The Supreme Court Yearbook

2019

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2019

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CONTENTS

CONTENTS 3

FOREWORD BY THE PRESIDENT OF THE SUPREME COURT 6

1. THE SUPREME COURT AS THE HIGHEST JUDICIAL AUTHORITY IN CIVIL AND CRIMINAL MATTERS 11
- 1. 1. Composition of the Supreme Court 12
- 1. 2. Seat of the Supreme Court, contacts 13
  - 1. 2. 1. Annex to the Seat of the Supreme Court in Bayerova Street 14
- 1. 3. Organisational Structure 16
- 1. 4. Supreme Court Justices in 2019 18
  - 1. 4. 1. upreme Court Trainee Justices in 2019 19
  - 1. 4. 2. Brief biographies of new Supreme Court Justices 20

2. DECISION MAKING 21
- 2. 1. Supreme Court Plenary Session 21
- 2. 2. Reports of Cases and Opinions 21
- 2. 3. The Supreme Court Civil and Commercial Division in 2019 22
  - 2. 3. 1. Summary of Decisions of the Supreme Courtś Civil and Commercial Division 22
  - 2. 3. 2. Unifying aktivity of the Supreme Court's Civil and Commercial Division 29
  - 2. 3. 3. Statistical data on the activities of the Supreme Court's Civil and Commercial Division 29
  - 2. 3. 4. Selection of the Important Decisions of the Supreme Court's Civil and Commercial Division 33
- 2. 4. The Supreme Court Criminal Division in 2019 45
  - 2. 4. 1. Summary of Decision-Making Activity of the Supreme Court's Criminal Division 45
  - 2. 4. 2. Unifying Activity of the Supreme Court's Criminal Division 49
  - 2. 4. 3. Statistical Data on the Activities of the Supreme Court Criminal Division 51
  - 2. 4. 4. Selection of important decisions of the Supreme Court's Criminal Division in 2019 52
- 2. 5. Special Panel Established under Act No 131/2002 Coll. On Adjudicating Certain Judisdiction Disputes 65
- 2. 6. Recognition for Supreme Court Justicices 67
- 2. 7. Additional Activities of Supreme Court Justices 68
  - 2. 7. 1. Law-Making 68
  - 2. 7. 2. Training of Justices and Participation in Professional Examinations 68
  - 2. 7. 3. Publications 69
- 2. 8. Administrative Staff in the Judiciary Section 69

3. DOMESTIC AND INTERNATIONAL RELATIONS 72
3. 1. ECLI Project Report 72
3. 2. Activities of the Analytics and Comparative Law Department 73
3. 2. 1. Analytical Activities 73
3. 2. 2. "Digest of ECHR Decisions for Judicial Practice" and "Bulletin" 74
3. 2. 3. Comparative Law Liaisons Group 74
3. 2. 4. Judicial Network of the European Union 75
3. 2. 5. Participation of Representatives of the Department of Analytics and Comparative Law in International Conferences 75
3. 3. Participation of the Supreme Court President and Vice-President in Conferences in the Czech republic and Abroad 76
3. 3. 1. President of the Supreme Court 76
3. 3. 2. Vice-President of the Supreme Court 76
3. 4. Justice´s Official Visits Abroad 77
3. 5. VIP Visits to the Supreme Court 78
3. 5. 1. President of the Supreme Court of the United Kingdom 78
3. 5. 2. President of the Supreme Court of Thailand 78
3. 5. 3. Justice of the Supreme Court of South Korea 79
3. 6. International Conference – "Efficiency and Quality of the Czech Judiciary: Assessment and Prospects" 79
4. PROFESSIONAL TRAINING OF JUSTICES, THEIR ASSISTANTS AND EMPLOYEES 80
5. FINANCIAL MANAGEMENT 81
6. THE PERSONAL DEPARTMENT 82
7. THE PUBLIC RELATIONS DEPARTMENT AND PROVIDING INFORMATION 83
7. 1. Information Office 83
7. 2. Spokesman 84
7. 3. Information under Act No. 106/1999 Coll., on Free Access to Information 85
8. HANDLING OF COMPLAINTS UNDER ACT NO. 6/2002 COLL., ON COURTS AND JUSTICES 87
9. THE DEPARTMENT OF CZECH CASE LAW AND ANALYTICS 88
10. THE SUPREME COURT LIBRARY 90
11. THE IT DEPARTMENT 91
12. THE CONFLICT OF INTERESTS DEPARTMENT 92
12. 1. Departmental Activities 92
12. 2. Statistical data 93
POSTSCRIPT BY THE SUPREME COURT VICE-PRESIDENT 94

FOREWORD BY THE PRESIDENT OF THE SUPREME COURT

Dear Readers,

When I took over the presidency of the Supreme Court in January 2015, its annual activity report was actually issued only once every two years. My colleagues and I agreed quite quickly that it would be a good idea to change this practice. After all, the Supreme Court is a living and dynamic institution; something is always going on here. Recapitulating or directly evaluating some of the fundamental steps taken after a two-year gap therefore makes little sense. Consequently, since 2015 we have been publishing a truly annual report, now more pertinently called the Yearbook of the Supreme Court. In the preparation of the Yearbook, we try to incorporate and summarise all the most important news defining the decision-making activity of the Court and its justices in the reporting period, while at the same time naturally looking back at the work of all departments whose smooth running is in the hands of staff from Administration, the Section of the President and the Section of the Vice-President of the Supreme Court. This is precisely the information presented in the Yearbook you are now browsing.

Although decision-making is the Supreme Court's most important day-to-day task, I would like to begin this brief recap of everything significant that happened and changed in 2019 by delving into the Court's background. The most fundamental change – a visual one that will be noticed by everyone, whether they are coming to the Supreme Court itself or just passing by – is the opening of a new wing of the building at our seat in Brno. We have been trying to increase the capacity of our listed 1930s building since 2000. In fact, we were granted a building permit back in 2005, but construction did not begin until 2015. Last the autumn, on 1 October 2019 to be precise, I had the honour of joining the Minister for Justice, Marie Benešová, in officially opening our modern new extension. I would like to reiterate my gratitude to the Ministry of Justice for this project because the Supreme Court was in desperate need of a new wing; for years previously we had been forced, on an ever increasing basis, to make many compromises and come up with makeshift solutions at the facilities for judges and Court staff. In particular, the judicial clerks, who have been assigned most of the newly opened offices at the extension in Bayerova Street, now have a dignified setting for their work. The same goes for the library staff. Everything about what the new building has to offer is detailed elsewhere in this Yearbook. In my assessment of the Court's decision-making activity, I would like to start by referring to the latest statistics indicating how successful we were again in 2019 in slashing the backlog, i.e. the number of pending cases carried

forward from the previous period to the current year 2020. This is most evident in the civil appeal agenda: last year, 1,970 cases were carried forward, which is 18% less than at the turn of 2019, when 2,404 such civil appeals were carried forward. Reaching even further into the past, the justices entered 2018 with 2,884 pending civil appeal cases and, for example, exactly 10 years ago, at the beginning of 2010, 5,595 civil appeals were switched from the old year to the new. In this respect, the statistics for almost all agendas, whether before the Civil and Commercial Division or the Criminal Division, are satisfactory. Naturally, the increased efforts of justices and the clerks assisting them in decision-making also help to reduce the average duration of proceedings. Thus, in 2019 civilian appeal proceedings lasted an average of 196 days, while criminal appeals were handled by the chambers even more quickly, i.e. within 45 days on average. While there is evidently no more leeway to speed up decisions on criminal appeals any further, I assume that faster civil proceedings will be possible if the Civil and Commercial Division successfully reduces the backlog of cases at the same rate it has achieved so far. I regularly use the foreword to the Yearbook as an opportunity to mention some of the key rulings that the Supreme Court's chambers have recently handed down or approved for publication in the Collection of Cases and Opinions. This year, I would like to draw particular attention to the Court Civil Division's very frequently cited Resolution 27 Cdo 3885/2017 on the distribution of profit among shareholders, in which the Supreme Court explained that the annual financial statements of a public limited company are an eligible basis for profit distribution right up until the end of the following reporting period, and interpreted the conditions under which a public limited company need not distribute the profit or any part thereof among shareholders. This chamber also analysed in detail the requirements of an invitation to a public limited company's general meeting. In Judgment 25 Cdo 1778/2019 of 15 October 2019, a chamber of the Civil Division ruled on a dispute concerning the applicant, whose profile photograph from the Facebook social network had been published, without her consent, on a server operated by the defending media company in the context of articles dealing with the death of the applicant's friend. The Supreme Court pointed out that, regarding the use of this photograph, it could not be automatically inferred that the person pictured had given implicit consent to the further publication thereof, or that the conditions of statutory editorial licence had been met. Rather, in all cases it is essential to address the aspect of proportionality, taking into account the specific circumstances of publication, and to protect not only the information media's freedom of expression and the right of the public to information, but also the legitimate interests of the person pictured, in particular the right to privacy, respect and dignity. Restitution-related cases remain common for the Civil Division's chambers. One of the most important rulings was Judgment 28 Cdo 2703/2018, addressing the legal prerequisites for the release of property in the event of religious restitution, approved last year by the College for publication in the Collection of Judgments and Opinions. According to that judgment, in a situation where the beneficiary filed a claim, pursuant to Act No 428/2012 on the settlement of assets with church and religious societies, with the Land Office seeking the relinquishment of agricultural property within the prescribed period referred to in the first sentence of Section 9(1) of that Act, running from 1 January 2013 to 2 January 2014, but the property was not owned by the

state, the legal prerequisites for the in-kind restitution of such property had not been met. At the Supreme Court's Criminal Division, one of the crucial rulings was Resolution 15 Tdo 1443/2018 of the Grand Chamber of the Supreme Court's Criminal Division of 17 April 2018, concerning the possibility of raising an objection of "extreme contradiction" between the evidence taken and the factual findings made therefrom in an appeal on a point of law by the Supreme Prosecutor brought against the accused. The Grand Chamber noted that objections of extreme contradiction between the evidence taken and the factual findings made therefrom are objections regarding violations of the fundamental rights of the accused within the meaning of Article 36 et seq. of the Charter of Fundamental Rights and Freedoms and the right to a fair trial in accordance with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Those fundamental rights protect the accused as the "weaker" procedural party and the Supreme Prosecutor therefore cannot invoke them to the detriment of that "weaker" procedural party. The Supreme Prosecutor may raise the objection of extreme contradiction between the evidence taken and the factual findings made therefrom in an appeal on a point of law only where this inures to the benefit of the accused. This ruling also addressed the particulars of a resolution on the referral of a case to another body pursuant to Sections 171(1), 188(1)(b), 222(2) or Section 257(1)(b) of the Code of Criminal Procedure. Such a ruling always concerns an act and not the possible legal assessment thereof. It must therefore be clear from the operative part of the resolution what the act is and what act will be the subject of decision-making by another competent body. If, after evidence has been taken, the court makes factual findings other than those on the basis of which the prosecution was brought, it is not enough to state such new findings of fact solely in the decision's statement of grounds. This is because the body to which the case is referred will decide on the act arising from the results of the evidence brought before the court and not on the reason for bringing the prosecution. Resolution 5 Tdo 1619/2018 of 28 February 2019 concluded that a perpetrator of the offence of the misrepresentation of one's financial status and assets pursuant to the third indent of Section 254(1) of the Criminal Code may be any natural (or even legal) person who has the appropriate ledgers, records or other documents in their possession, and no special quality, capacity or position is required of them within the meaning of Section 114(1) of the Criminal Code. This may also be a person who is contracted to maintain and process a particular entity's accounts. The perpetrator may therefore also be the governing body, or a member of the governing body, of a company that processes the accounts of another entity, if they intentionally refuse to hand over the entity's accounting documents, prevent it from filing its tax return, and impede a tax assessment by the tax office. Another important conclusion of this ruling is that accounting documents cannot be subject to the right of retention intended to secure an obligation between an entity and the person who maintains and processes its accounts. Under Resolution 4 Tdo 339/2019 of 21 May 2019, contrary to the opinion of the prosecutor's office, the Supreme Court concluded that municipal police officers are not a police authority, as this institution is not mentioned in Section 12(2) of the Code of Criminal Procedure Though these officers are included under the concept of officials [Section 127(1)(e) of the Criminal Code] along, for example, with judges, prosecutors, and members of the security corps (i.e. including the Police of the Czech

Republic), this does not in itself mean that the officers of the municipal police engage in acts under the Code of Criminal Procedure. If they had taken any action in connection with the injured party's notification of the act in question in the proceedings, they did not do so in the capacity of a police authority or in accordance with the Code of Criminal Procedure. Thus, if they were subsequently questioned by the court at first instance as witnesses in relation to the case as a whole, such acts and the evidence arising therefrom cannot be dismissed as inadmissible acts and evidence. In criminal proceedings, it is therefore possible to question a municipal police officer, in the procedural position of a witness, about facts of which he had learned from persons present at the scene of the crime in the performance of his duties. In connection with the Court's decision-making activities and the work of individual judges, it should be recalled that two newly appointed experts assigned to the Supreme Court from other legal professions, namely the former prosecutors Radek Doležel and Petr Škvain, also became members of the Criminal Division in 2019. This means that, for the first time in a while, it is not just career judges taking decisions in the chambers of the Supreme Court. The involvement of former prosecutors in the Supreme Court to date, though still in its early days, shows that reopening opportunities to a broader range of legal professions is a step in the right direction that has clearly enriched the decision-making activity of the Criminal Division. In total, nine new justices were permanently assigned or transferred to the Supreme Court in 2019. This was an extraordinary number, unprecedented in recent years, and resulted from the older generation of justices giving way to the next. As 2018 came to an end, eight judges took their leave of the Supreme Court either because they had reached the age limit of seventy or had personally requested to do so. The Civil and Commercial Division also entered 2019 with a new president, Jan Eliáš. I think it is self-evident from the following passages of this Yearbook how well, reliably and efficiently the Civil Division worked under his leadership throughout the year. This indisputable quality was also reflected in the individual awards presented to some of the justices. Vice-President of the Supreme Court Roman Fiala received an honourable mention from the HR Officers Club for his major and outstanding contribution to raising legal awareness in the Czech Republic, chamber president Pavlína Brzobohatá won an acclaimed legal award – the Antonín Randa Bronze Medal, and chamber president Lubomír Ptáček was elected president of the European Association of Labour Court Judges. This last event just goes to show, yet again, that the Supreme Court and the Czech judiciary in general enjoy a very good reputation abroad. In this context, it should be noted that Robert Fremr, a chamber president of the Supreme Court's Criminal Division, has had leave since 2012 to act as a judge of the International Criminal Court in The Hague. Since March 2018, he has been first vice-president of that court. The Czech judiciary is also constantly improving in the annual EU Justice Scoreboard. Last November, at an international conference co-organised by the Supreme Court and the Constitutional Law Committee of the Czech parliament's Senate, Ramin Gurbanov – the President of the European Commission for the Efficiency of Justice (CEPEJ) – also responded to the results of the last published scoreboard by observing that the Czech courts were in good shape. That conference, entitled "Efficiency and Quality of the Czech Judiciary: Assessment and Prospects", informed professionals and the general public alike that, in

many respects (for example in a comparison of how long court proceedings take), the Czech judiciary is doing better than many advanced Western European democracies. This industry event, attracting leading speakers, also specifically named what needed to be improved in the Czech judiciary. Hence the Supreme Court has identified – among other goals – an increase in the trustworthiness of the Czech judiciary as one of its priorities in the upcoming period. Negative news tends to prevail in the media as it panders to what people want to hear. We need to devise a counterweight rather than resign ourselves to those reports and this trend. Examples from some European countries, headed by the Netherlands and, more recently, Slovenia, show that credibility can be boosted considerably on the strength of judiciously chosen processes and programmes. And that this can be achieved in the short space of a few years. Inspiration abroad, mutual comparisons and respect, and exchanges of experience. All of this is becoming increasingly important in today's globalised world. The Supreme Court does not rely solely on its active membership of the Network of the Presidents of the Supreme Judicial Courts of the European Union or on its membership of the Permanent Conference of the Presidents of the Supreme Courts of the Visegrad Countries. The management of the Supreme Court, as well as its other justices, regularly seizes opportunities to meet representatives of the highest judicial institutions in Europe, in particular the Court of Justice of the European Union and the European Court of Human Rights. In recent years, European judicial leaders have also participated in international conferences held by the Supreme Court. In a spirit of reciprocation, Supreme Court justices attend similar events abroad. In the past, the Supreme Court's seat in Brno has been personally visited, including on repeated occasions, by many presidents of foreign courts. For example, in 2019 one of these visitors was Cheep Chulamon, President of the Supreme Court of Thailand. I would also like to highlight, in particular, the inspiring visit by Lady Hale, President of the Supreme Court of the United Kingdom. After all, it would be a mistake to think that we know everything best and that we can work everything out for ourselves.

Pavel Šámal
President of the Supreme Court

Pavel Šámal
President of the Supreme Court

1. THE SUPREME COURT AS THE HIGHEST JUDICIAL AUTHORITY IN CIVIL AND CRIMINAL MATTERS

The Supreme Court is the highest judicial authority in matters within the courts' jurisdiction in civil court proceedings and in criminal proceedings. Its panels decide on extraordinary remedies, with the exception of matters that fall within the competence of the Constitutional Court and the Supreme Administrative Court.

Extraordinary remedies are appeals against decisions of courts of second instance and also complaints claiming violations of the law filed at the criminal court by the Ministry of Justice. The Supreme Court decides, in cases prescribed by law, on the determination of the local and substantive jurisdiction of the courts, recognition of foreign decisions, permission to transit persons on the grounds of European arrest warrants, review of wiretapping orders and in case of doubts about immunity from criminal law enforcement.

The Supreme Court plays a vital role in unifying case law. It achieves this in particular by deciding on appeals and issuing opinions on a uniform interpretation of the law. The most important decisions of the Supreme Court, or lower instance courts, and opinions of the Divisions or Plenary Sessions of the Supreme Court, are published in the Reports of Cases and Opinions.

Since 1 September 2017, under Act No. 159/2006, on Conflicts of Interests, as amended, the Supreme Court has also been entrusted with receiving and recording notifications concerning the activities, assets, income, gifts and obligations of all the more than 3000 judges in the Czech Republic. These records have not yet been published.

1. 1. Composition of the Supreme Court

The Court is headed by the President of the Supreme Court, with Prof. JUDr. Pavel Šámal, Ph.D. being appointed to that position on 22 January 2015 by the President of the Republic and the Vice-President, JUDr. Roman Fiala, appointed on 1 January 2011. The Supreme Court also consists of Presidents of the Divisions, Presiding Judges and other Justices. The President and Vice-President of the Court are appointed by the President of the Republic for a 10-year term.

The Supreme Court President has a managerial and administrative role. In addition, he also participates in decision-making, appoints Heads of Divisions, Presiding Judges and assistants to Justices and also court employees to managerial positions. He issues the Organisational and Office Rules and, following discussions at the Plenary Session, the Rules of Procedure. Upon consultation with the Council of Justices, he issues a work plan for every calendar year. The President of the Supreme Court determines the agenda for the Plenary Session. He proposes opinions on courts' decision-making to the Plenary Session and to the Divisions.

The Vice-President of the Supreme Court acts as a Deputy for the President when the latter is absent; when the latter is present, the Vice-President exercises the powers conferred on him by the President. He oversees the handling of complaints, in particular those concerning proceedings before courts at all levels of the judiciary, collects comments from the Supreme Court Justices on forthcoming Acts of Parliament and, in cooperation with the Justice Academy, sponsors training courses for assistants, advisers and employees of the Supreme Court.

The Supreme Court has two Divisions, a Civil and Commercial Division and a Criminal Division. They are headed by Heads of Divisions, who manage and organise their activities. The post of Head of the Civil and Commercial Division was taken in 2019 by JUDr. Jan Eliáš, Ph.D., who was appointed on 1 January 2019; since 1 January 2016 JUDr. František Púry, Ph.D. has been acting as the Head of the Criminal Division, having been appointed to this post on 1 September 2015. The Divisions adopt opinions on courts' decision-making practice, monitor and evaluate their final decisions and generalise the findings. They initiate proposals for opinions on courts' decision-making, submitting their suggestions to the President of the Supreme Court. Upon proposals by the President of the Supreme Court, Heads of Divisions and Heads of Grand Panels, the Divisions adopt opinions, and select and decide to include seminal decisions in the Reports of Cases of Opinions.

All opinions of the Civil and Commercial Division, selected decisions of the individual Panels and selected decisions of lower courts are published in the Reports of Cases and Opinions.

The Plenary Session, composed of the President of the Supreme Court, the Vice-President of the Supreme Court, Heads of Divisions, Presiding Judges and other Supreme Court Justices, is the most important collective body of the Supreme Court. It discusses the Rules of Procedure of the Supreme Court and adopts opinions on courts' decision-making on issues concerning the Divisions or issues on which the Divisions differ in their views.

Grand Panels are composed of at least nine Justices from the respective Division of the Supreme Court. The Grand Panel of the Division considers a matter when any Panel of the Supreme Court refers the case to it because, during the course of the Panel's decision-making, it has arrived at a legal opinion different from that already expressed in a decision of the Supreme Court.

Three-member Panels decide, in particular, on appeals on points of law and on the recognition and enforceability of decisions of foreign courts in the Czech Republic, and in criminal cases they also decide on complaints claiming violations of the law. Each Panel of the Supreme Court is headed by a Presiding Judge who organises the work for the Panel, including assigning Panel members to cases.

The Council of Justices was established at the Supreme Court as an advisory body for the President of the Supreme Court. Members are elected at the assembly of all Supreme Court Justices for a term of five years. The last elections to the Council of Justices were held on 29 November ,2017. The Judicial Council consists of the President and four other members. Since 1 May 2019, the President is Mr Lubomír Ptáček who succeeded his predecessor Mr Petr Gemmel.

1. 2. Seat of the Supreme Court, contacts

Address of the Supreme Court: Burešova 570/20, 657 37 Brno
Telephone: + 420 541 593 111
e-mail address: podatelna@nsoud.cz
Data mailbox ID: kccaa9t
Website: www.nsoud.cz
Twitter: @Nejvyssisoud
LinkedIn: https://cz.linkedin.com/company/nejvyšší-soud
Instagram: https://instagram.com/nejvyssisoud

Since 1993, the Supreme Court has been located in a listed building of the erstwhile General Pension Institute, which was built to a design by Emil Králík, a professor of the Czech Technical University in Brno, between 1931 and 1932. After World War II, several institutions were progressively located in the building. From the 1960s, the Secretariat of the Regional Committee of the Czechoslovak Communist Party had its offices there and for its needs, in 1986 an insensitive extension, a mansard floor, was built to a design by Milan Steinhauser, along with a courtyard wing with a stepped hall, built into the courtyard. For a short period of time at the beginning of the 1990s, the Rector's Office and the Institute of Computer Science of Masaryk University were located there. Part of the building was also used by the Technical University and the Janáček Academy of Music and Performing Arts, up to 1996.

With capacity limited in the main building and with the numbers of justices and, above all, judicial clerks and employees growing, until the

autumn of 2019 the Supreme Court had annual leases on six field offices created from flats in a nearby apartment building. On 1 October 2019, after many years of waiting, the Supreme Court's new wing – adjacent to the original historical building in Bayerova Street – was opened.

1. 2. 1. Annex to the Seat of the Supreme Court in Bayerova Street

The Supreme Court had been seeking to increase the capacity of its historical building since 2000. Year after year, the growing total number of cases pending required gradual increases in the number of justices and, above all, judicial clerks to assist the justices as they tackled their agenda. Although a building permit for an extension comprising a new wing of the building in Bayerova Street had been granted back in 2005, the central government budget was unable to earmark enough funds for the construction to go ahead. It was not until 2015, following negotiations between Pavel Šámal, as the president of the Supreme Court, and the then justice minister Robert Pelikán, that a final decision was taken to finance the extension to the Supreme Court's main building from the budget of the Ministry of Justice. After a partial revision of the original project, construction began in June 2017. On 1 October 2019, Supreme Court president Pavel Šámal officially opened the new wing in the presence of justice minister Marie Benešová.

The new office building has seven floors above ground and three underground levels. The lowest level, besides housing technological facilities, accommodates the Supreme Court's new registry. Above that, there are 20 parking spaces spread over the underground garage's two levels. Finally, 26 years after its inception, the Supreme Court gained dignified premises for its large library on the ground floor of the building's new wing, along with a new courtroom that doubles up as a small multipurpose hall. The adjacent terrace is designed to be a relaxation zone. On the top floor, there are seven new accommodation units for justices who come to work in Brno from all over the country. This added to the existing accommodation facilities for justices in the original building's mansard roof and in rented flats in Brno.

Basic technical data on the building:

Number of storeys: 10 (3 underground)

Developed area: 433 m^2

Total gross floor area: 3,673 m^3

Total enclosed area: 12,508 m^3

Number of offices: 57

Number of employees working in the building: 143 (2 librarians, judicial clerks)

Other rooms (besides offices): Library, archive/registry, courtroom and council room, justices' accommodation

Underground parking spaces: 20

Price of all preparatory and construction works, including fixtures and equipment: CZK 135 million (CZK 129 million covered by the Ministry of Justice, with the Supreme Court contributing approximately CZK 6 million – primarily to work on interconnecting corridors to the old building)

Key dates of the project to extend the Supreme Court building with a new wing:

8 February 2016 – Approval and registration of Investment Project 136V118000221: Ministry of Justice – demolition and subsequent construction of a building at Bayerova 573/3, Brno – Veveří

18 April 2016 – Contract with Arch.Design, s.r.o. to revise the original project

28 June 2017 – Handover of construction site for start of works

22 July 2017 – Start of demolition of the original residential building

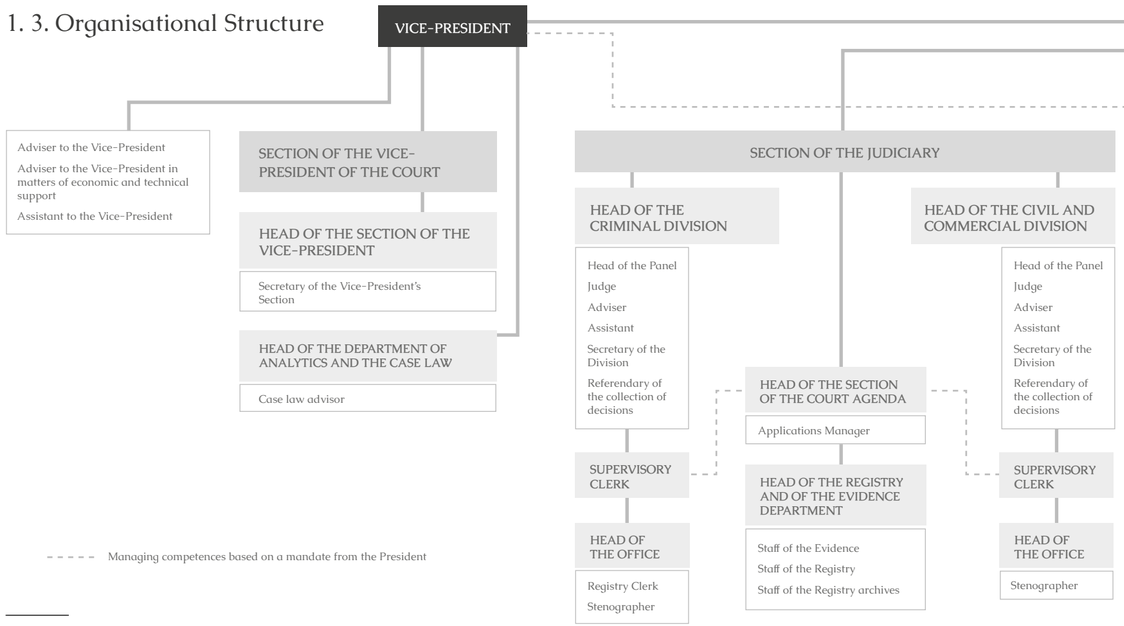
19 November 2017 – Completion of demolition and preparation of construction site for connection of utilities and laying of foundations

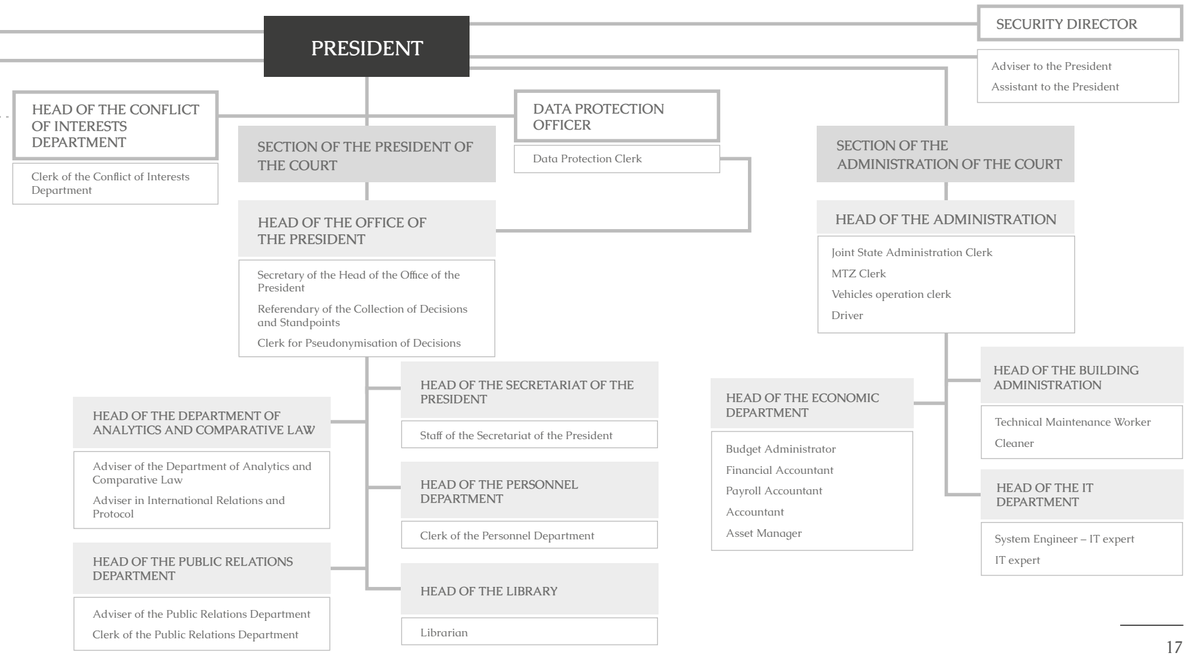
2 September 2019 – Handover of finished building by the contractor

19 September 2019 – Building approval finalised

1 October 2019 – Official opening

1. 3. Organisational Structure





1. 4. Supreme Court Justices in 2019

Criminal Division

JUDr. Petr Angyalossy, Ph.D.
JUDr. Jan Bláha
JUDr. Radek Doležel
JUDr. Antonín Draštík
JUDr. Tomáš Durdík
JUDr. Jan Engelmann
JUDr. František Hrabec
JUDr. Ivo Kouřil
JUDr. Věra Kůrková
JUDr. Josef Mazák
JUDr. Michal Mikláš
JUDr. Marta Ondrůšová
JUDr. Jiří Pácal
JUDr. František Púry, Ph.D.
JUDr. Blanka Roušalová
JUDr. Bc. Jiří Říha, Ph.D.
JUDr. Petr Šabata
prof. JUDr. Pavel Šámal, Ph.D.
JUDr. Milada Šámalová
JUDr. Pavel Šilhavecký
JUDr. Petr Škvain, Ph.D.
JUDr. Vladimír Veselý

Civil and Commercial Division

Mgr. Vít Bičák
JUDr. Pavlína Brzobohatá
JUDr. Filip Cileček
JUDr. Zdeněk Des
JUDr. Marek Doležal
JUDr. Jiří Doležílek
JUDr. Václav Duda
JUDr. Bohumil Dvořák, Ph.D., LL.M.
JUDr. Jitka Dýšková
JUDr. Jan Eliáš, Ph.D.
JUDr. Miroslav Ferák
JUDr. Roman Fiala
JUDr. Hana Gajdzioková
JUDr. Miroslav Gallus
JUDr. Petr Gemmel
Mgr. David Havlík
JUDr. Ing. Pavel Horák, Ph.D.
JUDr. Kateřina Hornochová
JUDr. Pavel Horňák
JUDr. František Ištvánek
JUDr. Miroslava Jirmanová, Ph.D.
Mgr. Michal Králík, Ph.D.
Mgr. Petr Kraus
JUDr. Pavel Krbek
JUDr. Zdeněk Krčmář

JUDr. Pavel Malý
JUDr. Helena Myšková
Mgr. Jiří Němec
JUDr. Michael Pažitný
Mgr. Milan Polášek
JUDr. Zbyněk Poledna
JUDr. Pavel Příhoda
JUDr. Lubomír Ptáček, Ph.D.
JUDr. Olga Puškinová
JUDr. Mojmír Putna
Mgr. Zdeněk Sajdl
JUDr. Pavel Simon
JUDr. Jiří Spáčil, CSc.
JUDr. Karel Svoboda, Ph.D.
JUDr. Petr Šuk
JUDr. Hana Tichá
JUDr. Petr Vojtek
JUDr. Pavel Vrcha, MBA
JUDr. Robert Waltr
JUDr. Jiří Zavázal
JUDr. Aleš Zezula
JUDr. Ivana Zlatohlávková
Mgr. Hynek Zoubek

1. 4. 1. upreme Court Trainee Justices in 2019

Criminal Division

Mgr. Daniel Broukal
JUDr. Tomáš Durdík
JUDr. Aleš Kolář
JUDr. Michael Vrtek, Ph.D.

Civil and Commercial Division

JUDr. Marek Cigánek
JUDr. Mgr. Marek Del Favero, Ph.D.
JUDr. Jiří Handlar, Ph.D.
Mgr. Lucie Jackwerthová
Mgr. Rostislav Krhut
Mgr. Tomáš Mottl
Mgr. Jiří Němec
Mgr. Michael Nippert
JUDr. Helena Nováková
JUDr. Vítězslava Pekárková
JUDr. Iva Suneghová
JUDr. Pavel Tůma, Ph.D., LL.M.
JUDr. David Vláčil
JUDr. Martina Vršanská
JUDr. Aleš Zezula

1. 4. 2. Brief biographies of new Supreme Court Justices

JUDr. Radek Doležel (∗1972)
justice of the Criminal Division, judge since 2019, Supreme Court justice since 2019

Graduated from the Faculty of Law of Masaryk University, Brno. He started his career in 1999 as an articled clerk. From 2000, he was a lawyer at the Office for the Protection of Competition, and then from 2002 he was a Supreme Court chamber president assistant. He worked as a prosecutor at the Brno Municipal Prosecutor's Office from 2006 and at the Supreme Prosecutor's Office from 2008. He was appointed as a department deputy director at the Supreme Prosecutor's Office in 2014, before becoming a department director in 2015.

JUDr. Tomáš Durdík (∗1976)
justice of the Criminal Division, judge since 2004, Supreme Court justice since 2019

Graduated from the Faculty of Law of the University of West Bohemia, Plzeň. From 2004, he was a chamber president at Praha 9 District Court. In 2008 and 2011, he was seconded to the Municipal Court in Prague. In 2012, he was permanently transferred to the Municipal Court in Prague as the president of the criminal chamber at first instance.

Mgr. Jiří Němec (∗1977)
justice of the Civil and Commercial Division, judge since 2004, Supreme Court justice since 2019

Graduated from the Faculty of Law of Palacký University, Olomouc. From 2001, he was a trainee judge at Olomouc District Court. In 2004, he was appointed as a chamber president at Olomouc District Court, and in 2009 was made vice-president of this court's civil section. In 2010, he was transferred to the Olomouc branch of the Regional Court in Ostrava, where he served on the board of appeal. From 2012, he was also the vice-president of that court's civil section.

JUDr. Petr Škvain, Ph.D. (∗1978)
justice of the Criminal Division, judge since 2019, Supreme Court justice since 2019

Graduated from the Faculty of Law of the University of West Bohemia, Plzeň. From 2003, he worked as an articled clerk, and from 2008 as an independent lawyer specialising in criminal law. From 2016 to 2019, he was a prosecutor at the High Prosecutor's Office in Prague.

2. DECISION MAKING

2. 1. Supreme Court Plenary Session

The Plenary Session, composed of the President of the Supreme Court, the Vice-President of the Supreme Court, Heads of Divisions, Presiding Judges and other Supreme Court Justices, is the most important collective body of the Supreme Court. No Plenary Session had to be convened in 2019 for any single case.

2. 2. Reports of Cases and Opinions

In terms of providing information about the Supreme Court's unifying activity and also of promoting legal awareness of both experts and laypeople, an important act of the Supreme Court is the publication of the Reports of Cases and Opinions (Section 24 (1) of Act No 6/2002 on Courts and Judges). This is the only official collection of court decisions on cases falling within the scope of the courts' jurisdiction in civil and criminal proceedings. They contain all the opinions of both Divisions of the Supreme Court, as well as selected and approved decisions of various Panels of the Divisions (including the Grand Panel) and also selected and approved decisions of lower courts. The publication Reports of Cases and Opinions of the Supreme Court is divided into a civil and a criminal section. Once the decisions selected for potential publication in the Reports of Cases and Opinions have been assessed by the Reports Panel of the relevant Supreme Court Division, they are distributed to the relevant persons for comment, i.e. regional and high courts, law schools and university law faculties, the Czech Bar Association, the Ministry of Justice, for criminal matters to the Supreme Public Prosecutor's Office and potentially, depending on the nature and importance of the questions being ad-

dressed, other bodies and institutions. The proposed decisions and the comments received are then considered and approved at a meeting of the relevant Supreme Court Division, which is quorate if attended by a simple majority of its members. At the Division meeting the proposed decisions may be adjusted if necessary, and then all Division Justices attending the meeting vote approve them for publication. A simple majority of votes of all Division Justices is required to approve a decision for publication in the Reports of Cases and Opinions.

The Reports of Cases and Opinions is published in individual issues, which are published ten times each year, in collaboration with the Wolters Kluwer publishing house. At the beginning of 2017, a userfriendly electronic version of the Reports of Cases and Opinions was made available to the public, available on sbirka.nsoud.cz, into which not only all the new decisions are included as they are issued, but the complete set of reports published since the beginning of the 1960s are also incorporated retrospectively. Similarly, since 2017, a so-called Blue Collection, containing a selection of important rulings by the European Court of Human Rights, has also been available in electronic form on eslp.nsoud.cz. The Supreme Court also issues this collection in cooperation with the Wolters Kluwer publishing house. The exact title of the publication is the Selection of the ECHR Rulings for the Judicial Practice.

Individual judgements from the Reports of Cases and Opinions can obviously also be found, along with legal recitals, on the Supreme Court website www.nsoud.cz , where the content of the next issue of the Reports is also announced in advance on the homepage.

2. 3. The Supreme Court Civil and Commercial Division in 2019

2. 3. 1. Summary of Decisions of the Supreme Courtś Civil and Commercial Division

As follows from Article 92 of the Constitution of the Czech Republic and from Section 14 (1) of Act No 6/2002, on Courts and Judges, as amended, the Supreme Court is also the highest judicial body in matters that fall within the civil jurisdiction of courts and, through the Civil and Commercial Division, it is called upon to provide for the uniformity and legality of court decisions within civil procedure. It carries out this task mainly by deciding on extraordinary remedies in cases provided for in laws governing court procedure, namely on appeals on points of law against decisions of courts of appeal as well as, under its powers outside its decision-making competences, by adopting opinions serving the purpose of overcoming courts' varied decision-making in specific types of cases, and finally by publishing selected decisions in the Reports of Cases and Opinions.

An amendment to Act No 99/1963 Coll., the Code of Civil Procedure (hereinafter referred to as the "CCP"), implemented by Act No 404/2012 Coll. and effective from 1 January 2013, was intended to assist the Supreme Court in executing these basic tasks; according to the explanatory memorandum it monitored a conceptual change in the

appeal system, whose intention was, on the one hand to reduce the excessive burden on the Supreme Court and, on the other hand, to reinforce the role of the Supreme Court as a unifier of judicial case law; and whereas this second objective (through a significant extension of the limits of appellate review) has been achieved, the first has not. The number of cases has increased in proportion with the extension of the range of decisions that are subject to appeal.

The amendment to the Code of Civil Procedure, which was enacted by Act No. 296/2017 Coll., effective from 30 September 2017, responded to this situation, extending the provisions of Article 238 of the CCP, which stipulated those cases for which an appeal was not admissible, to decisions of the appellate courts in sections relating to the statement of costs of the proceedings, decisions ruling on the application for exemption from court fees or on the obligation to pay a court fee, decisions to decide on a party's application for the appointment of a representative, and – albeit conceptually significant – decisions by which an appellate court annulled the decision of the court of first instance and returned the case to the court of first instance for further proceedings.

At the end of 2019, the Civil and Commercial Division was composed of its Head and fifty-seven Justices (ten of whom were temporarily assigned) and arranged in thirteen court departments, on the basis of a work plan set out by the President of the Supreme Court for that year, or changes to it made during the course of the year. In principle, this work plan is based on areas of specialised expertise, reflecting the existence of separable and relatively independent civil or commercial agendas. In brief, the individual court departments cover the following areas of specialised expertise: appeals on points of law in matters concerning the enforcement of decisions and execution - Department 20, labour law matters and others - Department 21, cases of rights in rem - Department 22, cases involving commercial obligations, industrial property rights and protection against unfair competition - Department 23, cases of succession and family law, as well as disputes over the validity and effectiveness of transfers of title - Department 24, matters of compensation for damage and protection of personality rights - Department 25, matters related to rents and leases - Department 26, In the matter of legal persons and claims arising from the Copyright Act - Department 27, cases of restitution and unjust enrichment - Department 28, matters concerning insolvency and promissory notes - Department 29, cases of compensation for damage and non-material harm caused by the exercise of public power - Department 30, cases involving commercial obligations and privatisation disputes - Department 32, cases concerned with non-commercial obligations - Department 33. Department 31 is composed of the Grand Panel, which decides pursuant to Section 20 of the Act on Courts and Judges.

Prior to 1 September 2016, when the Rules of Procedure of the Supreme Court were amended, the composition of each of the procedural (three-member) panels called upon to hear and decide a specific case that was assigned to the court department on the basis of the work plan was, in principle, handled by the "managing head" of the competent court department (who was also determined by the work plan); the managing heads appointed the panels that would decide the case primarily on the

basis of criteria such as internal specialised expertise, expertise of the Justices and their specific workload. As of 1 September 2016, the deciding panel is formed directly within the court department on the basis of the work plan. The work plan establishes a mechanism based on which an appeal is immediately identified with a specific justice (under a process of regular rotations), and from this - also in advance - the composition of the three-member panel can be deduced. This modification of the case scheduling process was introduced to preclude any objections claiming lack of respect for the rules governing a fair trial and the right to a lawful judge embodied therein under Article 38 (1) of the Charter of Fundamental Rights and Freedoms. The Justice assigned to the case prepares a draft decision, which is then put to vote in the panel configured as above.

2. 3. 1. 1. Decisions on extraordinary remedies

The focal point of the decision-making of the Division's Panels are decisions on appeals on points of law against final decisions of the courts of appeal, this being one means of extraordinary remedy under the valid and effective wording of Act No 99/1963, Code of Civil Procedure (CCP), which significantly dominates other activities from the point of importance. Since 1 January 2013, these proceedings have been governed by the provisions of Sections 236 to 243g of the CCP, i.e. in Chapter Three of Part Four of the Code of Civil Procedure.

The appeal on a point of law is a remedy against the final decisions of appellate courts, i.e. against decisions of regional and high courts (and the Municipal Court in the case of Prague), which terminate appeal proceedings as well as against certain specific procedural decisions of appellate courts covered by Section 238a CCP, and can be filed within two months from the service of the challenged decision (Section 240(1) CCP).

If the Petitioner, or the person representing him or her, has not received education in the field of law, he or she must be represented by an attorney of law, in accordance with Section 241 (1) CCP when filing a petition with the Supreme Court (in certain cases he or she may also be represented by a notary).

The appeal on a point of law is not always admissible; it is only admissible when the law so provides (Section 237 CCP, a contrario Section 238 CCP, Section 238a CCP). If the appeal on a point of law is not admissible, it will not become admissible if the appeal court erroneously informs the participant that the appeal on a point of law is admissible.

The amendment to the Code of Civil Procedure implemented by Act No 404/2012 Coll. has also significantly affected the admissibility of appeals on a point of law; henceforth they will be admissible against all decisions of appellate courts where the appeal proceedings terminated, regardless of the wording of the contested decision. It is therefore irrelevant whether or not the appellate court's decision modified or upheld the first instance court's decision, and it is also not necessary for the appeal on a point of law to be directed against a decision on the merits of the case as was the case under the previous regulations (the admissibility of an appeal against annulment decisions of the appellate courts was abolished under the aforementioned Act No 296/2017 Coll).

An appeal on a point of law is admissible (Section 237 CCP) when the appellate court's challenged decision depends on the resolution of an issue of substantive or procedural law and:

a) when addressing that issue, the court of appeal diverged from the established decision-making practice of the court dealing with appeals on points of law, or

b) that issue has not yet been resolved in the decision-making practice of the court dealing with appeals on points of law, or

c) the court dealing with appeals on points of law delivers different decisions regarding that issue, or

d) this issue should be assessed by the appellate court in a different manner.

Under the provisions of Section 238 CCP, the Act states when an appeal against a decision of an appellate court where the appeal procedure terminates is not admissible (here what is significant is the recording of assets – an appeal is not admissible against decisions and judgements handed down in proceedings where the subject, at the time the decision containing the contested ruling, decided on a monetary performance not exceeding CZK 50,000, including enforcement and execution proceedings, unless they are relations arising from consumer contracts or labour agreements).

Irrespective of the restrictions set out in Section 238 of the Code of Civil Procedure, under Section 238a CCP an appeal is admissible against the decision of appellate courts, when a decision was made during the appeal proceedings on:

a) who the party's procedural successor was,

b) on the admission of a party into the proceedings in lieu of the current party (Section 107a CCP),

c) on the accession of another party (Section 92 (1) CCP), or

d) on the substitution of a party (Section 92 (2) CCP).

An appeal on a point of law can only be filed on the grounds that the appellate court's decision is based on an erroneous assessment as to the law, whether substantive or procedural law, which was decisive in the challenged decision (Section 241a (1) CCP). Another ground on which an appeal on a point of law cannot be effectively raised, which is worth emphasising, in particular, is in relation to the rather frequent efforts of persons filing appeals on points of law to challenge decisions by claiming that their factual basis is incomplete or erroneous (although in the opinion of the Constitutional Court, this does not apply in situations of "extreme contradiction" between the evidence submitted and what was stated as a factual finding by the court on such basis).

As of 1 January 2013, the Code of Civil Procedure also put restrictions on the requirements regarding the form and content of appeals on a point of law, meaning that, in addition to the general particulars (Section 42 (4)) and information on which decision is targeted, the extent to which the decision is contested and the remedy sought by the petitioner, it must also include a statement of the ground for the appeal and an explanation of where the petitioner sees conditions for the admissibility of the appeal being satisfied, as enshrined in the above-mentioned provision of Section 237 CCP. When any of these particulars are absent, the appeal on a point of law is deemed defective, which often has critical consequences as such defects can only be removed within the time limit for filing the appeal on a point of law (while the procedure under Section 43 CCP does not apply in proceedings before the court dealing with appeals on points of law, which means that the petitioner is not invited to remedy, correct or supplement this appeal on a point of law). If the defect in the appeal on a point of law is not removed the court dealing with appeals on points of law dismisses the appeal on a point of law without being able to consider its merits.

When the petitioner does not sufficiently specify what he or she regards as satisfaction of the requirements for the admissibility of appeals on points of law, this will now also represent grounds for dismissing the appeal on a point of law, while it is possible that the appellate court can only make this decision through the Presiding Judge or a Justice authorised by the Presiding Judge (Section 243f (2) CCP). For example, should the petitioner claim that the appellate court diverged from the adjudicating practice of the court dealing with appeals on points of law, he or she must specify in the appeal on a point of law the decisions from which the court of appeal allegedly diverged, which obviously places considerable requirements on the petitioner.

However, these are not disproportionate with regard to mandatory (professional) representation (primarily by an attorney at law) stipulated by law. The legal regulation of the appeal procedure requires that the appeal on a point of law be also drafted by an attorney at law (or a notary) (Section 241 (4) of the Code of Civil Procedure); or the content of the petition, in which the petitioner states the scope of the challenge to the decision of the court of appeal or in which he or she sets out the grounds of appeal, without meeting the condition of mandatory representation, shall not be taken into account (Section 241a (5) CCP).

As a point of principle, the Supreme Court will review the contested decision only within the limits that it was challenged by the petitioner, and from the point of view of the grounds for an appellate as defined in the appeal on a point of law (exceptions to the binding nature of the content of the application are stipulated by Section 242 (2) of the CCP, the binding nature of the content of the appellate arguments is subject to an exceptional exemption under Section 242 (3), second sentence of the CCP).

In the vast majority of cases the Supreme Court decides on appeals on points of law without holding a hearing (Section 243a (1) CCP).

The Supreme Court discontinues the proceedings on the appeal on a point of law when the petitioner is not legally represented as required by the law or he or she withdraws the appeal on a point of law (Section 243c (3) CCP).

When the appeal on a point of law is not admissible or contains defects preventing the proceedings on the appeal on a point of law from continuing, or is obviously frivolous, the Supreme Court will dismiss it (Section 243c (3) CCP). If the appeal is rejected for inadmissibility under Section 237 CCP, all members of the Panel must agree to this (Section 243c (2) CCP).

If the appeal on a point of law is admissible but the Supreme Court concludes that the appellate court's challenged decision is correct, the Supreme Court rejects the appeal on a point of law as unfounded (Section 243d (1)(a) CCP).

However, where the Supreme Court concludes that the appellate court's decision is erroneous it may (now, under the legislation in force since 1 January 2013) modify that decision if the outcomes of the proceedings indicate that it is possible to decide on the matter (Section 243d (1)(b) CCP).

Otherwise, the Supreme Court quashes the appellate court's decision and refers the case back to the appellate court for further proceedings; if the grounds for which the appellate court's decision is quashed also apply to the first instance court's decision, that decision is also quashed and the case is referred back to the court of first instance for further proceedings (Section 243e (2) CCP).

The Supreme Court does not only decide in three-member panels but follows a procedure referred to as the Grand Panel to ensure the unity of its decision-making (see the provisions of Sections 19 and 20 of Act No 6/2002 Coll. on Courts and Judges) to which a procedural panel resorts when it arrives at a legal opinion that differs from the legal opinion expressed in an earlier decision of the Supreme Court. It is then obliged to refer the case to the Grand Panel (composed of representatives of the various court departments) and the Grand Panel is called upon to decide the case: in 2010 there were 17 of such cases, in 2011 16 cases, in 2012: 18 cases, in 2013 15 cases, in 2014 11 cases, in 2015 8 cases, in 2016 8 cases, in 2017 there were also 8 cases, in 2018 3 cases and in 2019 6 cases.

Proceedings on appeals on points of law can be tracked in the InfoSoud application, available on the Supreme Court website or the Ministry of Justice of the Czech Republic website (www.justice.cz); all decisions are then published in anonymised form on the website www.nsoud.cz.

2. 3. 1. 2. Other agendas dealt with by the Justices of the Civil and Commercial Division

Although appeals on points of law are of crucial nature for the Supreme Court and constitute the core of its operations, it also decides on other matters as the Code of Civil Procedure and other laws require it. It is

worth mentioning that the Supreme Court decides disputes over the in rem jurisdiction and local jurisdiction of courts, decides what court has local jurisdiction if the case falls within Czech courts' scope of authority but the circumstances determining territorial jurisdiction are absent or cannot be ascertained (Section 11 (3) CCP), and also decides on motions for removing and assigning a case if the competent court cannot consider the case due to the judges having been recused or if this is appropriate (Section 12 (3) CCP), as well as on partiality pleas against judges of superior courts (first sentence of Section 16 (1) CCP) or on recusing its own Justices (by another panel, under the second sentence of the same Section) and, finally, also acts in proceedings on a motion to determine the time limit for the enforcement of a procedural act pursuant to Section 174a of the Act on Courts and Judges. Under Section 51 (2) and Section 55 of Act No 91/2012 Coll, the Supreme Court is called on to decide on the recognition of final and conclusive foreign judgements concerning cases on the dissolution of marriage, legal separation, the declaration of a marriage as void and the declaration of whether or not a marriage was or was not concluded where at least one of the participants in the proceedings is a citizen of the Czech Republic, as well as on cases concerning the declaration or contesting of paternity where at least one of the participants in the proceedings is a citizen of the Czech Republic.

Under its powers outside its decision-making competences, referred to above, the Division fulfils its unifying role by adopting opinions on the case-law of lower courts in specific types of cases, on the basis of an assessment of final rulings where mutually conflicting legal opinions have been expressed. However, in 2019 no such unifying opinion was issued either by the Civil or the Commercial Division. The same interest - in reinforcing unified decision-making - is also monitored by the Supreme Court through the publication in its Reports of Cases and Opinions of important rulings deemed to serve the above purpose (not only the ones of the Supreme Court), on the basis of a decision by a majority of all the Justices in the Division. In 2019, the Civil and Commercial Division met a total of 10 times, also to select the core case law for publication in the Reports.

2. 3. 1. 3. Agendas of the Civil and Commercial Division of the Supreme Court according to the relevant registers

Cdo
– Appeals on points of law against final decisions of courts of appeal in civil and commercial matters;

Cul
– In civil and commercial matters, motions to set a time limit for making a procedural act under Section 174a of Act No 6/2002, on Courts and Judges;

ICdo
– Incidental disputes arising from insolvency proceedings;

Ncu
– Proposals for the recognition of foreign judgments in matters of marriage and in the declaration of and contesting of paternity;

Nd
– Disputes concerning courts' jurisdiction;
– Motions to refer a case to another court at the same level of judiciary on the grounds provided for in Section 12 (1) to (3) CCP if one of the courts is within the jurisdiction of the Prague High Court and the other within the jurisdiction of the Olomouc High Court;
– Motions to recuse Supreme Court Justices from hearing and deciding in a case;
– Motions to determine a court that would hear and decide a case if it falls within the jurisdiction of Czech courts but the prerequisites determining local jurisdiction are missing or cannot be ascertained (Section 11 (3) CCP);
– Other matters not falling within the ambit of the above typology, but requiring a procedural decision;

NSČR
– Matters submitted to the court for a decision in insolvency proceedings;

2. 3. 2. Unifying aktivity of the Supreme Court's Civil and Commercial Division

Under its powers outside its decision-making competences referred to above, the Division fulfils its unifying role by adopting opinions on the case-law of lower courts in specific types of cases (Section 14 (3) of Act No 6/2002 Coll., on Courts and Judges, as amended), on the basis of an assessment of final rulings where mutually conflicting legal opinions have been expressed. The same interest - in reinforcing unified decision-making - is also monitored by the Supreme Court through the publication in its Reports of Cases and Opinions important decisions from the point of the above relevance or if they are otherwise significant (not only decisions of the Supreme Court), on the basis of a decision by a majority of the Justices in the relevant Division.

Every approved opinion of the Supreme Court's Civil and Commercial Division is published in the Reports of Cases and Opinions and is also posted in electronic form on the Supreme Court's website www.nsoud.cz.

2. 3. 3. Statistical data on the activities of the Supreme Court's Civil and Commercial Division

It is a disappointing fact that the proportion of new cases requiring rulings by the Supreme Court means that appeal decisions are issued with lengthy delays, in some cases up to one or two years (however, in this regard, given the increase in the caseload, the situation is currently seeing some improvements). In principle, individual cases are dealt with on a first come first served basis based on the date of submission at court, also taking into account the total length of the (prior) court proceedings as well as the specific individual or public importance of the case.

On 31 December 2016 there were 24 cases that had been pending for more than two years, which implies an obvious and significant decrease

compared with early 2015 (82 cases), although the Supreme Court had started 2016 with a smaller number of such cases (22), as by 31 December. 2018, the number of pending cases older than two years was 20, while by 31 December 2019 there were 12 cases pending. The reasons for which cases pending for over two years had not been concluded are chiefly objective ones and are primarily the consequence of declarations of receivership, processes for the determination of procedural successors, the submission of cases before the Grand Panel, awaiting the outcome of the proceedings before the Constitutional Court, and requests for preliminary rulings to the CJEU. It is also expected that these cases will be concluded in the very near future.

Judicial assistants have been involved with assisting the Justices for the purposes of reducing the length of proceedings, increasing the quantity of decided cases and bringing focus to the decision-making as such. Each Justice currently has one to three assistants at his or her disposal and by the end of 2019 the Civil and Commercial Division included a total of 119 judicial assistants.

	Pending from earlier periods	New cases received	Decided	Pending
Cdo	2,404	4,340	4,774	1,970
Cul	0	7	6	1
ICdo (ICm)	208	157	184	181
Ncu	35	195	183	47
Nd	72	525	544	53
NSČR (INS)	124	144	159	109

(Summary of the number of cases assigned to the Civil and Commercial Division in 2019)

It transpired that, due to the otherwise justifiable objective and focus of the amendment to the Code of Civil Procedure implemented by Act No. 404/2012 Coll. leeway was created for submission of appeals on points of law even in matters (in particular procedural ones) which not only lack the potential to offer broader relevance for the case law, but which do not even require an individual review by the supreme tier of the judiciary; this caused a considerable rise in the caseload, which was not balanced out by legitimate benefits and should not even be viewed as temporary.

The tendency described has had to be adequately addressed, especially in view of the Supreme Court's mission described above, highlighted by the gradually emerging need to interpret new private law. This is because the agenda associated with the re-codified civil law – for the anticipated novelty of the legal problems submitted – represents a challenge for the appellate courts not only in terms of quantity, but also, and more importantly, in terms of quality. It is also a question whether the recently improved efficiency in handling the caseload is sustainable by the current Justices on a long-term basis given that the options for reinforcing the Supreme Court's staffing are apparently limited.

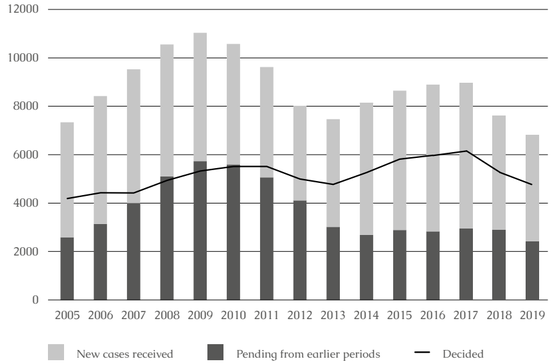
Therefore, as early as in 2016 a debate was initiated – in association with the Ministry of Justice – on how to alleviate the heavy burden resting upon the Supreme Court. The debate continued throughout the entire first half of 2017. The outcomes included a consensus on certain restrictions on access to appeals on points of law through extending the range of exemptions hitherto set out in Section 238 CCP to include, specifically, decisions on the party's motion for exemption from court fees, decisions dismissing the party's motion for the appointment of a counsel in proceedings, and decisions whereby the court of appeal has quashed the decision of the court of first instance and referred the case back to it for further proceedings (since admissible, legally relevant questions are usually not presented in appeals on points of law in any of the above-mentioned cases), and also a consensus on removal of the sixmonth period allowed for dismissal of appeals on points of law (Section 243c(1) CCP), in the wording effective up to September 2017), since while the availability of such a period encouraged increased efforts to deal with inadmissible appeals on a point of law, , it also hindered the resolution of cases in due time which, on the contrary, are then open to substantive assessment. This is due to the fact that exceeding the above-mentioned deadlines might result in the liability regime being activated under the provisions of Section 13(1) of Act No 82/1998 on the basis of maladministration (also including situations where the decision was not delivered "within the statutory period of time"), which results in decisions in matters that are genuinely important for the point or case being delivered with a delay.

The Bill to amend the Code of Civil Procedure, which includes the above changes, was submitted for parliamentary debate in 2017 and resulted in Act No 296/2017 Coll. being enacted, which came into effect on 30 September 2017 and which provided a legal basis for the intentions outlined above (the abolition of the statutory exemption from court fees for damages or other harm caused by exercise of public authority by an unlawful decision or maladministration was also a move welcomed by the Supreme Court, because the blanket waiver of court fees for these proceedings encouraged participants to file challenges and appeals that were often frivolous, which subsequently resulted in an extreme caseload for the relevant court department). Later, in 2018, the actual application of this amendment to the Code of Civil Procedure and the Act on Court Fees produced an about turn for the Supreme Court from the previous tendency (not always justified) to increase the quantity of decided matters. Subsequently, the reduction in the caseload helped to reduce the appeals procedure and to create space for a greater focus on issues significant for the case law.

Statistics from previous years show that while the backlog of pending cases had not been significantly reduced by 2017, despite the efforts-made and undeniable progress achieved, in 2019 and 2019 the situation changed significantly for the better, as shown in the summary below (Cdo and former Odo) for the period 2005 to 2019:

Year	Pending from earlier periods	New cases received	Decided	Pending
2005	2,592	4,747	4,195	3,144
2006	3,144	5,284	4,432	3,966
2007	3,996	5,534	4,427	5,103
2008	5,103	5,453	4,942	5,613
2009	5,731	5,309	5,327	5,595
2010	5,595	4,986	5,515	5,066
2011	5,066	4,559	5,514	4,111
2012	4,111	3,914	5,000	3,025
2013	3,025	4,444	4,777	2,692
2014	2,692	5,462	5,262	2,893
2015	2,893	5,757	5,812	2,838
2016	2,838	6,065	5,971	2,930
2017	2,930	6,105	6,151	2,884
2018	2,884	4,784	5,264	2,404
2019	2,404	4,340	4,774	1,970

(Cdo and former Odo agenda, 2005 – 2019)



The obvious cause of previously negative developments was that the caseload in the Supreme Court appeals increased significantly; in 2015 there were 5,757 cases, i.e. 47% more than in 2012, and although in 2015 the Justices of the Civil and Commercial Divisions dealt with the highest number of cases to date (5,812), the number of cases pending nevertheless amounted to an impressive 2,838. Similarly, in 2016, when the number of new cases rose to 6,065, and even more cases were settled than in 2015 (5,971), the backlog of outstanding cases still rose by 92 to 2,930. As regards 2017, even though the caseload included 40 more cases than in the previous year, an even higher number of files were dealt with, meaning that the outstanding balance of pending cases fell slightly – to 2,884 cases. It was only in 2018 that, due to the impact of the aforementioned amendment to the Code of Civil Procedure, implemented by Act No. 296/2017 Coll., there was a substantially significant reduction in newly submitted filings (4,784), which was positively reflected in the number of pending cases, which on 31 December 2018 totalled 2,404 files. In 2019, the above-mentioned trend of a lightening caseload (4,340 files) and backlog (an 18% reduction compared to 2018) continued at the Civil Division.

2. 3. 4. Selection of the Important Decisions of the Supreme Court's Civil and Commercial Division

2. 3. 4. 1. Decisions of the Grand Chamber of the Supreme Court's Civil and Commercial Division published in the Reports of Cases and Opinions in 2019

The term "compensation for personal injury or death" under the Motor Third Party Liability Insurance Act

Within the Court's jurisprudence the answer to the question of whether the term "compensation for personal injury or death" under Section 6(2)(a) of Act No 168/1999 on motor third party liability insurance, as amended, could also include compensation for non-material harm in

monetary form pursuant to Sections 11 and 13 of the 1964 Civil Code of 1964 has been "no". However, in Judgment **31 Cdo 1704/2016** of 18 October 2017, the Grand Chamber overcame this case-law-based finding by adopting an interpretation of the relevant provisions in conformity with EU law.

Compensation for the restriction of property rights in cases of rent control

In Judgment **31 Cdo 1042/2017** of 13 December 2017, the Grand Chamber responded to the case-law inconsistency surrounding rent control, which between 2002 and 2006 had no legal leg to stand on. Also drawing on the relevant judgments handed down by the European Court of Human Rights, it was inclined to infer that the amount of compensation for the restriction of property rights by rent control should essentially equal the difference between ordinary (market-driven) rent and the regulated rent to which a landlord was entitled under the then unconstitutional legislation.

Employment contract for activities falling within the ambit of the job description of a member of a governing body

Responding, among other things, to Constitutional Court Judgment I. ÚS 190/15, the Grand Chamber modified some of the tenets it had held on restricting the possibility of negotiating an employment contract with a member of the governing body of a business corporation. In Judgment **31 Cdo 4831/2017** of 11 April 2018, the Grand Chamber concluded that a member of the governing body of a business corporation, and the business corporation itself, may deviate from the rule expressed in the first sentence of Section 66(2) of the Commercial Code (according to which their relationship is adequately governed by the provisions on contracts of mandate) by agreeing to the Contracts regulating their relationship to be subject to Labour Code. However, such an arrangement does not render theirs a labour-law relationship; it will continue to be a business-law relationship governed by the Commercial Code and – as a consequence of the contractual arrangement – by those provisions of the Labour Code that, if applied, do not preclude mandatory legal rules governing (in particular) the status of a member of the governing body of a business corporation and his or her relationship with the business corporation.

Temporal effects of contractual penalty moderation

Under case-law to date, it was admissible, under Section 301 of the Commercial Code, to moderate (reduce) only an existing claim to a contractual penalty, hence this procedure could not be applied if a counterclaim was set off against the right to a contractual penalty before a court decision was reached on moderation, thereby extinguishing the right to payment of a contractual penalty. The Grand Chamber reviewed the jurisprudence and, in its Judgment **31 Cdo 927/2016** of 11 April 2018, concluded that a contractual penalty is moderated *ex tunc* at the time the agreement on the contractual penalty is reached. If the contractual penalty is disproportionate, it is impossible to extinguish a claim deriving from a contractual penalty to the extent of the

disproportionate amount by means of a unilateral set-off, or to extinguish the claim against which the set-off is directed.

The debtor's right to require the creditor to return consideration deriving from a bank guarantee

Previous case law was also reviewed in Judgment **31 Cdo 3936/2016** of 12 September 2018, in which the Supreme Court concluded that, in order for the debtor to have the right to require the creditor to return consideration unduly obtained on the basis of a bank guarantee pursuant to Section 321(4) of the Commercial Code, or for the creditor to have the obligation to return the consideration thus obtained to the debtor, it is not essential for the debtor to first pay the bank what the bank had paid to the creditor in accordance with the bank guarantee (as was previously inferred). This is because, if the bank makes a payment to the creditor in accordance with the bank guarantee, this creates a claim against the debtor corresponding to that payment and, at the same time, the debtor has a liability to the bank of the same amount. Whether or not the debtor's liability to the bank has been fulfilled is legally irrelevant from the point of view of the creditor's obligation to return the unduly obtained consideration to the debtor. If the creditor has received consideration to which they were not entitled, it must return this to the person to the detriment of whom this has occurred, i.e. to the debtor.

Obligation to acquaint the policyholder with the contract's valuation tables

In its Judgment **31 Cdo 1566/2017** of 13 February 2019, the Supreme Court dealt with the issue that had previously been resolved inconsistently of whether the relevant valuation tables constitute part of the insurance contract, even though they were not presented to the policyholder at the time the contract was signed and the policyholder was unfamiliar with their content. The Supreme Court concluded that it was necessary for the policyholder to be demonstrably informed of all the terms and conditions that are intended to form part of the relevant contract and are to be binding on the parties, regardless of their formal designation. The fact that the policyholder was informed of the possibility of perusing the insurance conditions at any time does not imply that he or she was demonstrably acquainted with them.

Deadline for payment of a court fee

The Grand Chamber adhered to its previous case law regarding the determination of the moment at which a court fee is deemed duly paid. In its Resolution **31 Cdo 3042/2018** of 10 April 2019, it kept to the conclusion that, if a payer had not properly fulfilled his or her obligation to pay a fee at the time he or she filed a submission, and the court had to ask him or her to pay the court fee by a set deadline, that deadline is met if the prescribed amount is at the relevant court's disposal no later than the last day of the set time limit.

2. 3. 4. 2. Decisions of the Supreme Court's Civil and Commercial Division published in the Reports of Cases and Opinions in 2019

Standing to bring an action for the cancellation of servitude

Persons having the standing may bring an action for the cancellation of servitude established by a remunerated legal act due to a change in circumstances include the person benefiting from the servitude. The Supreme Court arrived at this conclusion in its Judgment **22 Cdo 155/2018** of 27 March 2018. In the reasoning behind the judgment it provided an interpretation of the judicial law-making that was based on the assumption of a rational legislator, and also examined how the case at hand had been dealt with by the court of appeal, which had misapplied the argumentum *a contrario*.

Abuse of a dominant market position by the exercise of trademark rights

A person holding a dominant market position may abuse such a position under Article 102 of the Treaty on the Functioning of the European Union by exercising trade mark rights, where this is accompanied by exceptional circumstances that result in the inhibition of competition on the relevant market. The Supreme Court arrived at this conclusion in its Judgment **23 Cdo 5955/2017** of 29 May 2019, based on the application of the case-law of the Court of Justice of the European Union.

Determination of the law applicable to a purchase contract

The creation of a contractual relationship arising from a purchase contract concluded between a seller established in the Slovak Republic and a buyer established in the Czech Republic is assessed according to the Vienna Convention, unless the parties agree to preclude the application thereof. Issues related to the assignment of a receivable under such a contract, unilateral set-off and default interest represent a gap in the application of the Vienna Convention. As the Supreme Court concluded in its Judgment **23 Cdo 427/2017** of 29 January 2019, applicable law is therefore determined according to the conflict-of-laws rules under the Rome I Regulation.

Determination of the amount of compensation for mental suffering associated with the killing of a close person

When the amount of compensation for mental suffering associated with the killing of a close person is being determined, it is necessary to take into account the circumstances on the part of both the survivor and the perpetrator. The Supreme Court stated this in its Judgment **25 Cdo 894/2018** of 19 September 2018. On the survivor's side, the intensity of his or her relationship with the deceased, the age of the deceased and the survivor, dependence on the deceased, and any other satisfaction (such as the perpetrator's apology, administrative sanctions or criminal conviction) are particularly important. The primary criteria applicable to the perpetrator are his or her attitude to the incident, the impact of the incident on his or her mental state, and the form and degree of

culpability. The requirement to compare the amount of compensation cannot be mechanically interpreted as meaning that compensation for the killing of a close person should always be higher than compensation for interference with other personal rights.

Effect of negotiating an aggregate purchase price on the certainty and clarity of a contract

Specifying the purchase price as an aggregate price for a greater number of movable assets does not render the contract a vague and unintelligible legal act. This was how the Supreme Court ruled in its Judgment **20 Cdo 4452/2018** of 16 January 2019.

Protection of the right to residence in a family household

In Resolution **26 Cdo 3975/2017** of 24 January 2019, the Supreme Court concluded that, according to the Civil Code, a couple's dwelling is the place where they maintain their family household; a spouse's right to live in a house (flat) over which the other spouse has an exclusive right is tied to the existence of a family household, not to the duration of their marriage. However, the legal status of a spouse who lives in a house (flat) on the basis of a derived legal title is protected (Section 747 of the Civil Code). The protection of the right to such housing is also maintained if a spouse holding an exclusive right enabling him or her to live in a house (flat) leaves the family household and the household thus ceases to exist.

Distribution of profit among shareholders and content of an invitation to a general meeting

In Resolution **27 Cdo 3885/2017** of 27 March 2019, the Supreme Court explained that the annual financial statements are an eligible basis for profit distribution until the end of the following reporting period, and interpreted the conditions under which a public limited company need not distribute the profit (or any part thereof) among shareholders. It also analysed in detail the requirements of an invitation to a public limited company's general meeting.

Judicial review of a decision of a political party or movement

In Resolution **27 Cdo 1495/2017** of 27 February 2019, the Supreme Court, in accordance with standard procedures for the judicial review of a decision of a body of a legal person, defined the ground rules for such a review in cases concerning decisions by a political party or movement. It takes into account the changes brought about by new procedural legislation. As the Court of Extraordinary Appeal it concentrated the agenda of judicial reviews of decisions by a body of a political party or a movement at regional courts.

Substantive standing from the perspective of Section 2995 of the Civil Code

In its Judgment **28 Cdo 694/2019** of 4 June 2019, the Supreme Court addressed substantive standing in terms of the right to the relinquish-

ment of unjust enrichment arising from performance under an invalid, specious or rescinded contract. In principle, only the contracting parties have such standing. The principle of linking unjust enrichment to contractors may also apply where the content of contractual performance is an obligation to settle third-party debt.

Legal prerequisites for the relinquishment of assets in cases of church restitution

In a situation where the beneficiary filed a claim, pursuant to Act No 428/2012 on the settlement of assets with church and religious societies, with the Land Office seeking the relinquishment of agricultural property within the prescribed period referred to in the first sentence of Section 9(1) of that Act, running from 1 January 2013 to 2 January 2014, but the property was not owned by the state, the legal prerequisites for the in-kind restitution of such property were not met. The Supreme Court reached this conclusion in its Judgment **28 Cdo 2703/2018** of 28 August 2018.

Review of finally acknowledged enforceable tax assets in insolvency proceedings

The Supreme Court interpreted the basic principles underpinning a review of finally acknowledged enforceable tax assets in insolvency proceedings in cases where the authenticity or amount thereof was challenged. It did this in its Judgment **29 ICdo 4/2017** of 31 January 2019, in which it also explained, in relation to special provisions contained in the Tax Code, which tax assets can be considered final and enforceable at the time of their review.

Consequence of the bankruptcy of a contractor contracted for work

In its Judgment **29 Cdo 561/2017** of 25 March 2019, the Supreme Court clarified how the settlement of a guarantee is incorporated into contracts for work to cover situations where the client is unable to use such a guarantee due to the bankruptcy or liquidation of the contractor. Arrangements for a discount in the amount of the retainage in such a case constitute a valid agreement expressing the value of the unrealised guarantee.

Deadline for an application seeking exemption from court fees

The time limit in which a legally relevant application seeking an exemption from court fees can be lodged was assessed in Resolution **30 Cdo 825/2019** of the Supreme Court of 16 April 2019. In connection with the amendment to Act No 549/1991 on court fees, the Supreme Court thus deviated from previous case-law – an application for an exemption from court fees may be submitted, with the effect of preventing the discontinuance of proceedings due to non-payment of fee under Section 9(1) of Act No 549/1991, in the version effective since 30 September 2017, no later than the last day of the time limit set by the court for payment thereof.

Obligation to provide security to cover the costs of proceedings

In Resolution **32 Cdo 594/2019** of 23 April 2019, the Supreme Court assessed whether a party to proceedings – a foreign legal person – may be ordered to remit security to cover the costs of proceedings pursuant to Section 11 of Act No 91/2012 on private international law in a situation in which an application for the imposition of this obligation is filed after the first court-ordered meeting with the registered mediator has taken place, during which no mediation contract has been concluded. It concluded that such a meeting with a mediator is not a procedural act of the parties with which the law associates the establishment, change or termination of a procedural relationship, i.e. it is not even a procedural act within the meaning of Section 11(2)(a) of the Act on Private International Law and therefore it was possible, in such a situation, to impose the obligation to remit security to cover the costs of proceedings.

Nature of a contract between a travel agency and fellow travellers

A travel contract is a consumer agreement not only in the relationship between a holiday- or trip-purchasing client and the travel agency. In Judgment **33 Cdo 715/2017** of 18 October 2018, the Supreme Court ruled that there was also a consumer-based relationship between the travel agency and fellow travellers, who, under the travel contract, are entitled to performance to the extent agreed in that contract. The fact that fellow travellers have accepted the agreed performance does not make them a party to the travel contract and does not establish their obligation to pay the price of the holiday or trip.

Consequence of the absence of the required characteristics of a guide dog

In Judgment **33 Cdo 1201/2017** of 25 January 2018, the Supreme Court found that defects comprising a guide dog's inability to possess the properties (abilities) stipulated by Implementing Decree No 388/2011 on the implementation of certain provisions of the Act on the Provision of Benefits to Disabled Persons, or to acquire those properties in the first place, can be claimed against the seller within six months of handover, as these constitute defects in an item , i.e. a specific compensatory aid.

2. 3. 4. 3. Other selected decisions of the Civil and Commercial Division

Compensation for loss of amenity

To determine the amount of compensation for loss of amenity in employment relations, neither the legislation on compensation for loss of amenity under the Civil Code nor the Supreme Court's recommendatory Methodology for the compensation of non-material health impairment (pain and loss of amenity under Section 2958 of the Civil Code) can be used instead of special provisions contained in the relevant regulations, even if the injured party, pursuant to Government Decree No 276/2015 (or pursuant to Implementing Decree No 440/2001), would be entitled to less compensation than under the Civil Code (according to the Supreme Court's Methodology for the compensation of non-material health impairment). This was the Supreme Court's ruling in its Judgment **21 Cdo 3687/2018** of 28 May 2019.

The relationship between the operative part and the reasoning of a decision in cases of the enforcement thereof

In Resolution **20 Cdo 3704/2018** of 17 April 2019, the Supreme Court recalled that the operative part of a decision may be interpreted in connection with the reasoning if this reasoning adds clarity to the content of the operative part and can be used to remove any doubts about the content and the extent of the obligation that has been imposed, taking into account the nature of the case or the prescribed method of enforcement; however, an enforceable title in an operative part cannot be amended or corrected in this way.

Particulars of a trade union announcement

Based on the finding of the Supreme Court in its Judgment **21 Cdo 641/2018** of 27 August 2019, a trade union's announcement to an employer that it is active and has the right to act must include not only a statement that the trade union's statutes regulate its activity with the employer and the right to act and that at least three of its members are employed by the employer, but also a proof of the information conveyed. This finding seeks to increase legal certainty in relations between employers and employees.

Consequences of the loss of medical fitness to carry out one of several agreed types of work

Judgment **21 Cdo 670/2019** of 5 September 2019 addresses a situation in which an employee has agreed on several types of work to be carried out under his or her employment contract, but subsequently becomes unable to perform one of them on medical grounds. The Supreme Court concluded that, in such circumstances, the employer cannot serve notice of termination of employment on the employee on the grounds of long-term loss of medical fitness to perform the agreed work pursuant to Section 52(e) of the Labour Code.

Legal regime for gardens by multi-unit houses

The Supreme Court assessed the nature of gardens by multi-unit houses. In Judgment **22 Cdo 1216/2019** of 31 July 2019, it stated that such a garden generally constitutes a functional entirety with the house and it is therefore not against the law if the court assigns it, undivided, to the house owner. Furthermore, a garden may also be regarded as accessory co-ownership, which is another reason for it to be indivisible.

Conditions for the use and evacuation of a public port

The Supreme Court examined conditions for the use and evacuation of a public port, focusing on its public nature. This issue had not been addressed within the case-law and literature until Judgment **22 Cdo 1672/2019** of 26 June 2019 was handed down.

Agreement on a contractual penalty linked to withdrawal from a contract

Judgment **23 Cdo 1192/2019** of the Supreme Court of 30 October 2019 addresses the validity of an agreement on a contractual penalty, which

ties the origin of a right to a contractual penalty not only to a breach of a legal obligation, but also to another legal circumstance, specifically in this case a withdrawal from the contract by the creditor due to a breach of obligation by the debtor. According to the conclusions reached in this decision, such an arrangement is admissible within the scope of the Civil Code. The purpose may be to penalise a party which, by act or omission, breaches the contract in such a way as to justify the right of the other contracting party to withdraw from the contract, but withdrawal from the contract would not in itself constitute a sufficient penalty.

Consequences of discharging the order to pay the costs of proceedings

In its Judgment **20 Cdo 1227/2019** of 10 July 2019, the Supreme Court responded to a situation in which enforcement is suspended and the bailiff is not granted the right to the reimbursement of costs, even though the orders to pay the costs of proceedings are not explicitly discharged. The court of appeal concluded that, in this situation, the bailiff is obliged to surrender the consideration obtained under such orders to the debtor as unjust enrichment granted on the grounds that subsequently lapsed.

Modification of shares of the estate of inheritance

Shares of the estate of inheritance pursuant to Section 1693(3) of the Civil Code need to be modified only in exceptional cases where the division of the inheritance under the law would be manifestly unfair in view of the heirs' "approach to and care of" the person and property of the testator. The Supreme Court expressed this finding in its Judgment **24 Cdo 2619/2018** of 13 March 2019.

Demonstration of the grounds for disinheriting a descendant of the testator

According to Section 1646 et seq. of the Civil Code, the grounds for disinheriting a descendant of the testator may be demonstrated only up to the date of death of the testator. In this respect, in Judgment **24 Cdo 1777/2019** of 27 September 2019 the Supreme Court concluded that, in any adversarial procedure initiated by an action pursuant to Section 170 of the Act on Special Judicial Procedure, the court must also address legal grounds (typically put forward by the parties) for disinheritance other than just those stated by the testator in the deed of disinheritance.

An act that, by nature, is a wilful criminal act perpetrated against the testator by a person who is not criminally liable

In its Judgment **24 Cdo 4761/2018** of 28 May 2019, the Supreme Court concluded that even a person who is not criminally liable may be ineligible to inherit. The fact that an heir commits a crime in a situation in which his cognitive faculties are severely diminished and his or her self-control has disappeared completely is relevant "only" as far as his or her criminal liability is concerned. From the perspective of inheritance law, the court needs to assess his or her acts in the context of

Section 1481 of the Civil Code and, notwithstanding any decision to discontinue the criminal prosecution, must evaluate whether the act committed by the heir is a reason for him or her to be excluded from inheritance right.

Non-material harm comprising personal misfortune

The strict liability of an animal owner for damage caused is enshrined in Section 2933 of the Civil Code. However, in its Judgment **25 Cdo 972/2018** of 28 March 2019, the Supreme Court noted that if the injured party also claims non-material harm comprising personal misfortune, that claim must be assessed in accordance with Section 2971 of the Civil Code. In such a situation, the harm must occur under special circumstances, and the basic premise, not required by Section 2933 of the Civil Code, is that the harm was caused by an unlawful act. Furthermore, the unlawful act must be of a certain (high) intensity. Another prerequisite is proof that the injured party reasonably perceives the harm caused as personal misfortune that cannot otherwise be undone.

Consent of a person pictured in a photograph on social media to the further publication thereof

The subject of the proceedings in the case before the Supreme Court in Judgment **25 Cdo 1778/2019** of 15 October 2019 was a dispute concerning the applicant, whose profile photograph from the Facebook social network had been published, without her consent, on a server operated by the defendant in the context of a series of articles dealing with the death of the applicant's friend. It concluded that, regarding the use of this photograph, it could not be automatically inferred that the person pictured had given implicit consent to the further publication thereof, or that the conditions of statutory editorial licence had been met. Rather, in all cases it is essential to address the aspect of proportionality, taking into account the specific circumstances of publication, and to protect not only the information media's freedom of expression and the right of the public to information, but also the legitimate interests of the person pictured, in particular the right to privacy, respect and dignity.

Representation of the owner of a unit at a meeting of the owners' association

Resolution **26 Cdo 1657/2018** of 16 October 2019 addresses what, in practice, is the much debated issue of the representation of the owner of a unit at a meeting of the owners' association by another person. It concludes that the owner of a unit is entitled to be represented if this is not excluded by the association's statutes. For practical purposes, the conclusion, expressed here, on the reasonable use of Section 260 of the Civil Code in the relations of the association of unit owners is also important. This provision regulates the reasons why a court will not declare an association decision null and void, even if it is contrary to law or the statutes; in the event of minor infringements, the protection of third-party rights acquired in good faith and the association's interests are prioritised over the individual interests of unit owners.

Interest on late rent payments

Judgment **26 Cdo 2059/2018** of the Supreme Court of 5 June 2019 concluded that a tenant of a flat who is late in paying rent must pay interest on such late payments at the amount prescribed by Government Regulation No 351/2013. Contractual interest for late payment may also be negotiated, but not for a higher rate.

Consequences of failing to comply with the manner of representation by the members of a governing body

The Supreme Court addressed the consequences of non-compliance with the manner of representation by members of the governing body of a legal person, as established by the legal act founding that legal person. In Judgment **27 Cdo 4593/2017** of 23 July 2019, the Supreme Court expressly acknowledged the possibility of subsequent approval of such a legal act (made by a member of the governing body contrary to the manner of representation) in accordance with Section 440 of the Civil Code and explained how ratihabition can be carried out.

Constitutionality of part of the Act on the Regulation of Ownership Relations to Land and Other Agricultural Assets

In its assessment of an appeal on a point of law in a restitution dispute, the Supreme Court concluded that the effects of the applied regulation would be contrary to the constitutional order. Therefore, under Resolution **28 Cdo 3772/2018** of 2 October 2019, it referred this matter, in the context of an interlocutory review of the constitutionality of rules, to the Constitutional Court with a petition to annul part of Section 16(1) of Act No 229/1991 on the regulation of ownership relations to land and other agricultural property, which refers to Section 28a of the same regulation. There were three reasons that prompted the Supreme Court to file for a derogation – an effort to maintain consistency in case-law, to avoid situations in which the State Land Office is not authorised to voluntarily provide reasonable compensation, and to restrict the scope for interpreting a rule *praeter legem* through judicial discretion that was too broad.

Establishment of a state claim deriving from insurance payments and the contribution to the state employment policy

The Supreme Court addressed the establishment of a state claim deriving from pension insurance contributions and the contribution to the state employment policy against a self-employed person for the purposes of assessing the state's priority right to the payment of such claims in insolvency proceedings conducted against such a person's assets. In Judgment **29 ICdo 21/2017** of 2 July 2019, the Supreme Court concluded that such due insurance payments and contributions for the period preceding the date on which the debtor is declared bankrupt are not claims in relation to the bankrupt person's estate.

The Czech Republic's liability for harm caused by a court decision handed down in violation of European Union law

In Judgment **30 Cdo 2584/2016** of 12 December 2018, the Supreme Court followed up on its case-law concerning the definition of general presumptions for the state to incur liability for harm caused by violations of EU law. It also stated the conditions under which the Czech Republic is liable for violations of EU law as a result of a decision of a court of last instance, i.e. including the Supreme Court as the court for appeals on a point of law. Due to the special nature of a court's role, the state is liable only in exceptional cases where a court decision has manifestly violated applicable law. Courts decide on claims for damages in accordance with Act No 82/1998, but the requirement set out in Section 8 of that Act, entailing the annulment of the assessed decision on grounds of unlawfulness, does not apply because it would make it virtually impossible, or overly difficult to obtain the award of damages.

Determination of territorial jurisdiction on the basis of choice and directly applicable European Union legislation

In terms of territorial jurisdiction, a person whose ordinary court is in the Czech Republic can be sued in a court that has territorial jurisdiction for an action against another person residing (established) in another EU Member State under directly applicable EU legislation. In Resolution **30 Cdo 3684/2018** of 21 May 2019, the Supreme Court addressed the application of Section 11(2) of the Code of Civil Procedure. It concluded that, if an action is directed against multiple defendants, it is irrelevant for the purposes of territorial jurisdiction pursuant to Section 85(1) of the Code of Civil Procedure in which order they are listed in the action; in such a case, the ordinary court may be the ordinary court of any of the defendants. It did not find reasonable grounds why the above finding on the choice of court by the applicant could not be applicable even in a situation where a national rule and directly applicable EU legislation concurrently establish territorial jurisdiction.

Liability of a parent company

In Judgment **32 Cdo 2214/2017** of 24 April 2019, the Supreme Court addressed a claim deriving from liability for defects, lodged by the buyer against the seller of a business corporation and also against its parent company. It concluded that the competition-law concept of a single economic unit which breaks the autonomy of individual legal persons in legal terms and from the point of view of assets is an exception to the otherwise general principle of personal responsibility, i.e. the autonomy of the legal and asset sphere of persons as legal entities, and that it cannot be expanded to legal relationships in general where there is no connection with a violation of public-law rules governing the protection of competition.

Obligation to reimburse to an electricity market operator the costs of promoting renewable energy sources

In its Judgment **32 Cdo 3744/2017** of 26 August 2019, the Supreme Court addressed the unclear wording of Act No 165/2012 on promoted

energy sources, in a dispute between a market operator and a regional distribution system operator. The court of appeal interpreted the disputed provisions of the Act as meaning that, in the relevant period, the regional distribution system operator was obliged to reimburse to the electricity market operator the costs related to the promotion of electricity from renewable sources, including electricity consumed outside of the transmission system or the regional distribution system.

Legal regime for services provided by a private primary school

In Judgment **33 Cdo 3805/2018** of 17 October 2019, the Supreme Court concluded, pursuant to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market and the case-law of the Court of Justice of the European Union, that a private primary school established in the form of a private limited company, i.e. a business corporation incorporated for purposes of business and generation of profit, provides public services within the meaning of Section 2(3) of Act No 561/2004.

2. 4. The Supreme Court Criminal Division in 2019

2. 4. 1. Summary of Decision-Making Activity of the Supreme Court's Criminal Division

In 2019, the Supreme Court Criminal Division (hereinafter referred to as "the Criminal Division") was composed of a Head of Division and 22 other Justices; in addition, judges were temporarily assigned at different times. The Criminal Division Justices are posted in seven adjudicating Panels that constitute seven court departments. There is also a Criminal Division Grand Panel, a Reports Panel and a separate panel for appeals against decisions of the Supreme Audit Office's disciplinary chamber.

The Head of the Criminal Division assigns each of the criminal cases to the seven adjudicating Panels (hereinafter referred to as the "Panels") under the rules contained in the Supreme Court's case management guideline. The managing Presiding Judge assigns particular Justices within the Panel to cases, also under the case management rules, which combine the principle of the specialised expertise of certain Panels with the principle of regular rotation. Three specialised panels operate within the Criminal Division - one (No 8) considers cases heard under Act No 218/2003 on Juvenile Justice, as amended, the second (No 5) specialises in economic and property crime and the third (No 11) specialises in drug-related criminal offences and cases concerning international

judicial cooperation in criminal matters. The Criminal Division's Panels usually decide in closed hearings, i.e. the accused, the defence counsel and the public prosecutor are not present; they decide in an open court, where the parties are present, only in certain matters. In addition to decisions handed down by Panels of three Justices in criminal cases, the Criminal Division also includes a Grand Panel of nine Justices.

The Supreme Court's key mission is to unify the adjudicating practice of lower courts. In criminal matters, the Supreme Court's Criminal Division is in charge of pursuing this mission. To this end, Act No 6/2002 on Courts and Judges, as amended, provides the Supreme Court with several tools. They primarily include decision-making on extraordinary remedies in the three-member Panels of the Criminal Division, and also decision-making in the Grand Panel of the Criminal Division, the adoption of opinions by the Criminal Division and, finally, also the publication of the Reports of Cases and Opinions.

2. 4. 1. 1. Decisions on Extraordinary Remedies

The Supreme Court is the supreme body among the ordinary courts of the Czech Republic (Article 92 of the Constitution of the Czech Republic). It is therefore empowered to decide on the most important extraordinary remedies; in criminal proceedings, these are appeals on points of law and petitions about violations of law.

An appeal on a point of law is an extraordinary remedy that can be used to challenge final decisions on the merits delivered by courts of second instance (Section 265a CrPR), but solely with reference to one of the grounds for appealing on a point of law; such grounds are exhaustively set out in Section 265b (1) and (2) CrPR. The subject matter of proceedings on appeals on points of law is not to review the facts but solely to examine the questions of law in the challenged decision or in proceedings preceding the decision. An appeal on a point of law may be filed, first, by the Supreme Public Prosecutor – for the inaccuracy of any verdict of a court decision, in favour of and against the accused, and, on the other, by the accused – for the inaccuracy of the verdict of the court directly concerned. Accused persons can only file appeals on points of law through their defence counsels; an accused person's submission filed otherwise than through his/her defence counsel is not regarded as an appeal on a point of law and is, if applicable, treated in some other manner depending on its content. An appeal on a point of law has to be filed with the court that has decided on the merits of the case at the level of first instance, specifically within two months from the service of the decision against which the appeal on points of law is directed. The presiding judge of the first instance court serves a copy of the accused person's appeal on a point of law to the Supreme Public Prosecutor, and a copy of the Supreme Public Prosecutor's appeal on a point of law to the accused person's defence counsel and to the accused person, advising them that they can submit their written observations on the appeal on a point of law and agree with the in camera hearing of the appeal on a point of law before the appeal court. As soon as the time limit for filing an appeal on points of law expires for all the persons entitled to do so, the first instance court delivers the file to the Supreme Court. The Supreme Court dismisses appeals on points of law on the grounds

exhaustively set out in Section 265i (1) CrPR, in particular when some formal conditions have not been met or if in the appeal on a point of law the appellant repeats the arguments with which lower courts have fully and correctly dealt with in terms of substance. In such cases, the Supreme Court in its resolution on dismissal of the matters only briefly lists the grounds for dismissing the appeal on a point of law by way of reference to the circumstances related to the statutory grounds for the dismissal. The Supreme Court rejects appeals on points of law when it finds that they are unfounded (Section 265j CrPR). If the Supreme Court does not dismiss or reject an appeal on a point of law, it reviews the challenged decision and the preceding proceedings, but solely in the scope of and on the grounds specified in the appeal on a point of law. Following this review the Supreme Court overturns the challenged decision or a part thereof and, if needed, also the defective proceedings preceding the decision if it finds that the appeal on a point of law is well founded. If a new decision has to be issued following the reversal of the challenged decision or any of its rulings, the Supreme Court usually orders the body whose decision is in question to hear the case again in the required scope and to decide (Section 265 of the 4 (1) CrPR). The court or another law enforcement or criminal proceedings authority to which the case was remanded for a new hearing and decision are bound by the Supreme Court's legal opinion (Section 265s (1) CrPR). Where the challenged decision was only overturned due to an appeal on a point of law filed in favour of the accused, a decision against the accused must not be issued in the new proceedings (Section 265s (2) CrPR). However, when quashing the challenged decision, the Supreme Court itself can decide on the merits by its own judgment (Section 265m CrPR).

The other extraordinary remedy admissible before the Supreme Court is the petition on a violation of the law ('VOL petition'). Only the Minister of Justice is entitled to file this extraordinary remedy, directed against a court's or a public prosecutor's final decision whereby the law was violated or which was made on the basis of a defective course of action in the proceedings, or if the sentence is manifestly disproportionate to the nature and gravity of the offence or to the perpetrator's personal state of affairs, or if the nature of the imposed sentence is manifestly contrary to the purpose of punishment (Section 266 (1) and (2) CrPR). A petition against a court's final decision concerning a violation of the law to the detriment of the accused person may not be filed solely when the court proceeded in line with Section 259 (4), Section 264 (2), Section 273 or Section 289 (b) CrPR. In the event of a VOL petition being filed to the detriment of the accused and following the finding that the law was violated, but not in disfavour of the accused, only an 'academic ruling' can be achieved, but the challenged decision or the preceding proceedings whereby the law was violated cannot be quashed. The Supreme Court rejects VOL petitions if they are inadmissible or unfounded (Section 268 (1) CrPR). If the Supreme Court finds that the law was violated, it holds so in its judgment (Section 268(2) CrPR). If the law was violated in disfavour of the accused the Supreme Court quashes, simultaneously with holding as above under Section 268 (2) CrPR, the challenged decision or a part thereof and potentially also the defective proceedings preceding the decision. If only one of the rulings in the challenged decision is unlawful, and if such ruling can be severed from the other rulings, the Supreme Court quashes only that ruling (Section 269 CrPR). Where a new decision has to be issued following the challenged deci-

sion or any of its rulings are overturned, the Supreme Court orders the authority, usually the one whose decision is in question, to hear the case again in the required scope and to decide. The authority to which the case is remanded is bound by the Supreme Court's legal opinion (Section 270 CrPR). When quashing the challenged decision, the Supreme Court itself can decide on the merits if a decision can be issued on the basis of the facts that were correctly established in the challenged decision (Section 271 CrPR). Where the Supreme Court holds that the law was violated in disfavour of the accused, in the new proceedings the decision must not be modified in disfavour of the accused (Section 273 CrPR).

2. 4. 1. 2. Agendas of the Criminal Division of the Supreme Court: Broken down by Register

The justices of the Supreme Court's Criminal Division of the Supreme Court are empowered by the following legislation to take decisions within the scope of the following agendas in chambers mainly composed of the chamber president and two justices:

Tdo
– Decisions on appeals on point of law against final decisions on the merits of courts of second instance (Section 265a *et seq*. CrPR);

Tcu
– Decision on motions for having an entry of the particulars of a conviction of a Czech nation by a foreign court made into the records of the Criminal Records (Sections 4(2), (3), (4) and Section 4a(3) of Act No 269/1994 Coll. on Criminal Records, as amended);
– Decisions on motions under Act No 104/2013 Coll. on International Judicial Cooperation in Criminal Matters, as amended (e.g. on motions for remanding a person being transferred into transit custody for the time of transit through the Czech Republic under Section 143(4) of this Act);
– Decisions on motions for decisions on whether a person is excluded from the powers of law enforcement and criminal proceedings authorities (Section 10(2) CrPR);
– Decisions on applications lodged by the Minister of Justice for review of a decision on the admissibility of a person's extradition to another state for criminal prosecution;

Tz
– Decisions on petitioners on violations of law, filed by the Minister of Justice against public prosecutors' and courts' decisions in proceedings held under the Criminal Procedure Rules (Section 266 *et seq*. CrPR);

Td
– Decisions on disputes over jurisdiction among lower courts (Section 24 CrPR);
– Decisions on motions for the removal and assignment of a case (Section 25 CrPR);
– Decisions on applications to exclude Supreme Court justices from hearing and adjudicating on cases (Section 31 of the Code of Criminal Procedure);

Tvo
– Decisions on petitions against decisions of the High Courts on the extension of custody pursuant to Section 74 CrPR; and against other decisions of High Courts if they were in the position of the court of first instance (e.g. petitions against decisions to rescue High Court judges from criminal proceedings pursuant to Sections 30 and 31 CrPR);

Tul
– Decisions on motions for the determination of a time limit applicable to carry out a procedural act (Section 174a of Act No 6/2002 on Courts and Judges, as amended);

Zp
– Decisions on appeals against decisions of the Supreme Audit Office's disciplinary chambre (Section 43(2) of Act No 166/1993 Coll. on the Supreme Audit Office, as amended);

Pzo
– Decisions on motions for a review of the lawfulness of warrants for intercepting and recording telecommunications traffic and warrants for finding particulars about telecommunications traffic (Sections 314l to 314n CrPR).

2. 4. 2. Unifying Activity of the Supreme Court's Criminal Division

The lower courts' adjudicating practice is unified primarily through decisions on the two extraordinary remedies in specific criminal cases, with the Supreme Court setting forth binding legal opinions in its decisions; lower courts and other criminal proceedings authorities are bound by such legal opinions and these authorities follow such opinions, if applicable, in other similar cases. The Supreme Court usually decides on appeals on points of law and complaints about violations of the law in three-member Panels composed of the Presiding Judge and another two professional judges, but for exceptions where the Criminal Division's Grand Panel decides.

A case will be referred to the Grand Panel when, in its decision-making, a three-member Panel has arrived at a legal opinion differing from the opinion already expressed in any of the Supreme Court's earlier decisions, where the Panel has justified such a different decision (Section 20 of Act No 6/2002 on Courts and Judges, as amended).

The above procedure can be used to refer a case to the Criminal Division's Grand Panel, in particular where the contentious issue concerns substantive law. Where a legal opinion on adjectival law is at issue, the three-member Panel may only refer the case to the Criminal Division's Grand Panel if it has concluded unanimously (by votes of all Panel members) that the procedural question at issue is of fundamental importance to the law. However, a referral to the Criminal Division's Grand Panel is out of the question if the issue at hand has already been

resolved by a Division or Plenary Session of the Supreme Court. The Criminal Division's Grand Panel decides on the merits of the case at all times, i.e. on the extraordinary remedy filed, unless it exceptionally concludes that no reason for referring the case to the Criminal Division's Grand Panel existed; in such cases, it remands the case to the

Panel that (groundlessly) referred the case to it, and without deciding on the merits. It is questionable whether this practice should be preserved. An alternative to this practice is the opinion that the Criminal Division's Grand Panel should decide only on the resolution of the submitted question at hand as to the law and that any subsequent decisions on the merits should be made by a competent three-member panel, which had originally been assigned the case under discussion.

In 2019, the Grand Chamber of the Criminal Division ruled on the merits of cases four times in the appeals agenda within the framework of the Tdo Register (Judgment 15 Tdo 1443/2018 of 17 April 2019; Judgment 15 Tdo 1474/2018 of 17 April 2019; Judgment 15 Tdo 204/2019 of 26 June 2019; and Judgment 15 Tdo 1154/2019 of 12 December 2019).

All decisions of the Grand Panel of The Supreme Court's Criminal Division, as well as all decisions of the three-member Panels, are also anonymised and posted on the Supreme Court's website www.nsoud.cz, which also contributes to unifying decision-making in criminal matters.

There is also a Reports Panel composed of its Presiding Judge and another eight Justices of the Criminal Division at the Supreme Court's Criminal Division. At its meetings, the Reports Panel considers proposals for those decisions of the Panels of The Supreme Court's Criminal Division and decisions of lower courts in criminal matters, which have been recommended for the purposes of generalisation and for approval, at a Criminal Division meeting, of their publication in the Reports of Cases and Opinions. A simple majority of votes of all Criminal Division Justices is required to approve a decision for publication in the Reports of Cases and Opinions. A total of six meetings of the Supreme Court's Criminal Division were held in 2018. The Reports Panel decides on which of the decisions considered by it will qualify for the further approval process, i.e. distributed for comments to the competent bodies and institutions and then laid before a Criminal Division meeting. On a proposal by the Head of the Criminal Decision or the Presiding Judge of the Reports Panel, the Criminal Division's Reports Panel also considers other papers, in particular suggestions to the Criminal Division to adopt an opinion.

Another important tool for unifying the practice of lower courts and other law enforcement and criminal proceedings authorities is the adoption of the Supreme Court Criminal Division's opinions on court decisions on matters of certain nature. Debate on an opinion in the Criminal Division is preceded by drafting the opinion by the mandated member(s) of the Criminal Division; then followed by a commenting procedure to collect comments on the draft opinion from the commenting entities, which include regional and high courts, the Supreme Public Prosecutor's Office, universities, law faculties and law schools, the Czech Bar Association, the Ministry of Justice and potentially, depending on the nature and importance of the questions being addressed, other bodies and institutions. The draft opinion is then considered and approved at a Criminal Division meeting, which is quorate if attended

by a two-thirds majority of all members of the Supreme Court's Criminal Division. A simple majority of votes of all Criminal Division members is required to pass an opinion of the Supreme Court's Criminal Division and then publish it in the Reports of Cases and Opinions.

Every approved opinion of the Supreme Court's Criminal Division is published in the Reports of Cases and Opinions and is also posted in electronic form on the Supreme Court's website.

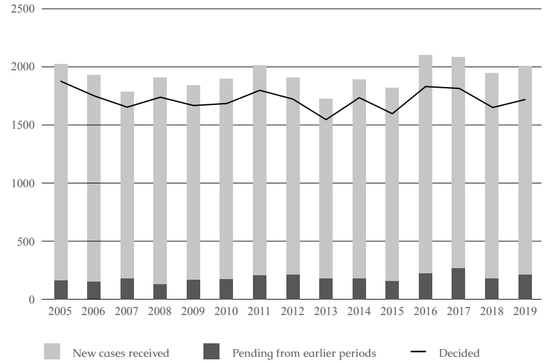
2. 4. 3. Statistical Data on the Activities of the Supreme Court Criminal Division

	Pending from 2018	Newly contested	Decided	Pending
Tdo	196	1,595	1,608	183
Tcu	13	169	175	7
Tz	8	104	98	14
Td	6	103	103	6
Tvo	1	27	26	2
Tul	-	3	3	-
Zp	-	-	-	-
Pzo	2	11	9	4

(Summary of the number of cases assigned to the Criminal Division in 2019)

Year	Pending from earlier periods	New cases received	Decided	Pending
2005	167	1,860	1,874	153
2006	153	1,778	1,750	181
2007	181	1,605	1,653	133
2008	133	1,777	1,738	172
2009	172	1,670	1,667	175
2010	175	1,719	1,684	210
2011	210	1,802	1,797	215
2012	215	1,691	1,722	184
2013	184	1,542	1,546	180
2014	180	1,713	1,734	159
2015	159	1,662	1,597	224
2016	224	1,877	1,829	272
2017	272	1,722	1,815	179
2018	179	1,676	1,651	204
2019	204	1,699	1,706	197

(Sum of the Tdo and Tz agendas 2005 – 2019)



The graph illustrates caseload statistics for all agendas of the Criminal Court of the Supreme Court in the longer term, i.e. from 2005 to 2018. The total number of cases taken on has evidently remained relatively stable. However, this graph also shows that submissions to the Supreme Court's Criminal Division spiked in 2016 and 2017, when they reached their highest level in the entire reporting period, before calming down a little in 2018. It should be borne in mind that the graph simply aggregates all the agendas, but fails to take into account that the complexity, labour-intensity and organisation within each agenda varies considerably.

2. 4. 4. Selection of important decisions of the Supreme Court's Criminal Division in 2019

2. 4. 4. 1. Opinions of the Supreme Court's Criminal Division published in the Reports of Cases and Opinions

In order to resolve certain divisive issues and to harmonise the lower courts' decision-making activities, the Supreme Court's Criminal Division issued the following opinion, which was published in the Reports of Cases and Opinions.

Opinion on whether and to what extent a notice reporting a criminal offence made orally in a statement of record, in writing, or in any other manner foreseen by Section 59(1) of the Code of Criminal Procedure may serve as evidence in criminal proceedings

Opinion **Tpjn 300/2019** of the Criminal Division of the Supreme Court of 18 September 2019, published under number 1/2019 in the Reports of Cases and Opinions, addresses whether and to what extent a notice reporting a criminal offence made orally in a statement of record, in writing, or in any other manner foreseen by Section 59(1) of the Code of Criminal Procedure may serve as evidence in criminal proceedings. The Criminal Division addressed this issue in some detail and arrived

at the conclusion that a notice reporting a criminal offence, as an act under the Code of Criminal Procedure that precedes the instigation of criminal proceedings (Section 158(1) and (2) of the Code of Criminal Procedure) may – regardless of its form, as defined by Section 59(1) of the Code of Criminal Procedure – serve as evidence merely to make findings about the object of the evidence (i.e. in this sense – proof), and only with respect to the actual circumstances under which the reporting was made, such as when and where it was made, who made it and with whom, what it was made about, etc. On the other hand, a notice reporting a criminal offence cannot constitute evidence of the facts alleged therein (i.e. regarding the actual content of the notice), which must be evidenced by procedures expressly provided for in Title Five of the Code of Criminal Procedure (similarly, see also the decision published in the Reports under number 46/1993). A notice reporting a crime may constitute evidence in terms of its actual content only in exceptional cases, for example in the context of criminal proceedings concerning a criminal offence committed by the filing of the criminal complaint (e.g. the criminal offence of false accusation under Section 345 of the Criminal Code). When evidence is taken by means of a notice reporting a crime, court proceedings are governed by Section 213(1) or (2) of the Code of Criminal Procedure. Section 211(6) of the Code of Criminal Procedure is not applied to the taking of evidence by means of a statement of record on the filing of a report of crime that has been drawn up by a police authority or prosecutor pursuant to Section 158(2) of the Code of Criminal Procedure, because such a statement of record does not meet the requirements of an official record of the submission of an explanation within the meaning of Section 158(6) and (8) of the Code of Criminal Procedure. If a notice reporting a criminal offence is received only after criminal proceedings have been instigated in a case (Section 158(3) of the Code of Criminal Procedure), it is necessary to proceed, in the filing of the notice, in accordance with Section 158(6) of the Code of Criminal Procedure. and to draw up an official record of the submission of an explanation with the person reporting the crime or to interview him or her as a witness according to Section 158(9) of the Code of Criminal Procedure – not according to Section 158(2) of the Code of Criminal Procedure. If the person reporting the crime annexes documents and factual evidence to the office reporting the crime (e.g. if a notice is filed by a tax authority, it might attach tax returns and related documents, especially reports or records of tax audits), these can be used to take evidence in criminal proceedings further to Section 213 of the Code of Criminal Procedure.

2. 4. 4. 2. Decisions of the Grand Chamber of the Supreme Court's Criminal Division published in the Reports of Cases and Opinions

The following decisions of the Grand Chamber of the Supreme Court's Criminal Division were published in the Reports of Cases and Opinions in 2019.

What can be considered a decision that, in content, follows on from a decision annulled on the basis of an appeal on a point of law filed under the second sentence of Section 265k(2) of the Code of Criminal Procedure; the Supreme Court's obligation to decide on remand if a decision with related content that has been handed down in another

criminal case is annulled pursuant to Section 265k(2) of the Code of Criminal Procedure

Resolution **15 Tdo 195/2018-I** of the Grand Chamber of the Supreme Court's Criminal Division of 28 June 2018, published under number 12/2019 in the Reports of Cases, addresses important procedural issues. It follows from the first part of the headnote of this resolution that a decision related in content to a decision annulled on the basis of an appeal on a point of law filed under the second sentence of Section 265k(2) of the Code of Criminal Procedure should be taken to mean not only decisions with related content handed down in the same criminal case in which the appeal on a point of law was filed (e.g. a decision on conditional release from a prison sentence, a decision on the costs of criminal proceedings, or a decision on credit for time served), but also decisions with related content that have been handed down in other criminal cases against the same accused, in respect of whom a decision challenged by an appeal on a point of law has been annulled, if the operative part (or any part thereof) of such decisions follows on, in content, from the operative part set aside on the basis of the appeal on a point of law. A decision with related content may also be a decision handed down in another criminal case that has annulled the operative part – detailing the penalty – of a decision challenged by an appeal on a point of law, in relation to which a subsequent decision in another criminal case has imposed an overall penalty pursuant to Section 43(2) of the Criminal Code. The second part of the resolution's headnote emphasises that, if the Supreme Court annuls a decision with related content – further to the second sentence of Section 265k(2) of the Code of Criminal Procedure – that has been handed down in another criminal case, specifically the operative part thereof on an overall prison sentence imposed also for criminal activity which the accused was initially found guilty of by the decision challenged by the appeal on a point of law, and if the accused is serving this sentence at the time of the decision on the appeal on a point of law, it is to decide, within the meaning of Section 265l(4) of the Code of Criminal Procedure, on the remand of the accused, where appropriate also in any follow-up criminal case in which the operative part on the overall punishment was set aside.

The possibility of raising an objection of "extreme contradiction" between the evidence taken and the factual findings derived from that evidence by the Supreme Prosecutor; particulars of a resolution on the referral of a case to another body in cases where the act can be assessed as a misdemeanour or misconduct

Resolution **15 Tdo 1443/2018** of the Grand Chamber of the Supreme Court's Criminal Division of 17 April 2018, published under number 31/2019 in the Reports of Cases, concerns an important legal issue: the possibility of raising an objection of "extreme contradiction" between the evidence taken and the factual findings made therefrom in an appeal on a point of law by the Supreme Prosecutor brought against the accused. The decision's first headnote states that objections of extreme contradiction between the evidence taken and the factual findings made therefrom are objections regarding violations of the fundamental rights of the accused as an individual within the meaning of Article 36 et seq. of the Charter of Fundamental Rights and Freedoms and

the right to a fair trial in accordance with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. However, those fundamental rights protect the accused as the "weaker" procedural party and the Supreme Prosecutor therefore cannot invoke them to the detriment of that "weaker" procedural party, since the rules governing the accused's rights of defence have been established to protect the accused. In this respect, the Supreme Prosecutor may raise the objection of extreme contradiction between the evidence taken and the factual findings made therefrom in an appeal on a point of law only where this inures to the benefit – not the detriment – of the accused. If the Supreme Court finds violations of these fundamental rights of the accused on the basis of an alleged extreme contradiction, the Supreme Court's intervention, by way of appeal procedure, is based on Articles 4 and 90 of the Constitution. The decision's second, and equally interesting, headnote concerns the particulars of a resolution on the referral of a case to another body pursuant to Sections 171(1), 188(1)(b), 222(2) or Section 257(1)(b) of the Code of Criminal Procedure. According to that headnote, this decision always concerns an act and not the possible legal assessment thereof. It must therefore be clear from the operative part of the resolution what the act is and what act will be the subject of decision-making by another competent body. If, after evidence has been taken, the court makes factual findings other than those on the basis of which the prosecution was brought, it is not enough to state such new findings of fact solely in the decision's statement of grounds. This is because the body to which the case is referred will decide on the act arising from the results of the evidence brought before the court and not on the reason for bringing the prosecution. In this respect, the procedure followed by the court differs from acquittal under Section 226(b) of the Code of Criminal Procedure, where the court always acquits due to an act stated in the claim, regardless of the fact that the evidence taken could prove a different course of events, because the results of the evidence-taking lead to the conclusion that the act identified in the claim is not a criminal act and there is no need to refer the case to another body for consideration, since it cannot be a misdemeanour or misconduct either.

Attempted credit fraud

Resolution **15 Tdo 204/2019** of the Grand Chamber of the Supreme Court's Criminal Division of 26 June 2019, published under number 49/2019 in the Reports of Cases, expresses the legal opinion that the criminal act of credit fraud, as defined in Section 211(1) of the Criminal Code, is deemed to have been committed if the perpetrator, when negotiating a credit agreement or when drawing on credit, provides false or grossly distorted information or conceals relevant details. However, if the offender's conduct constitutes the criminal act of credit fraud under Section 211(1) of the Criminal Code with the intention of causing damage that exceeds the threshold stated as a circumstance conditioning the use of a higher term of imprisonment [see Section 211(4), (5)(c) and (6)(a) of the Criminal Code], which is a sign of a qualified constituent element, but which will not occur (typically no credit is provided), such unsuccessful conduct must be regarded as a single criminal act, i.e. an attempt at the criminal act of credit fraud pursuant to Section 21(1) and Section 211(1), (4) or (5)(c) or 6(a) of the Criminal Code.

2. 4. 4. 3. Selected decisions approved by the Supreme Court's Criminal Division for publication in the Reports of Cases and Opinions in 2019

Appropriation of another person's asset constituting the criminal act of misappropriation under Section 206 of the Criminal Code in a situation where a lessor fails to refund a refundable deposit (security) to the lessee

Resolution **5 Tdo 149/2018** of the Supreme Court of 27 February 2018, published under number 21/2019 in the Reports of Cases, addresses the criminal act of misappropriation of another person's asset under Section 206 of the Criminal Code. The decision's headnote stipulates that if, under a lease agreement (e.g. for a vehicle), the lessee provides the lessor with a monetary amount in the form of a refundable deposit (security) that is intended to compensate for any damage caused to the leased item, unless there is an express contractual arrangement that the deposit remains the property of the lessee, any failure by the lessor to refund this refundable deposit, and the lessor's subsequent use thereof for its own needs, cannot be deemed to have constituted the criminal act of misappropriation pursuant to Section 206 of the Criminal Code. In such circumstances, the refundable deposit handed over by the lessee has become the lessor's property and has merged with the lessor's other assets, so there is nothing to prevent the lessor from using it for its own needs since the deposit is not "another person's entrusted asset" within the meaning of Section 206(1) of the Criminal Code. That conclusion applies irrespective of whether the refundable deposit is provided in cash, is deposited as cash in the lessor's bank account, or is transferred to that account by non-cash means.

Interpretation of the term "credit agreement" within the meaning of Section 211(1) of the Criminal Code; scope of limitation of the Supreme Court's powers of review in appeal proceedings (Section 265i(3) of the Code of Criminal Procedure) brought against a new decision handed down in the same case

Resolution **7 Tdo 1136/2018** of the Supreme Court of 23 October 2018, published under number 23/2019 in the Reports of Cases, addresses both substantive and procedural issues. First, it interprets the term "credit agreement" within the meaning of Section 211(1) of the Criminal Code, noting that such a contract is an agreement on credit pursuant to Section 2395 et seq. of the Civil Code (or, more specifically, pursuant to Section 497 et seq. of Act No 513/1991, the Commercial Code, effective until 31 December 2013). However, according to the first headnote of this decision, this type of agreement may also encompass a contract under which the parties, when negotiating the credit, agree on the fiduciary transfer of title (Section 2040 et seq. of the new Civil Code and Section 553 of Act No 40/1964, the Civil Code, effective until 31 December 2013) of the asset, the purchase of which is being financed by the credit, to the lender (the creditor), while the borrower (the debtor) becomes nothing more than the steward and keeper of the asset until the whole credit is repaid, when it passes or reverts back to his ownership. This is not the same as a "deferred payment" or even a lease contract, which has a lot in common with a credit agreement and, in practice, is an alternative. The second headnote of the decision, relating to appeal proceedings, states that the Supreme Court's powers of review in appeal proceedings (Section 265i(3) of the Code of Criminal Procedure) brought against a new decision handed down in the same case are limited by the impossibility of a repeat review of a previous decision on an appeal on a point of law in the same case (see the decision published under number 29/2004 in the Reports of Cases). However, this limitation applies only to the repeat review of operative parts (and previous proceedings) that were rendered prior to the previous decision of the court of appeal and were unaffected by that decision. Therefore, if, in an appeal on a point of law against a new decision in the same case, the appellant raises grounds of appeal and objections not relied on in the original appeal on a point of law and relating to the operative parts of the new decision and the proceedings before them as a whole, it is incumbent on the Supreme Court to address those objections. This does not constitute a review of a previous appeal decision; hence the impossibility of a repeat review does not apply. Such a situation may typically arise in cases where the grounds of appeal centre on procedural issues, such as the exclusion of a judge from decision-making, the fact that the court rendering the contested decision does not have subject-matter jurisdiction, the inadmissibility of criminal prosecution, the fact that the accused, in contravention of the law, did not have a defence counsel in the proceedings, etc. The fact that the objections raised in the appeal also apply to that part of the proceedings which preceded the original decision in the case is irrelevant here.

Interpretation of the term "residence" within the meaning of Section 364(1) of the Code of Criminal Procedure

Resolution **7 Tdo 17/2017** of the Supreme Court of 20 April 2017, published under number 20/2019 in the Reports of Cases, addresses the term "residence of the convicted person" within the meaning of Section 364(1) of the Code of Criminal Procedure, which establishes the court's territorial jurisdiction to expunge a conviction. According to the decision's headnote, such residence of a convicted person must be taken to mean the municipality or borough where this person lives with the intention of staying there permanently. It is not identical to the concept of permanent residence, as applied under provisions of administrative law for registration purposes. As is apparent from the statement of grounds accompanying this decision, it is based on the concept of residence under Section 80 of the Civil Code.

Fulfilment of the statutory condition for the discontinuance of a criminal prosecution on the grounds referred to in Section 172(2)(c) of the Code of Criminal Procedure; the accused's approach to the crime he has committed

Resolution **4 Tdo 105/2018** of the Supreme Court of 27 February 2018, published under number 24/2019 in the Reports of Cases, addresses a procedural issue concerning the optional discontinuance of a criminal prosecution. The decision's headnote starts by noting that, if a criminal prosecution is to be discontinued on the grounds referred to in Section 172(2)(c) of the Code of Criminal Procedure, the accused's conduct after the crime, particularly taking into account the accused's approach to the crime he has committed, is a statutory condition that needs to be fulfilled. The accused's approach is addressed by the second part of the headnote, according to which the accused must demonstrate, by his conduct after committing the crime, that there is no need for further

proceedings against him. Such a conclusion is not inconceivable even in a situation where the accused does not admit to his criminal activity in full, but it is clear from how he conducts himself after the crime that he is aware of the essential factors establishing his criminal liability for his actions, which he must avoid in the future. This is because, even in a case like this, it can be inferred that the purpose of criminal proceedings within the meaning of Section 1(1) of the Code of Criminal Procedure has been achieved.

The application (or non-application) of the "ne bis in idem" criminal-law principle in relation to the criminal act of the counterfeiting and falsification of an authentic public document and an act resulting in the prosecution of the accused for a misdemeanour in administrative proceedings

Resolution **4 Tdo 866/2018** of the Supreme Court of 25 September 2018, published under number 17/2019 in the Reports of Cases, concerns the application (or non-application) of the criminal-law principle *ne bis in idem* in connection with the criminal act of the counterfeiting and falsification of an authentic public document pursuant to Section 348(1) of the Criminal Code. The headnote of this approved decision states that an act whereby the accused has operated a motor vehicle without a valid vehicle inspection certificate and which has been prosecuted as a misdemeanour in administrative proceedings is not identical to another act committed by the same accused whereby, in an investigation into a traffic accident, the accused submitted a significantly altered technical certificate to the Police of the Czech Republic and tried to pass it off as genuine. In this respect, his prosecution for the offence of the counterfeiting and falsification of an authentic public document pursuant to Section 348(1) of the Criminal Code does not violate the *ne bis in idem* principle.

Bias, under Section 30(1) of the Code of Criminal Procedure, of a judge who is also in the position of the injured party in a previous criminal case involving the accused

Resolution **3 Tdo 725/2018** of the Supreme Court of 18 July 2018, published under number 27/2019 in the Reports of Cases, addresses the disqualification of a judge from decision-making. According to this decision's headnote, the fact that a judge has been an injured party in an earlier criminal case involving the accused, in which the accused was prosecuted for wilfully making the false accusation that the judge in the present case had committed a criminal act, cannot, in and of itself, mean that the judge is biased pursuant to Section 30(1) of the Code of Criminal Procedure. When assessing the objective aspect of a judge's relationship to the present case or a person, it cannot be overlooked that a judge is excluded from hearing and adjudicating on the case if there are reasonable doubts about his or her impartiality because the judge's relationship to the case, the parties or their representatives is of such a nature and intensity that, despite his or her statutory obligations, he or she will be unable to make independent and impartial decisions (see, for example, the Constitutional Court's judgment I. ÚS 167/94 of 27 November 1996).

"Ne bis in idem" principle in criminal proceedings and in tax proceedings where a fine is imposed for late tax declarations

Resolution **5 Tdo 1534/2017** of the Supreme Court of 19 September 2018, published under number 16/2019 in the Reports of Cases, addresses the *ne bis in idem* principle in tax and criminal proceedings conducted against one and the same person. According to this decision, if the court concludes that the imposition of a fine by the competent tax office in tax proceedings for a late tax declaration (Section 250 of Act No 280/2009, the Tax Code, as amended) is of a criminal nature and that, in terms of classifying the offence, the conduct is identical to the actions resulting in the accused's prosecution for the criminal act of misrepresenting his or her financial status and assets under the first indent of Section 254(1) of the Criminal Code, it must assess, on the basis of the specific facts established, whether there is a sufficient factual and temporal link between the tax and criminal proceedings that both proceedings can be regarded as an integral response to the accused's conduct and that there can be no doubt that the accused has not been subject to disproportionate harm or unfairness by the imposition of different sanctions by two different bodies in different proceedings. If this were the case, it would infringe the *ne bis in idem* principle within the meaning of Article 4 of Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (cf. judgment of the Grand Chamber of the European Court of Human Rights of 15 November 2016 in the Case of A and B versus Norway, Application Nos 24130/11 and 29758/11, judgment of the European Court of Human Rights of 18 May 2017 in the Case of J versus Iceland, Application No 22007/11, and the decision of the Grand Chamber of the Supreme Court's Criminal Division published under number 15/2017 in the Reports of Cases).

Criminal liability of a legal person established by an unlawful act of an unidentified natural person

Resolution **3 Tdo 487/2018** of the Supreme Court of 28 June 2018, published under number 37/2019 in the Reports of Cases, addresses the criminal liability of legal persons and concludes that, if an unlawful act by an unidentified natural person is to establish the criminal liability of a legal person pursuant to Section 8(3) of Act No 418/2011 on the criminal liability of and proceedings against legal persons, as amended, it is not sufficient to conclude that such a natural person was acting in the interest of a legal person within the meaning of the introductory part of Section 8(1) of that Act. Nor can the criminal liability of a legal person be established by the alternative conclusion that an unidentified natural person has acted in the interest of the legal person or, in the course of his activities, in a position (unspecified) under Section 8(a), (b), (c) or (d) of the Act on the Criminal Liability of and Proceedings Against Legal Persons. Rather, there needs to be a clear conclusion, underpinned by the corresponding findings of fact, that the natural person has acted either in one of the positions foreseen by Section 8(1)(a) to (c) of the Act on the Criminal Liability of and Proceedings Against Legal Persons or in the position pursuant to Section 8(1)(d) thereof, and that, as a result, the act that has been committed can be attributed to a legal person under either Section 8(2)(a) or Section 8(2)(b) of the Act on the

Criminal Liability of and Proceedings Against Legal Persons. This also applies if the legal person is to be complicit or otherwise involved in another person's criminal act.

Inadmissible criminal prosecution as a ground of appeal

Resolution 3 Tdo 966/2018 of the Supreme Court of 31 October 2018, published under number 33/2019 in the Reports of Cases, addresses how to interpret one of the grounds of appeal. The headnote of this decision states that the ground of an appeal on a point of law under Section 265b(1)(e) of the Code of Criminal Procedure is also met if a criminal prosecution is conducted after the court of appeal incorrectly dismisses an appeal lodged late pursuant to Section 253(1) of the Code of Criminal Procedure but annuls the decision of the court at first instance.

Timeliness of securing defence counsel to file an appeal on a point of law

Resolution 8 Tdo 142/2019 of the Supreme Court of 26 February 2018, published under number 32/2019 in the Reports of Cases, addresses the filing of an appeal on a point of law by an accused who is not represented by defence counsel in proceedings. According to this decision's headnote, an accused who wishes to file an appeal on a point of law (Section 265d(2) of the Code of Criminal Procedure) must appoint a defence counsel in good time. An accused who lacks sufficient resources must apply to the court promptly for a defence counsel free of charge or for a reduced fee (Section 33(2) of the Code of Criminal Procedure – see the decision published under number 50/2007 in the Reports of Cases). This procedure is justified, in particular, in cases where a part of the time limit for an appeal on a point of law has expired (Section 265e(1) of the Code of Criminal Procedure), since even if the court is required to appoint a defence counsel without undue delay (Section 33(4) of the Code of Criminal Procedure), there can be no circumventing the fact that there needs to be enough time to assess the documentation underlying a decision pursuant to Section 33(2) of the Code of Criminal Procedure. An accused who fails to engage in such procedure is exposed to the risk that the defence counsel will not file the appeal on a point of law in time. If, in such a case, the appeal on a point of law is lodged late [Section 265i(1)(c) of the Code of Criminal Procedure], this cannot be blamed on state authorities, provided that the court has proceeded in accordance with Section 33(4) of the Code of Criminal Procedure.

Presence of circumstances conditioning the imposition of a more severe penalty for the criminal act of extortion and resulting in considerable damage

Resolution 8 Tdo 1154/2018 of the Supreme Court of 25 October 2018, published under number 35/2019 in the Reports of Cases, addresses the legal classification of an offender's conduct in connection with the criminal act of extortion. This decision's headnote stipulates that if the offender first causes considerable damage to the injured party and subsequently commits extortion against that party under Section 175(1) of the Criminal Code, such damage is not causally related to extortion,

and therefore circumstances conditioning the imposition of a more severe penalty, as set forth in Section 175(2)(d) of the Criminal Code, are absent.

Perpetrator of the offence of the misrepresentation of one's financial status and assets pursuant to the third indent of Section 254(1) of the Criminal Code

Resolution 5 Tdo 1619/2018 of the Supreme Court of 28 February 2019, published under number 48/2019 in the Reports of Cases, concluded that a perpetrator of the offence of the misrepresentation of one's financial status and assets pursuant to the third indent of Section 254(1) of the Criminal Code may be any natural (or even legal) person who has the appropriate ledgers, records or other documents in their possession, and no special quality, capacity or position is required of them within the meaning of Section 114(1) of the Criminal Code. This may also be a person who is contracted to maintain and process a particular entity's accounts. The perpetrator of this offence may also be the governing body, or a member of the governing body, of a company that processes the accounts of another entity, if they intentionally refuse to hand over the entity's accounting documents, prevent it from filing its tax return, and impede a tax assessment by the tax office. An important conclusion of the headnote is that accounting documents cannot be subject to the right of retention intended to secure an obligation between an entity and the person who maintains and processes its accounts.

Interpretation of the constituent elements of the "long-term persecution of another person" in relation to the offence of dangerous persecution under Section 354(1) of the Criminal Code

Resolution 8 Tdo 178/2019 of the Supreme Court of 24 April 2019, published under number 41/2019 in the Reports of Cases, addresses how to interpret the constituent elements of the "long-term persecution of another person" in relation to the offence of dangerous persecution under Section 354(1) of the Criminal Code. According to this decision's headnote, these constituent elements can arise even over a period of a single month in cases involving highly intensive behaviour that might be described as systematic, persistent, and dogged, if, because of the danger it poses, it justifiably makes the injured party fearful, or escalates into physical violence, falls well outside the limits of normal social relations, is exercised by various means, and consists of a combination of the alternatives defined in Section 354(1) of the Criminal Code.

Absence of encroachment on copyright in cases involving the use of a computer program acquired from a previous user who no longer uses that program and has removed it from his device

Resolution 5 Tdo 513/2019 of the Supreme Court of 17 July 2019, published under number 53/2019 in the Reports of Cases, addresses the offence of infringement of copyright, copyright-related rights and database-related rights under Section 270(1) of the Criminal Code, and expresses the legal opinion that such an offence is not committed by someone who uses a computer program, a copy of which has been

acquired from a previous user who no longer uses that program and has removed it from his device. In this situation, there is no encroachment on copyright, as the author's right to distribute the computer program has already been exhausted by its first sale (Section 14(2) of Act No 121/2000, the Copyright Act, as amended). In this decision, the Supreme Court applied, inter alia, the case-law of the European Court of Justice (in particular the judgment handed down by the Court of Justice of the European Union on 3 July 2012 in Case No C-128/11, UsedSoft GmbH v Oracle International Corp.).

The possibility of discontinuing the criminal prosecution of an offender due to the ineffectiveness of continued prosecution and the lack of public interest in the prosecution, unless the offender's criminal liability is extinguished due to active repentance pursuant to Section 33 of the Criminal Code

Resolution **6 Tdo 739/2019** of the Supreme Court of 24 July 2019 states that, outside of a situation where an offender's criminal liability is extinguished due to active repentance pursuant to Section 33 of the Criminal Code (e.g. requiring signs that the offender's behaviour is voluntary), a criminal prosecution may be discontinued due to the ineffectiveness of continued prosecution and the lack of public interest in the prosecution, subject to the fulfilment of conditions under Section 172(2)(c) of the Code of Criminal Procedure. This procedure is feasible for minor offences and, on rare occasions, may be considered for more serious crimes.

Disqualification with no specification of the period over which it is to last

Judgment **6 Tz 62/2019** of the Supreme Court of 25 June 2019 addresses the imposition of the penalty of disqualification. This decision's headnote states that, if the accused, in breach of Section 73(1) of the Criminal Code, has been disqualified with no time limit on such disqualification, i.e. indefinitely, such a penalty evidently runs counter to the purpose of the penalty as defined by Section 266(2) of the Code of Criminal Procedure and thus establishes grounds for a complaint to be filed for violation of the law.

Clarification of the term "publicly accessible"

Resolution **8 Tdo 838/2019** of the Supreme Court of 30 July 2019 refused to uphold the objections of an accused whom the lower courts had found guilty of committing the offence of disorderly conduct under Section 358(1)(2)(a) of the Criminal Code as, in four instances in 2018, at different times and in various publicly accessible places, he had pulled down his trousers, held his penis and stimulated it by masturbation, and observed the reactions of girls and women who were in the vicinity or passing by. The accused argued that the individual places did not meet the definition of a publicly accessible place (bushes by a car park at a petrol station, a wooded area by a forest footpath within the city limits, a cul-de-sac, and a park in the complex of a former factory). However, the Supreme Court, like the lower courts, harboured a different opinion and stated that a "publicly accessible" place,

within the meaning of Section 358(1) of the Criminal Code, was any place accessible to a wide range of individually unidentified persons at the time of the act, and where numerous persons tend to be present, so that gross indecency or disorderliness could be noticed by multiple individuals, even if they were not there at the time of the act. This term is thus distinguished from the term "publicly" defined in Section 117(b) of the Criminal Code.

The possibility of questioning a municipal police officer as a witness in criminal proceedings

Resolution **4 Tdo 339/2019** of the Supreme Court of 21 May 2019 addressed whether a municipal police officer could be questioned as a witness in criminal proceedings. Contrary to the opinion of the prosecutor's office, the Supreme Court concluded that municipal police officers are not a police authority, as this institution is not provided for in Section 12(2) of the Code of Criminal Procedure. Though these officers are included under the concept of officials [Section 127(1)(e) of the Criminal Code] along with judges, prosecutors, and members of the security corps (including the Police of the Czech Republic), this does not in itself mean that the officers of the municipal police engage in acts under the Code of Criminal Procedure. If officers had taken any action in connection with the injured party's notification of the act in question in the proceedings, they did not do so in the capacity of a police authority or in accordance with the Code of Criminal Procedure. Thus, if they were subsequently questioned by the court at first instance as witnesses in relation to the case as a whole, such acts and the evidence arising therefrom cannot be dismissed as inadmissible acts and evidence. In criminal proceedings, it is therefore possible to question a municipal police officer, in the procedural position of a witness, about facts of which he or she had learned from persons present at the scene of the crime in the performance of his or her duties.

2. 4. 4. 4. Other selected decisions of the Supreme Court's Criminal Division issued in 2019

In 2019, the chambers of the Supreme Court's Criminal Division also took other important decisions that have yet to be included in the Reports of Cases and Opinions. The following merit particular attention:

Complicity in the criminal act of the evasion of taxes, charges or similar mandatory payments

Resolution **5 Tdo 1435/2018** of the Supreme Court of 17 July 2019 addresses the complex issue of trade in spirits, where the perpetrators had engaged in a rather sophisticated operation in which, through a chain of interrelated companies, they had carried out both genuine legal transactions and fictitious transactions with spirits in respect of which excise duty was not paid, but was declared as paid to the final customer. This was intended to fraudulently conceal the origin of spirits and affect the assessment phase of tax proceedings so that the taxable entity would not have to pay excise duty and, moreover, could illegally claim a value added tax deduction on input despite the fact that no taxable transactions were made. The Supreme Court, like the

lower courts, classified the conduct of the individual offenders as joint enterprise, within the meaning of Section 23 of the Criminal Code, in the criminal act of the evasion of taxes, charges or similar mandatory payments, since the individual components of the concerted conduct of all of these persons were links in a chain that repeatedly had an effect on each other as they went down the line, were geared towards the direct perpetration of the criminal act and, as a whole, met the constituent elements thereof.

Determination of the difference between the amount of economic benefit as an element of a criminal act and the amount of damage consisting of loss of earnings for the purposes of compensation for damage

Resolution **5 Tdo 462/2019** of the Supreme Court of 17 July 2019, in determining the amount of economic benefit as an element of the criminal act of the misuse of information and abuse of position in business relations pursuant to Section 255(2) and (3) of the Criminal Code, in the version in force until 12 August 2017, drew – when assessing the fulfilment of circumstances conditioning the application of a higher penalty – on the "net benefit", which does not include the costs incurred in achieving such benefit, i.e. taxes that the offender actually paid in connection with the activity or performance from which the benefit gained is derived. In determining the loss of earnings that the offender was ordered to compensate to the injured party, the Supreme Court relied on an amount which included an amount corresponding to the income tax which the injured party would be required to pay after the offender had paid the compensation, because such compensation is not exempt from income tax and thus becomes part of the taxable amount.

Boundaries of behaviour in an extreme emergency in relation to a positive factual error about a circumstance precluding unlawfulness

Resolution **5 Tdo 1121/2019** of the Supreme Court of 26 September 2019 addresses a situation where the accused, riding a motorbike in a drunken state, attempted to flee a chasing municipal police patrol and in doing so committed a number of traffic offences, but argued, in his defence, that he thought he was being chased by individuals wanting to kill him because of his past duties as a member of the Customs Administration. In the accused's opinion, he had acted under conditions of "putative extreme emergency" within the meaning of Section 18(4) of the Criminal Code, i.e. this was a positive factual error about a circumstance precluding unlawfulness, and thus excluded his criminal liability for committing an intentional criminal act. However, the Supreme Court concluded that, even if the accused had genuinely feared for his life, despite the fact that there was no real danger, only one of the conditions of this "putative extreme emergency" would be met. Even in a case such as this, individuals must act within the limits of the law prescribed for a circumstance that precludes unlawfulness if they are to be able to rely on it successfully by referring to their error, i.e. the conditions of proportionality and subsidiarity would have to be met, and, furthermore, the accused must not be a person duty-bound to shoulder risks (Section 28(2) of the Criminal Code). In the accused's case, the (presumed) imminent threat to an interest protected by the Criminal Code could have been averted differently under the circumstances, and if this rule applies to the actual and real aversion of a threat, the more likely it is to apply to the aversion of a presumed threat. In such a situation, therefore, the accused's criminal liability for committing an intentional criminal act is not excluded, as Section 18(4) of the Criminal liability is not used here.

2. 5. Special Panel Established under Act No 131/2002 Coll. On Adjudicating Certain Judisdiction Disputes

The Special Panel, established under Act No 131/2002, is composed of three Supreme Court Justices and three Supreme Administrative Court Judges. The Presidents of the Supreme Court and the Supreme Administrative Court appoint six members and six alternates for a three-year term. Presiding Judges rotate mid-term at all times. During the first half of their term of office, the chair is taken by an elected judge from the Supreme Administrative Court and during the other half by a Supreme Court Justice. The first session of the Special Panel shall be convened and chaired by the most senior member of the Special Panel.

The Special Panel acts and decides at the seat of the Supreme Administrative Court.

The Special Panel rules on certain jurisdictional disputes over powers or material jurisdiction to issue judgements between courts and executive bodies, territorial, interest or professional jurisdictions, and on disputes between civil courts and administrative courts. The Special Panel determines which of the parties to the dispute is competent to deliver a decision.

Although the Special Panel is not part of the Supreme Court or the Supreme Administrative Court, if the courts are parties to a jurisdictional dispute, it may annul the decision of both Supreme Courts.

No remedies are admissible against the Special Panel's decisions. Its decisions are final and binding on the parties to a jurisdictional dispute, parties to the proceedings, and all executive bodies, local self-government bodies and courts.

Statistics of the Special Panel's cases from 2017 to 2019:

	Caseload	Decided in that year	Percentage of that year's caseload	Pending as of 31 December
2018	51	62	122 %	24
2019	31	35	113 %	20
2003 to 2019	1,254			

In 2019, the members of the special panel established under Act No 131/2002 were the Supreme Court justices Mgr. Vit Bicak, JUDr. Roman Fiala, and JUDr. Pavel Simon, who has chaired the special panel since 1 July 2019. The reserves appointed on behalf of the Supreme Court were JUDr. Petr Angyalossy, Ph.D., JUDr. Antonín Draštík, Ph.D., LL.M. and Mgr. David Havlík.

From the Supreme Administrative Court, the following were appointed: Mgr. Ing. Bc. Radovan Havelec, JUDr. Tomáš Rychlý and JUDr. Michal Mazanec. For the Supreme Administrative Court, the appointed alternate judges were JUDr. Ing. Filip Dienstbier. Ph.D., Mgr. Ondřej Mrákota and JUDr. PhDr. Karel Šimka, Ph.D., LL.M.

2. 6. Recognition for Supreme Court Justicices

Supreme Court justices consistently excel in prestigious professional competitions and surveys, for which they receive a range of awards.

At the traditional gala evening the Lawyer of the Year on 1 February 2019, JUDr. František Púry, Ph.D., the President of the Criminal Division, was awarded the Lawyer of the Year 2018 in the category of criminal law. The following year, on 31 January 2020, at the gala evening the Lawyer of the year 2019, he was also awarded the Václav Mandák price for the joint authorship with doc. JUDr. Pavel Mates, CSc. of the best article in the Bulletin advokacie magazine in 2019 called the Prohibition of Forcing to Self-Accusation. The Lawyer of the Year award remained at the Supreme Court also in the year 2019, when JUDr. Robert Fremr, the President of a Chamber of the Criminal Division, temporarily assigned to the International Criminal Court (ICC), where he currently serves as the First Vice-President. The Lawyer of the Year award 2019 in the field of family law was awarded to JUDr. Lubomír Ptáček, Ph.D., the President of a Chamber of the Civil and Commercial Division. Not only is he an expert in this field, but he was also elected the President of the European Association of Labour Court Judges (EALCJ), which as well proves his excellency in the field of labour law.

In 2019, Supreme Court vice-president Roman Fiala earned an honourable mention from the HR Officers Club for his major and exceptional long-term contribution to raising legal awareness in the Czech Republic.

The ranks of Supreme Court justices holding an acclaimed Antonín Randa medal expanded, with a bronze medal being awarded to Pavlína Brzobohatá, chamber president of the Supreme Court's Civil and Commercial Division.

2. 7. Additional Activities of Supreme Court Justices

In addition to the adjudicating and unifying efforts of the Supreme Court Criminal Division, its Justices were also involved in other specialist activities in 2019. These involved, in particular, law-making, training and publishing.

2. 7. 1. Law-Making

In keeping with the government's legislative rules, Supreme Court justices actively contribute to the consultation procedure for bills. In late 2019, after several years' efforts, the Supreme Court succeeded in strengthening its position in the consultation procedure for bills after referring the matter to the Government Legislative Council and the justice minister. Although the Supreme Court has long been one of the mandatory consultees, until recently the only legislative proposals submitted to it were directly related to its activities or to the procedural rules governing it, and legislators were not obliged to deal with the responses. Now, since about October 2019, the Supreme Court has all draft legislation at its disposal and, if it makes comments on them, the government and ministries must address them accordingly.

In 2019, Criminal Division justices were again actively involved in the preparation of the new Code of Criminal Procedure, especially the part on remedies. Supreme Court president Pavel Šámal chairs the of the "large" committee for the preparation of the new Criminal Procedure Code, while Criminal Division chamber president Jiří Říha manages the "small" committee.

In 2019, the justices of the Civil Division, having been highly critical, at the turn of 2018, of the then ministerial draft explanatory memorandum for the Code of Civil Procedure, actively participated in events, expert meetings, seminars and conferences aimed at discussing the preparation of this fundamental procedural piece of civil law and a reduction in the originally proposed non-systemic solutions detailed by the original explanatory memorandum.

2. 7. 2. Training of Justices and Participation in Professional Examinations

On the basis of Act No. 6/2002 Coll., on Courts and Judges, as amended, Supreme Court Justices contribute to the training and education of judges, prosecutors, judicial trainees and other judiciary staff in the framework of events organized primarily by the Judicial Academy of the Czech Republic, the Ministry of Justice, the Courts or even Prosecutors' Offices. The Supreme Court Justices also take part in the training of solicitors and articling lawyers organised by the Czech Bar Association. Some of the Justices also work as external members of the Faculty of the Judicial Academy of the Slovak Republic.

Some of the Criminal Division Justices also teach students of universities or tertiary education law schools as in-house or external teachers. Some are also members of scientific councils of higher education institutions, or of higher education institutions themselves. Nor do Criminal Division Justices neglect their participation in examinations of jurists, in particular justice and bar examinations.

2. 7. 3. Publications

Justices of the Supreme Court's Criminal Division were also engaged in publishing activities; in particular, they contributed legal papers to journals and proceedings, commentaries and textbooks; some of them are members of editorial boards of professional or expert journals. For the most part, individual book or periodical publishers reach out to Justices of the Supreme Court to ask for contributions.

2. 8. Administrative Staff in the Judiciary Section

The basis for the internal arrangements in the Judiciary Section are the Judicial Departments (Panels) which are created on the basis of the current work schedule. Administrative and other office work for one or more judicial departments or panels is carried out by the Court Office, which consists of a Head of Office and 3 to 4 stenographers, as well as a registry clerk for the Criminal Division.

The court offices carry out professional, highly-qualified, responsible and demanding tasks, which require active knowledge of court records user programmes and other IT systems. Administrative staff in the court offices carry out a range of tasks independently, in accordance with the applicable legal regulations and the office and filing rules of the Supreme Court.

The Registrar organises and supervises the work of the Registry for individual court departments or panels and their Judges. He or she is fully responsible for the proper management of court records and court files.

The supervisory clerk is responsible for running all the court offices in the Division, managing them in terms of methodology and overseeing them. In addition, the supervisory clerk prepares statistical materials on the activities of the Division, elaborates methodologies for administrative staff, judges and assistants and cooperates with other

sections of the court, for example with the Public Relations Department, for which he/she processes documents for handling applications under Act no. 106/1999 Sb on Free Access to Information, as amended.

Administrative Staff for the Civil and Commercial Division	
Supervisory Clerk	1
Head of Office	4
Stenographer	12
Secretary of the Division	1
Referendary of the collection of decisions and standpoints	1
Total	19

Administrative Staff for the Criminal Division	
Supervisory Clerk	1
Head of Office	3
Registry Clerk	8
Stenographer	1
Secretary of the Division	1
Referendary of the collection of decisions and standpoints	1
Total	15

2. 9. Court Agenda Section

The Court Agenda Section is organisationally integrated into the section of the judiciary.

Among other things, the Head of the Court Agenda Section coordinates, manages and checks the filing service and pre-archival care of documents in all sections of the court.

The Court Agenda Section includes the Registry and Registry Department, which is divided into the Records Department, which ensures the receipt of electronic documents and records of all paper and electronic documents and files delivered to the Supreme Court, and the Registry Department, which ensures the registration of delivered paper shipments and files, the delivery service of all documents and files sent from the Supreme Court and the registration and sale of stamps to parties to proceedings.

In 2019, the Records and Registry Department processed 13,932 data messages, entered 11,463 new submissions in the correct registers, processed 10,614 incoming paper submissions and delivered approximately 10,770 paper consignments and 6,035 parcels weighing over 2 kg.

In addition, for all sections of the Supreme Court, the Court Agenda Section secures the storage of completed files and processed documents in the Court Registry, while at the same time ensuring pre-archival care, decommissioning and shredding and destruction.

The application manager supervises the smooth operation and proper running of information systems and data processing processes in ISNS, ISIR and IRES applications.

3. DOMESTIC AND INTERNATIONAL RELATIONS

3. 1. ECLI Project Report

This part of the Supreme Court Yearbook summarises activities in 2019 connected to participation in ECLI (European Case Law Identifier) projects, or Building on ECLI ("BO-ECLI").

In 2019, the Supreme Court continued its efforts to raise the degree of implementation of the European Case Law Identifier and moved forward with discussions on how to improve the level of metadata of court decisions that continue to be indexed by the Supreme Court. The responsible approach taken by specialised staff meant that most of the technical problems faced by the Supreme Court in the past were avoided. The Supreme Court also performed BO-ECLI project tasks focusing in particular on the further implementation of the identifier for decisions of high and regional courts that were provided to it.

The Supreme Court monitored the activities of the ECLI Expert Sub-Group, part of the e-Law Working Group of the Ministry of Justice of the Czech Republic, and continued to consult all issues related to ECLI implementation with the Government Office and the Ministry of Justice.

The Supreme Court, as ECLI's national coordinator, was pleased to see the efforts the Supreme Administrative Court made as it sought to prepare the implementation of ECLI for its decisions. The Supreme Court provided cooperation and a helping hand in the hope that the Supreme Administrative Court will soon join the Supreme Court and the Constitutional Court, which are already using ECLI, thus complementing the project's implementation at the highest echelons of the Czech judiciary.

At European and national level alike, the future of the identifier is being discussed, both in terms of its form, mandatory metadata, and the expediency of expanding it against the backdrop of the domestic judiciary's landscape and technical configuration. The Supreme Court will continue to strive for the highest possible level of awareness of this issue, so that it can continue to play a responsible role as the national ECLI coordinator.

3. 2. Activities of the Analytics and Comparative Law Department

The Department of Analytics and Comparative Law focuses primarily on analytical and research activities in the field of European and comparative law, for both the Supreme Court's decision-making and lower-level courts. These activities include, in particular, the elaboration of analyses from the case law of the Court of Justice of the European Union, the European Court of Human Rights, as well as a comparison of case law and legislative activities in other EU Member States. Maintaining contact with foreign courts and actively participating in the operation of the various platforms for the exchange of legal information represented an inseparable part of the department's activities in 2018. In 2018, the department's activities also included other international issues, detailed below, and contacts with foreign courts.

3. 2. 1. Analytical Activities

The Supreme Court's decision-making activities require analysis of specific topics in the field of EU law and the system in place under the European Convention for the Protection of Human Rights and Fundamental Freedoms. Consequently, in 2019, as part of its analytical work (as its key activity) the department addressed issues related to the case-law of the European Court of Human Rights and the interpretation of the Convention, as well as selected matters based on EU law and the case-law of the CJEU. The department also focused on comparative law. This has resulted in a comparative overview of the justification provided for civil court rulings in selected countries, concentrating in particular on the need for the justification of decisions and the scope thereof for different types of rulings. Another analysis dealt with the neglect of mandatory maintenance from the perspective of criminal liability in selected laws of the EU Member States. This analysis examined answers to the question as to whether the failure to provide prescribed maintenance in these countries is a criminal offence, whether it is possible to impose a custodial sentence for such an offence and, if so, whether this option is used in practice, or what other sanctions can be imposed. EU law was also the main subject of investigation, for example, in the context of Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment or Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. The department also dealt, for instance, with the *ne bis in idem* principle in the context of criminal and disciplinary proceedings, as well as the use of videoconferencing in criminal proceedings in the light of the case-law of the European Court of Human Rights. In connection with the Convention for the Unification of Certain Rules for International Carriage by Air, the international jurisdiction of Czech courts was also examined; the department addressed the locus standi from the point of view of the Convention on the Contract for the International Carriage of Goods by Road.

3. 2. 2. "Digest of ECHR Decisions for Judicial Practice" and "Bulletin"

The preparation of the publication "Digest of ECHR Decisions for Judicial Practice" is another activity in which the Analytics and Comparative Law Department has been involved for a long time. The collection contains translations of important decisions into Czech, thus helping to make this case-law accessible to the broader professional public. The department also prepares the annotation of certain decisions for the online database of selected decisions of the European Court of Human Rights, which operates under the auspices of the Office of the Government Commissioner for the Representation of the Czech Republic before the European Court of Human Rights. These annotations are published on the website of the Ministry of Justice at eslp.justice.cz. The department regularly contributes its annotations to the publicly available database, thus helping to popularise and raise awareness of the case-law of the Strasbourg court. Finally, we need to mention the Bulletin of the Department of Analytics and Comparative Law. As the name suggests, this is produced by the department itself. The Bulletin, published electronically on a quarterly basis, aims to provide information in particular on the latest developments in European law and the case-law of Europe's supreme courts, the European Court of Human Rights, and the Court of Justice of the European Union.

3. 2. 3. Comparative Law Liaisons Group

As the supreme body of the general judiciary, the Supreme Court is a member of a number of international groupings. One of these is the Network of the Presidents of the Supreme Judicial Courts of the European Union, a forum for the presidents of supreme courts to discuss issues of common interest and to share information and experience. The Department of Analytics and Comparative Law is responsible for official communication and contact between the Supreme Court and the Network.

The department is also an integral part of the Comparative Law Liaisons Group, which was established within the Network of Presidents. This group aims to facilitate cooperation in the exchange of legal information. In particular, it concerns itself with the content of legislation and case-law on matters which are the subject of the decision-making activity of any of the supreme courts belonging to this group. This activity results in analytical material that will informs the supreme courts' justices how specific legal issues are dealt with in the decision-making of the cooperating supreme courts. In 2019, the department therefore also participated in exchanges of information with foreign counterparts. In the civil field, this included the protection of persons placed in psychiatric care without their consent, issues related to the labour-law nature of the relationship between intermediary online platforms and the individuals working for them, matters related to the exclusion of an individual from a works council, and third-party claims in the event of defective contractual performance. The liaisons group's activities also encompassed criminal law. Here, it dealt, for example, with covert police investigations, forced biological authentication on mobile devices by the police, "fake news" and disinformation, libel in the context of freedom of expression, and the criminality behind the non-payment of maintenance. In November, the traditional (sixth) meeting of the liaisons group was held, this time in The Hague, Netherlands. In particular, issues related to climate cases were discussed, in particular in the context of the Dutch Urgenda case, including the regulation of climate risks through civil courts, and the use of the "Mr Big" investigative method in uncovering serious crime. However, other issues related to the day-to-day decision-making practices of the competent courts were also discussed.

3. 2. 4. Judicial Network of the European Union

The Department of Analytics and Comparative Law is also involved in creating the content of the Judicial Network of the European Union, an initiative of the president of the Court of Justice of the European Union and the presidents of Member States' constitutional and supreme courts. The Network's main objective is to facilitate access to information and documents among the courts of the European Union. To this end, a web interface has been developed, the content of which will reflect efforts to strengthen judicial cooperation by supporting deepening dialogue in preliminary ruling proceedings, the dissemination of national decisions of relevance to the Union, and the strengthening of mutual knowledge about Member States' law and legal systems.

Cooperation with the Superior Courts Network, which was created to ensure the effective exchange of information between the European Court of Human Rights and national higher courts, also takes place with the active participation of the department's members.

3. 2. 5. Participation of Representatives of the Department of Analytics and Comparative Law in International Conferences

In order to improve their knowledge on an ongoing basis, the department's members continued to participate in an expert programme abroad in 2019. In the reporting period, a third meeting of the contact persons of the High Superior Courts Network was held in Strasbourg. Here, inter alia, the Knowledge Sharing Platform was presented. This platform aims to provide Network members not only with information on ECHR case-law, but also comprehensive knowledge with added analytical value. The meeting also presented the European Programme for Human Rights Education for Legal Professionals (HELP), which supports Member States in the Council of Europe in the implementation of the European Convention on Human Rights. During 2019, one of the department's members had the opportunity to take part in EU law research directly at the Court of Justice of the European Union via a two-block placement, the first of which was at the Cabinet of the Advocate General of the Court and Justice and the second at the General Court. Another department member was able to expand his practical skills in the field of human rights protection during a one-month placement at the European Court of Human Rights.

3. 3. Participation of the Supreme Court President and Vice-President in Conferences in the Czech republic and Abroad

In 2019, foreign travel also constituted an essential part of the duties of the President and Vice-President of the Supreme Court, aiming to strengthen cross-border relations between the Supreme Court and foreign courts and other important institutions. Another essential role is to exchange professional information in order to improve the quality of mutual cooperation as well as to inspire national solutions.

3. 3. 1. President of the Supreme Court

The President of the Supreme Court, Pavel Šámal, visited the Supreme Court of Thailand from 30 January to 3 February 2019 on the basis of a reciprocal invitation. This was an opportunity to further develop the cooperation of both courts against a backdrop where many Thais are settling in the Czech Republic and entering into civil and commercial relations with Czech companies and citizens, making the cooperation of law enforcement authorities also necessary on occasion.

On 24–29 March 2019, the president of the Supreme Court participated in a conference of national experts, judges and prosecutors in Tel Aviv, Israel, on money laundering and terrorist financing. The conference was hosted by the Financial Action Task Force (FATF), an international and intergovernmental organisation that has a worldwide influence in developing standards and assessing jurisdictions from the perspective of money laundering and terrorist financing.

The president of the Supreme Court had the opportunity to hear representatives of Polish and other judiciaries at an international conference entitled "The Future of Europe Based on the Rule of Law", held on 25–26 April 2019 by the Supreme Court of Poland.

At the invitation of the president of the Supreme Court of Austria, Elisabeth Lovrek, the president of the Supreme Court also visited the Supreme Court of Austria on 14 May 2019. The topics of the joint meeting here, following up on meetings held the November before in Brno and Bratislava, were the administration of the judiciary, the appointment of judges and court officials in the Czech Republic, the judiciary in juvenile cases, the publication of supreme courts' decisions, the work of the reports panels of both divisions, and the media policy of both courts.

3. 3. 2. Vice-President of the Supreme Court

On 25 September 2019, the Supreme Court's vice-president, Roman Fiala, attended the international conference "The General Court of the European Union in the Digital Era" in Luxembourg, held under the auspices of the Court of Justice of the European Union. The presentations and related discussions addressed how to safeguard justice in the current age of digital technology and analysed the challenges that judicial institutions need to tackle in this context.

3. 4. Justice´s Official Visits Abroad

Last year, other Supreme Court justices also attended foreign expert conferences and meetings and availed themselves of similar opportunities to gain new knowledge in the field of civil and criminal law and engage in valuable consultations with their foreign colleagues. Supreme Court officials actively participated in these events as speakers.

On 26–29 May 2019, Petr Angyalossy attended the 10th Conference of Presidents of the Supreme Courts of Central and Eastern Europe, hosted by the Supreme Court of the Slovak Republic in Bratislava. The conference's content focused mainly on issues related to the media policy of the courts, the unifying role of supreme courts, respect for human rights, the selection, appointment and career development of justices, the disciplinary liability of justices, and the comprehensible justification of court decisions.

On 6–8 June 2019, Lubomír Ptáček was in Dublin attending a regular meeting of members of the European Association of Labour Court Judges (EALCJ). Here, he was elected president of this association for the next year. His main role in this position is to prepare the annual EALCJ conference, which is to be held in London in June 2020, 25 years after the establishment of the European Association of Labour Court Judges.

On 21–27 June 2019, Pavel Simon went on an official trip to the John Marshall Law School in Chicago, US, at the invitation of Michael Seng, where he spoke at a conference organised by the Czechoslovak Society of Arts and Sciences in cooperation with the John Marshall Law School. At the conference itself, Pavel Simon contributed two papers, one on the independence of the judiciary in the context of public protests in the Czech Republic, and the other on access to a court from the point of view of the social understanding of the role of courts and judges, the system in place for access to a court, and purpose and scope of restrictions on access to the Czech Supreme Court in the context of the admissibility of appeals on a point of law in civil cases.

On 4–5 September 2019, Lubomír Ptáček and Petr Šuk attended a conference held by the European Law Institute in Vienna. The conference programme included the presentation of an evolving project of European civil procedure rules theoretically aiming to develop model rules that could be used to prepare national legislation in this area.

On 17–21 September 2019, Petr Škvain went on a short placement to the Research Centre for Human Rights in Criminal Proceedings, which operates within the Faculty of Law of the University of Passau. This placement was aimed, among other things, at enhancing professional skills, particularly with regard to the decision-making practices of the European Court of Human Rights. Consultations were also held on the structure and method of teaching at the Faculty of Law of the University of Passau.

On 13–25 October 2019, Petr Angyalossy took part in an exchange programme at the Curia (Supreme Court) of Hungary in Budapest. This

included a session of a working group examining the legal practices of courts, participation in court hearings, and meetings with court members and other legal experts.

On 13–15 November 2019, Pavel Horák attended the World Intellectual Property Organisation's Intellectual Property Judges Forum in Geneva. This event, specifically designed for judges dealing with the intellectual property rights in practice, made it possible to focus in particular on practical issues in the context of copyright, trade marks, designs and patents, especially in cross-border disputes in an environment of digitalisation and globalisation.

On 17–19 November 2019, Pavel Horák and Petr Škvain attended the Forum of Judges of High Courts of the Member States of the European Union at the Court of Justice of the European Union in Luxembourg. The programme of meetings comprised a plenary session and meetings at the individual sections. They focused on issues surrounding questions referred to the Court of Justice for a preliminary ruling and on the tenth anniversary of the Charter of Fundamental Rights of the European Union.

Within the scope of activities arranged by the Network of Presidents of the Supreme Courts of the Member States of the European Union, Pavel Horák went on a placement at the Supreme Court of Sweden on 2–6 December 2019. This placement included issues related to procedural and substantive issues, especially the law of obligations, consumer protection, contractual penalties, default interest, arbitration, etc.

3. 5. VIP Visits to the Supreme Court

3. 5. 1. President of the Supreme Court of the United Kingdom

On 16 July 2019, the Supreme Court was honoured to receive Lady Hale, the president of the Supreme Court of the United Kingdom. She was accompanied by the vice-president of the Supreme Court of the United Kingdom, Lord Reed, and a justice of the Supreme Court of the United Kingdom, Lord Kitchin. The guests from the United Kingdom discussed future cooperation and the specific exchange of experience with the management of the Supreme Court and some other justices. The programme of Lady Hale, Lord Reed and Lord Kitchin in Brno also included a visit to the Constitutional Court and the Supreme Administrative Court.

3. 5. 2. President of the Supreme Court of Thailand

On 31 May 2019, the Supreme Court was also honoured to receive Cheep Chulamon, President of the Supreme Court of Thailand, who was welcomed by Roman Fiala, the vice-president of the Supreme Court.

3. 5. 3. Justice of the Supreme Court of South Korea

On 26 June 2019, Supreme Court vice-president Roman Fiala also received a visit from Kwon Soon-il, a justice of the Supreme Court of South Korea, accompanied by Moon Seoung-Hyun, the South Korean Ambassador to the Czech Republic.

3. 6. International Conference – "Efficiency and Quality of the Czech Judiciary: Assessment and Prospects"

The Constitutional Law Committee of the Senate of the Parliament of the Czech Republic, in cooperation with the Supreme Court, held a conference in Prague on 26 November 2019 entitled "Efficiency and Quality of the Czech Judiciary: Assessment and Prospects". Ramin Gurbanov, the president of the European Commission for the Efficiency of Justice (CEPEJ), accepted an invitation to the first block of the conference on the efficiency of the work of Czech courts, where he spoke about the European standard on the length of proceedings. As part of the next block, on the quality of the judiciary system in the Czech Republic, Niovi Ringou, head of the Unit for Justice Policy and Rule of Law at the Directorate-General for Justice and Consumers of the European Commission, gave a presentation on improving the efficiency of the judiciary system in the European Union.

4. PROFESSIONAL TRAINING OF JUSTICES, THEIR ASSISTANTS AND EMPLOYEES

In view of the ongoing and finishing works on the new wing extending the Supreme Court building, only one specialised legal seminar was held in the Grand Chamber of the Supreme Court as part of its long-term annual cooperation with the Judicial Academy in Kroměříž.

16 September 2019 - "Incidental Actions in Insolvency with a Special Focus on Ineffective and Unenforceable Legal Acts" – lecture delivered by Zdeněk Krčmář

In 2019, justices, judicial clerks and other employees of the Supreme Court participated on a greater scale in training events in Kroměříž, where the Judicial Academy of the Czech Republic is seated.

In connection with the processing of the Supreme Court's decision-making activity in IBM Notes (formerly LotusNotes), seminars and training sessions for existing and newly arrived justices, judicial clerks, advisers and administrative employees of the Supreme Court were regularly held directly in the Supreme Court building in 2019.

5. FINANCIAL MANAGEMENT

Most of the Supreme Court's budgetary expenditure is taken up by the salaries of justices and court employees. Payroll spending accounts for more than 90% of annual expenditure.

The Supreme Court's operational resources are used primarily for the actual running of the court and for the maintenance and repair of facilities at the court building, which is a listed building. In the autumn of 2019, the new wing of the Supreme Court building was put into operation, thereby primarily resolving the problem of the lack of quality work space for judicial clerks. In this context, considerable resources were spent on the redeployment and subsequent adaptation of space in the existing building. In 2019, the Supreme Court also spent funds on restoring the condition and furnishings of the offices used by justices and employees in the original historical building. In addition, the Supreme Court is striving to obtain investment funds for the repair and modernisation of the existing historical building. The main focus here is on replacing windows and installing air-conditioning. A lot of money is being channelled into the ongoing upgrade of IT and the procurement of the necessary materials and services for normal operations. In terms of ensuring the professional competence of justices and employees, a major expense item is the cost of purchasing professional publications for the library of the Supreme Court.

The Supreme Court's financial management is governed at all times by the basic principles of efficiency and effectiveness in the spending of central government budget funds. The Supreme Court's financial operations are subject to internal management checks to ensure control and approval from the preparation of operations until they are fully approved and settled, including an evaluation of the results and the regularity of such financial management.

	Approved budget	Revised budget	Actual use of funds
2017	331,395	350,543	333,594
2018	351,328	351,848	359,124
2019	357,782	404,023	403,709

(amount in 1000s of CZK)

6. THE PERSONAL DEPARTMENT

In 2019, the number of Justices, assistants to Justices and staff of the Supreme Court again increased slightly.

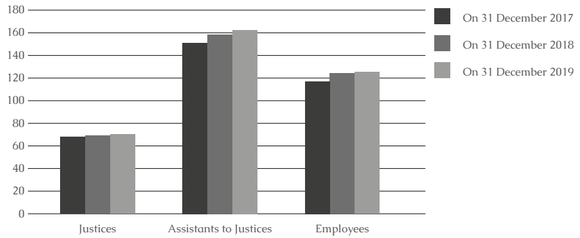
	On 31 December 2017	On 31 December 2018	On 31 December 2019
Justices	68	69	70
Assistants to Justices	151	158	162
Employees	117	124	125

In 2019, there was another slight increase in the number of justices, judicial clerks and employees at the Supreme Court.

Criminal Division:
as at 1 January 2019 JUDr. Marta Ondrušová
as at 1 April 2019 JUDr. Tomáš Durdík
as at 18 April 2019 JUDr. Radek Doležel
JUDr. Petr Škvain, Ph.D.

Civil and Commercial Division:
as at 1 January 2019 JUDr. Pavel Horňák
JUDr. Helena Myšková
JUDr. Hana Tichá
JUDr. Aleš Zezula
as at 1 July 2019 Mgr. Jiří Němec

No justices left the Supreme Court in 2019.



7. THE PUBLIC RELATIONS DEPARTMENT AND PROVIDING INFORMATION

7. 1. Information Office

In 2019, as in the past, the Public Relations Department, which provides basic information on the state of the proceedings to parties thereto, their lawyers, or journalists, fielded between 60 and 80 enquiries over the telephone, in writing or in person every day.

The Information Office, where two desk officers are employed, is competent to communicate information on the state of the proceedings (i.e. whether a decision has been reached in particular proceedings). It also provides information on progress in the production of statements of grounds for decisions, whether a decision and its file have already been sent (typically) to the court of first instance, or where the complete file is currently located. The Information Office does not disclose information on the outcome of proceedings. Nor is the Information Office competent to provide legal advice; in these cases, it refers persons making enquiries to lawyers registered with the Czech Bar Association. In the interests of its own impartiality, the Supreme Court cannot provide legal advice.

In 2019, the parties and their legal counsel received information on the outcome of proceedings solely via the due service thereof (typically) by the court of first instance. Journalists were provided with information by the spokesperson, but only after decisions had been duly served on all parties to the proceedings. In connection with the amendments to the Code of Criminal Procedure and the Code of Civil Procedure effective from 1 February 2019, the Supreme Court began to publish its judgments and selected resolutions on the electronic official notice board and the physical official notice board in the court building. Consequently, some of the parties, together with the public, were made aware of the outcome of the proceedings via the official notice board.

7. 2. Spokesman

Spokesperson Petr Tomíček is also the head of the Public Relations Department. The spokesperson's main duties include communicating with the media and responding to requests for information under Act No 06/1999 on freedom of information. He is assisted in the processing of requests by an adviser on issues pertaining to Act No 106/1999.

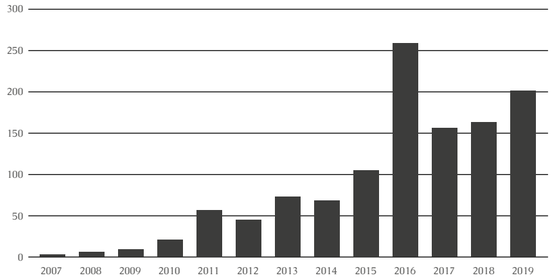
Every year, the Supreme Court's Public Relations Department compiles the Supreme Court Yearbook, published in Czech and English, prepares and publishes the electronic quarterly AEQUITAS, and releases other materials reporting on the Court's activities.

Other channels of communication with the public are the Supreme Court's website at www.nsoud.cz and social media, i.e. Twitter, LinkedIn and Instagram.

In 2019, the spokesperson issued 78 press releases. The Supreme Court's Public Relations Department held or co-organised six press conferences, including a joint press conference of the Constitutional Law Committee of the Senate of the Parliament of the Czech Republic and the Supreme Court in the framework of the international conference "Efficiency and Quality of the Czech Judiciary: Assessment and Prospects"; a joint press conference with the Transport Research Centre to mark the launch of the web application www.datanu.cz; a press conference of the Supreme Court and the Supreme Prosecutor's Office on efforts to seek more frequent proposals for fines and diversions in criminal proceedings; a press conference on the Supreme Court's ruling on the dispute between the bankruptcy trustee Josef Monsport and the defendant SBD Svatopluk, comprising H-System clients; a press conference marking the launch of a process that would lead to two prosecutors' subsequent appointment as judges and their assignment to the Supreme Court as justices; and press conferences in Brno and Bratislava as part of the international event "Supreme Courts in Changing Times"). The spokesperson replied to more than 2,000 different enquiries from journalists and the public on media cases by telephone, in writing, or by giving interviews on camera or into a microphone.

7. 3. Information under Act No. 106/1999 Coll., on Free Access to Information

In the period from 1 January to 31 December 2019, the Supreme Court received 202 written requests for information pursuant to the Freedom of Information Act, 174 of which were from natural persons and 28 were from legal persons. This was a 23% increase (equal to 38 requests) on 2018.



Number of requests for information, 1 January – 31 December

Three requests were withdrawn. In three cases, the applicants did not respond to the requests from the liable entity under the Freedom of Information Act to clarify the original text of the request, so these requests were subsequently refused after the statutory deadline expired. In three cases, the applicants failed to respond to the requests from the liable entity under the Freedom of Information Act to provide jointly with the request the additional mandatory information about the applicant, so no further action was taken on these requests after the statutory deadline expired.

Consequently, the information or the decisions to refuse or to partially refuse requests or not to take further action on (part of) a request were sent to 199 applicants. The statutory time limits for processing or deciding to take no further action on requests were complied with.

Fully processed responses were provided for 75 requests (including 1 within the scope of an internal appeal). In a further 47 cases, partial information was provided. In 8 cases, the applicants were referred fully to the information available within the public domain; in 2 further cases, they were referred partly to information in the public domain.

It was decided no further action would be taken on 22 requests (16 due to the Supreme Court lacking jurisdiction, 3 due to the applicant failing to provide the required details, and 3 due to the applicants' failure to pay the amount quantified to cover the costs for processing the request). In another 12 cases, the decision was taken not to take further action on part of the requests (9 due to the Supreme Court lacking jurisdiction and 3 due to the applicants' failure to pay the amount quantified

to cover the costs for processing the request). In this respect, the most common grounds for not taking further action on requests, as per Section 2(1) of the Freedom of Information Act, was that they were beyond the competence of the liable entity under that Act.

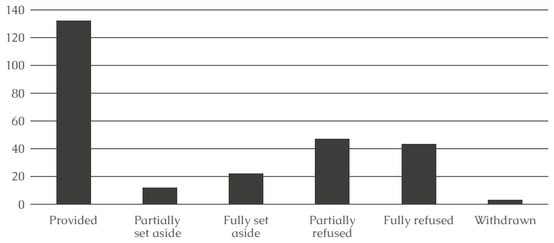
In 8 cases, payments were quantified for extraordinarily extensive searches pursuant to Section 17(1) of the Freedom of Information Act. In 2 cases, the information was provided after the payments were made; in the remaining cases, no further action was taken on requests, in full or in part, because the payment was not forthcoming.

In 2019, two applicants complained about how their requests for information were processed, specifically about the form, the content or the scope of the information provided. In both cases, the superior body affirmed the procedure of the first-instance body of the liable entity and ruled that these complaints were unfounded.

The liable entity (including the 3 aforementioned requests refused due to the applicants' failure to provide additional clarification by the deadline) refused 43 requests in full and 47 requests in part. The most frequent reason for refusing an entire request was that the applicants were seeking new or non-existent information. Requests were also repeatedly refused in cases where the applicants sought a statement of the liable entity's opinion. The most common reason for partial refusal of requests was the fact that the liable entity was protecting the personal data of parties to criminal or civil proceedings. In these circumstances, it refused requests for information concerned with personal data that is not to be disclosed.

Applicants lodged 6 appeals against decisions to fully or partially refuse their requests. In one case, the decision on partial refusal was overturned and the request was then processed in full within the scope of an internal appeal pursuant to Section 87 of the Code of Administrative Procedure. The liable entity's appellate body dismissed all other appeals and upheld the decision of the first-instance body.

In 2019, in addition to the aforementioned requests for information pursuant to Act No 106/1999 on freedom of information, the Supreme Court's Public Relations Department fielded more than 10,000 written, telephone and personally submitted requests and enquiries from the public, parties to proceedings, and journalists.



Method for processing requests submitted in 2019

8. HANDLING OF COMPLAINTS UNDER ACT NO. 6/2002 COLL., ON COURTS AND JUSTICES

Pursuant to Act No 6/2002 on courts, judges, lay judges and the State administration of courts, as amended, natural and legal persons may file complaints with bodies responsible for the State administration of courts about delays in proceedings, the misconduct of court personnel, or impairment of the decorum of court proceedings.

In 2019, 3 complaints were filed with the Supreme Court, all relating to alleged delays in proceedings before the Supreme Court. Of these, 2 were classified as justified and one as unjustified. None of the complainants opposed the way their complaints were handled.

In 2019, the Supreme Court again made every effort to meet all the conditions of a fair trial, including the duration thereof.

	Justified	Partially justified	Unfounded
Delays in proceedings	2	0	1
Misconduct of court personnel	0	0	0
Impairment of the decorum of proceedings	0	0	0

Handling of complaints under Act No 6/2002 in 2019

9. THE DEPARTMENT OF CZECH CASE LAW AND ANALYTICS

Since its inception on 1 October 2011, the Department of Czech Case-law Documentation and Analytics (the "Case-law Department") has proved a boon to the Supreme Court on account of the expert work it produces. In terms of its activities, the Case-law Department's name is self-explanatory: it specialises in legal expert analysis focusing primarily on case-law and records thereof, specifically in cases falling within the jurisdiction of Czech courts in civil and criminal proceedings.

It carries out extensive background research into case-law related to a specific legal issue, evaluates its applicability to the case at hand, and formulates partial conclusions that subsequently serve as a basis for the work of the reports panels and meetings of both divisions. Building on the results of the divisions' meetings, it then draws up short annotations on selected decisions, which are used to acquaint the reader briefly with the issue covered by each of those rulings. This makes it easier to navigate the large number of decisions. The annotations are periodically published on the Supreme Court's website.

In 2019, the Case-law Department continued to process individual decisions provided by lower courts concerning adhesion procedure and claims for compensation for non-material damage in criminal proceedings. Its analysis maps the decision-making activities of the Supreme Court and the Constitutional Court formulating fundamental conclusions for adhesion procedure and the assessment of claims for compensation for non-material damage. It encompasses both criminal and civil decisions.

On request, the Case-law Department processes underlying documentation for the Supreme Court's comments on newly emerging legislation, or amendments thereto, provides assistance to individual justices and judicial clerks, and supports the work of the Supreme Court's Department of Analytics and Comparative Law.

Further to ongoing recodification work and the publication of Act No 89/2012, the Civil Code, the need arose to select and summarise civil decisions in connection with individual provisions of the newly created Code. By 2019, the Case-law Department had covered the Civil Code in its entirety with the selected themes of its compilations. The individual volumes contain the text of the legislation, the explanatory memorandum and the aforementioned available court case-law, including historical case-law (e.g. decisions published in the Vážný Collection). In the production of this work, the wording of the explanatory

memorandum on the Civil Code and amendments thereto, as well as the available expert literature providing a commentary on this legislation, is taken into account. However, as civil law is a very dynamic area of law responding to pitfalls arising in the application of the code, societal developments, changes in European legislation, and new judicial conclusions of the European Courts, the Case-law Department has revised and gradually updated the various volumes of its compilations in order to preserve their intended purpose. Compilations of the civil substantive code will continue to be expended to include volumes dealing with civil procedural law.

In 2018, the Case-law Department entered into cooperation with the Transport Research Centre on the development of the DATANU project, the primary objective of which was to map out the current decision-making practices of lower courts in cases where there are claims for compensation for non-material damage or claims seeking the indemnification of a survivor. The project's secondary objective was to create a software database of court decisions classified by defined criteria, so that specific compensation for non-material damage that has already been granted can be looked up on the basis of input parameters. The department's work has contributed to the development of the database's content by providing the Transport Research Centre with extensive feedback on its functionality and also by professionally processing materials provided by the courts. In 2019, the department continued its work, focusing on the expansion of information contained in the database. DATANU project outputs are publicly available online at www.datanu.cz.

In 2018, the department created the concept of a Collection of Selected Decisions covering part of the Supreme Court's decision-making practices. During 2019, the technical aspect of this proposal was implemented, and now the content is being put together. In addition to headnotes, the collection will also include a short annotation, an interactive list of relevant related court decisions, legal provisions, information on whether the conclusion reached by a decision has been replaced by (or replaces existing) judicial practices, information as to whether the parties have filed a constitutional complaint against the decision, information on the proceedings, and, where appropriate, information on the outcome of proceedings. The collection's practical benefit lies in the classification of processed decisions according to pre-defined topics and legal areas, as this will make it much easier to navigate and work on a large number of appeal court decisions.

The increase in the Supreme Court's caseload is inextricably linked to a heavier administrative burden. Guided by the idea of a modern and efficient institution, the Case-law Department undertook a complete revision of the Register of Constitutional Complaints (SUS) and, in cooperation with IT experts, devised an automated system that generates relevant data (previously handwritten) on constitutional complaints that have been filed. This allows end users of the Supreme Court's internal systems to automatically access decisions published by the Constitutional Court. This system means that the court's administrative burden in this area of the department's work can be lightened. It minimises the scope for error in the inexhaustible amount of data processed, and makes it easier to navigate those court decisions that are linked to each other.

10. THE SUPREME COURT LIBRARY

The Supreme Court Library exists primarily to serve justices, judicial clerks, advisers and other employees of the Supreme Court. As information and on-site loans are also provided to experts among members of the general public, the Supreme Court Library has been registered at the Ministry of Culture as a specialised public library since 2002. The library catalogue can be accessed on the Supreme Court's website (www.nsoud.cz).

In addition to the library catalogue, specialised legal literature databases, such as ASPI, Beck Online and other legal databases available online, are also used to answer users' enquiries.

The library currently has stocks comprising over 30,000 volumes of books, bound annual volumes of journals, and other printed and electronic documents. Although the library mostly offers legal literature and case-law, there are also, to a lesser extent, publications on philosophy, psychology, political science and history.

In 2019, the stock was expanded to include nearly 450 new titles. The library's services are used by approximately 1,300 people. Library staff answered more than 500 internal and external enquiries.

In September 2019, the long-awaited completion of the extension to the Supreme Court building was completed. Here, the entire ground floor is reserved for a new library. All of the offices and storage facilities used until then, located on different floors across the main building, had to be moved. To help them, librarians were able to draw on the assistance of inmates from Brno Prison, who transferred all of the books, journals and other materials to the new premises. This assistance, combined with maximum effort by the librarians and other court staff, saw everything completed within a month.

Reviews of the stock being relocated were started while the library remained in full operation. Once these are completed, further reviews will continue as required by the Libraries Act.

Library visitors have been very positive about the newly built premises. After many years, practically since the Supreme Court started operating in Brno in 1993, the library can finally provide its services to readers in more welcoming conditions.

11. THE IT DEPARTMENT

Following the completion of the Supreme Court building's new wing, as described in the introduction to this Yearbook, the IT department was set the task of equipping the new offices and library with the appropriate hardware and software, including network connections. The secure operation of information systems at the Ministry of Justice requires some specific sophisticated settings.

Data security is an essential priority at the Ministry of Justice and hence also at the Supreme Court. The protection of IT technologies and software products is enhanced not only by upgrading them, but also by providing regular information and training to users, i.e. all justices and employees. In this respect, all users are required to attend cybersecurity training every 12 months, which is rounded off with a detailed test. This obligation is premised on a Ministry of Justice instruction on information security in information and communication systems at the Ministry of Justice (MSP-53/2015-OI-SP).

The security of sensitive information and personal data is also related to the implementation of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of personal data (the GDPR). Also in connection with that regulation and the newly effective Act No 110/2019 on the processing of personal data, the Supreme Court proposed modifications to existing hardware and software so that computer equipment, computer programs and access thereto fully comply with the newly applied legal standards. Bearing in mind the wide range of changes required, these system modifications, started in previous years, continued in 2019. At the same time, the follow-up training on GDPR-related issues was held for the Supreme Court's users.

The world today requires not only the acceleration of all communication services, but also their reliability and security. They are operated in accordance with all applicable legal standards and regulations. Therefore, the Supreme Court also pays attention not only to the standard of its own IT equipment and employee awareness, but also to the standards in place at all suppliers and contractual partners.

12. THE CONFLICT OF INTERESTS DEPARTMENT

12. 1. Departmental Activities

Act No 159/2006 on conflicts of interest, as amended, empowers the Supreme Court to receive and record notifications of the activities, property, income, gifts and liabilities of Czech judges, and to store and supervise the completeness of data in these notifications.

The Supreme Court's Conflict of Interest Department carries out all activities required by law in relation to public officeholders – judges.

All judges registered in the Central Register of Notifications compiled by the Ministry of Justice are obliged to file notifications when commencing and terminating their duties and also periodically at the times prescribed by the Conflict of Interest Act. Notifications are sent to the Supreme Court in writing on a specific form, the structure and format of which are set by the Ministry of Justice in an implementing decree. These notifications are then kept for a period of five years from the date of termination of a judge's duties. The register of judges' notifications is an autonomous and separate register that is not available for perusal. The information contained in it is not even disclosed under Act No 106/1999 on freedom of information, as amended. Only entities directly designated in the law have access to the information contained in individual notifications.

Judges who were in office on 1 January 2019 filed "interim notifications" for the period they were in office in the 2018 calendar year, and were required to do this by 30 June 2019. The preparatory phase ahead of the actual submission of notifications mainly entailed the creation of an interim notification form for the needs of judges (a classic and interactive form) with detailed comments to guide its completion. Auxiliary materials have also been created to provide judges with comprehensive information on their legal reporting obligation.

During procedure for the submission of interim notifications for 2018, issues surrounding methodology were handled in cooperation with the Ministry of Justice. Information was sent to the presidents of individual courts on an ongoing basis. The department's staff answered telephone and email inquiries and provided personal consultations. All necessary information was published in a specially created section on the Supreme Court's website.

In 2019, the department also received and recorded entry and exit notifications for justices who were freshly appointed or retiring.

In 2020, the department will supervise the completeness of the data in the notifications received. These checks will include, in particular, a formal check that the notifications contain the mandatory information prescribed by the Conflict of Interest Act and Implementing Decree No 79/2017 laying down the structure and format of notifications pursuant to the Conflict of Interest Act, as amended. The data in the notifications will also be compared with the details provided in other public administration information systems, which the Supreme Court's Conflict of Interest Department is authorised to view, e.g. the property register and the road vehicles register. In the first half of 2020, the department is expected to submit interim notifications for the period justices were in office in the 2019 calendar year. In addition, entry and exit notifications will be received and recorded.

12. 2. Statistical data

As at 1 January 2019, there were 3,021 judges in office registered in the Central Register of Notifications maintained by the Ministry of Justice. By the statutory deadline for the submission of interim notifications for 2018, i.e. by 30 June 2019, five judges had died, one of whom had submitted her interim notification. The statutory obligation to submit interim notifications for 2018 therefore applied to 3,017 justices.

As at 31 December 2019, 3,016 justices had filed an interim notification for 2018. Only a judge who had already retired did not file a notification.

Under the Conflict of Interest Act, 53 judges commenced their duties in 2019, all of whom duly filed their entry notification.

In 2019, 71 judges were subject to the obligation to provide notification in connection with the termination of their office. The judges who had been set a deadline for the submission of their exit notification in 2019 filed this notification, with the exception of the one judge who had also failed to submit her interim notification for 2018. On the basis of her failure to submit an exit notification, the Supreme Court drew up notice of this judge's misdemeanour, which was forwarded for handling to the municipal authority with extended competence in whose territorial area the individual who was a public official resided.

POSTSCRIPT BY THE SUPREME COURT VICE-PRESIDENT

To round off this Yearbook, I would like to present some positive observations on selected activities of the Supreme Court. It is our aim for this text to provide a comprehensive overview of the most important activities of the Supreme Court carried out by its representatives and the individual components within its internal structure.

It can be inferred from the information provided in this document that the Supreme Court, as the supreme representative of the Czech judiciary in matters falling within the jurisdiction of courts in civil proceedings and criminal proceedings, strives not only to be conscientious in playing a pivotal role in harmonising the case-law of lower courts, but also contributes significantly to raising the standard of the domestic judicial environment, leaving its mark on the resultant form of this sector.

In this respect, it should be noted that the efficiency of the Supreme Court and the Czech judiciary as a whole continues to increase. One of the clear reasons for this is the strengthening cooperation between the Supreme Court and the Ministry of Justice. In fulfilling its role as a consultee, the Supreme Court provides its expert opinions on numerous drafts of relevant legislation, the resulting form of which is reflected in judicial practice. The Supreme Court also organises annual meetings of presidents and vice-presidents of Czech courts to unify the way they tackle outstanding issues. Its representatives attend a number of expert seminars (e.g. an annual seminar on succession law, held under the auspices of the Judicial Academy) and conferences organised to discuss key issues of legal practice (such as the November conference on the "Efficiency and Quality of the Czech Judiciary: Assessment and Prospects").

The truth of the claim above can be evidenced by reference to a 2019 analytical document of the European Commission concerning the judiciary, which places the Czech judiciary among the top echelons of EU members in terms of the number of cases heard (the Czech judiciary satisfactorily copes with newly contested cases and keeps pending cases to a minimum), and as regards the time required to settle cases (an average of below 200 days).

Therefore, while the public tends to be inundated with negative reports informing it of the shortcomings, errors or unused opportunities within the judiciary, I believe it important to point out a number of matters in the opposite direction – the successes that have been achieved, the expectations that have been met, and the efforts that have been made

to increase standards within the Czech judiciary. It is also vital to learn about the positive aspects of its work because it is in this way that trust in the courts and the judiciary, which is not as high as it could and should be, can be increased.

Although I am aware of a number of challenges that need to be tackled in the near future (including the current and future form of the disciplinary liability proceedings with judges, requiring the reintroduction of the two-instance model necessary to ensure a higher level of fairness for the parties involved), I remain full of optimism.

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