The Supreme Court Yearbook

2021

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ISBN 978-80-907159-7-4

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FOREWORD BY THE PRESIDENT OF THE SUPREME COURT

Dear readers,

Most of you surely expected, just like I did, that we would finally defeat the coronavirus pandemic in 2021 and that our professional and private lives would return to normal. Sadly, we did not. Because of that, we all continued to live and work for a whole year in an extraordinary regime that was unlike anything we had experienced up to that point. And that is why, at the beginning of 2022, in connection with the evaluation of the complete statistics of the Supreme Court's decision-making activity for 2021, I was pleased to hear that even despite the extraordinary circumstances associated with the pandemic last year, our judges managed to close more cases than the Registry Office accepted. Once again, we have managed to slightly reduce the number of pending cases and proceedings that will need to be decided this year. An example to speak for all: While the agenda of extraordinary appeals in civil proceedings docket had a backlog of 1 663 cases moving from 2020 to 2021, it was 1 569 at the turn of this year, nearly 100 fewer. When compared to the rest of Europe, we also keep our proceedings in individual cases relatively short, with the Panels deciding extraordinary appeals in an average of 42 days for criminal proceedings and 160 days for civil proceedings.

A total of 72 judges of the Supreme Court, with the help of a few trainee judges, handled a total of 6 789 cases across all agendas in 2021, with 1 816 cases in the Criminal Division and 4 973 cases in the Civil and Commercial Division. In 2021, the Registry Office newly registered 6 728 files; 1 856 cases for decisions in criminal cases and 4 872 cases for decisions in civil cases. As in any other field of human activity, judges cannot pursue only quantity – above all, they must strive for quality. That is why I want to stress that among the thousands of decisions from 2021, there are a large number of judgments and resolutions of extremely high quality in both Divisions.

This is also confirmed by the overly favourable and persistent trend of a decreasing number of decisions by the Constitutional Court on the basis of an individual constitutional complaint. Last year, judges of the Constitutional Court annulled a total of 59 decisions delivered by the Panels of the Supreme Court. Compared to 2016, this is almost half the number, as at that time judges of the Constitutional Court annulled more than 100 decisions, specifically 102. In view of the situation at the moment of writing these lines, we have a chance to improve said statistics further. Such an assertion can be stated on the grounds that after the review from the judges of the Constitutional Court only 16 decisions from the pool of constitutional complaints were filed last year. At the same time, 1 511 decisions of the Supreme Court in total were challenged by the constitutional complaint, 422 being the decisions of the Criminal Division, while 1 086 were the decisions of the Civil and Commercial Division. Furthermore, 3 constitutional complaints were filed against decisions in the Nd registry of the civil section, which contains motions for delegations. For instance, disputes over jurisdiction between courts and motions to exclude judges from hearing a particular case fall within this category. In 2021, the Constitutional Court managed to decide on 1 070 constitutional complaints against decisions of the Supreme Court.

One of the most significant decisions of the Supreme Court is the judgment of the Grand Panel of the Criminal Division of the Supreme Court of 16 March 2021, file No 15 Tdo 110/2021, which responded to the expectations of the general expert and lay public and unified decision-making practice beyond any doubt when it stated that the application of Section 205(4)(b) of the Criminal Code, which refers to the criminal offence of theft committed in a state of threat to the state or state of war, during a natural disaster or another event seriously endangering lives or health of people, public order or property, requires the factual connection between the theft committed and the event in question to be unequivocally established, where the event may be considered to include the current occurrence of the coronavirus known as SARS-CoV-2 which causes the COVID-19 disease. Therefore, it is not sufficient that a link is only established by the fact that the theft occurred when a state of emergency was declared by the government. This decision was issued by the Grand Panel of the Criminal Division in the shortest possible time, as permitted by the applicable law, in order to provide the legal opinion of the Supreme Court to all lower courts in the Czech Republic as an important piece of case law.

In 2021, the Civil Division finally had more opportunities to interpret some parts of the new Civil Code and, for example, the Business Corporations Act. The yearbook in your hands contains, among other things, the recitals of law of several judgments, by which the Supreme Court fulfils one of its fundamental roles, i.e. unifies case law.

Despite the extensive restrictions associated with travelling abroad and, reciprocally, the many security measures with our government has conditioned the entry of foreign nationals into the Czech Republic, I am pleased that, especially in the second half of 2021, I was able to meet with many presidents of European supreme courts. In addition to several visits with the President of the Supreme Court of the Slovak Republic Ján Šikuta and meetings with the presidents of the supreme courts and constitutional courts of other countries from the former Eastern Bloc, which had to face similar problems to ours in the last decades, and some are still dealing with them. I was personally inspired by meetings with the President of the Supreme Court of Austria, Elisabeth Lovrek, the President of the Court of Cassation of France, Chantal Arens, and the President of the German Federal Court of Justice, Bettina Limperg. For example, senior representatives of the German judiciary were quite interested in our positive, long-established good experience with judicial assistants. Given the practices of the Court of Cassation, our

collegues, the French judges, took interest in the experience with exhaustive reasoning of court decisions typical for Czech legal system and were also interested in our other approaches to increasing the credibility of the judiciary in the eyes of the public. At the same time, we have repeatedly received useful feedback from our colleagues in countries with advanced judicial cultures. And so, in 2021, among other things, I was once again convinced that we have nothing to be ashamed of, that we need not be afraid to present our new approaches and ideas aimed at making the work of judges more efficient even in countries with such advanced democracies, which we still sometimes longingly look up to. Czech justice continues to build its good standing in Europe.

Last, let me also mention investment initiatives which the Supreme Court can gradually plan and implement after years of not having sufficient funds to carry them out. When the new ten-storey wing of the historic Supreme Court building was ceremonially opened in October 2019, built on the site of the demolished tenement building on Bayerova Street, we knew that it was likewise necessary to invest in the original 1932 listed building as soon as possible. It was necessary to prevent, for example, a significant heat leak through the historic windows considering that after almost 90 years of use they were unpleasantly draughty. Some of them could not even be opened, others closed properly. It follows that as soon as the Supreme Court finished the new wing, it embarked on a large-scale replacement and renovation of more than 350 mostly wooden windows, an undertaking amounting to more than CZK 25 million. New windows had to be faithful replicas of the originals, as required by the conservationists. Planners, constructors and companies executing the reconstruction in 2020 and 2021 faced an unprecedented number of original designs with 42 different types of windows and other glass panels on the exterior of the Supreme Court building.

Something I am pleased about is the recently commenced reconstruction of the Plenary Hall. The only hall capable of accommodating all the judges has long since lost its representative function and perhaps never even technically met the requirements of modern times. All that will change this year. I hope that on the occasion of the Czech Presidency of the Council of the European Union, we will be able to welcome the participants of one of the most important events – the Colloquium of the Network of the Presidents of the Supreme Judicial Courts of the European Union – in this modern hall. I am sincerely honoured that fellow presidents of the supreme courts from all over Europe entrusted us with the organisation of such an important international event. It represents a challenge, and I am confident that as hosts we will certainly meet all the expectations associated with it.

Yours truly, Petr Angyalossy

Petr Angyalossy
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 on the violation 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 the 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 extraordinary 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 Collection of Decisions and Standpoints of the Supreme Court.

Since 1 September 2017, under Act No 159/2006 Sb., on Conflicts of Interest, 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 3,000 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 and the Vice-President of the Supreme Court. On 20 May 2020, the President of the Czech Republic Miloš Zeman appointed JUDr. Petr Angyalossy, Ph.D., as the President of the Supreme Court for a 10-year term. As of 17 February 2021, the Vice-President of the Supreme Court has been JUDr. Petr Šuk, who was also appointed by the President of the Czech Republic Miloš Zeman for a 10-year term.

The President of the Supreme Court has a managerial and administrative role. In addition, he also participates in decision-making, appoints Presidents of Divisions, Presidents of Panels, judicial assistants 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 Judges, he issues a Work Schedule 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 judges on forthcoming Acts of Parliament and, in cooperation with the Judicial Academy, sponsors training courses for assistants, advisers and employees of the Supreme Court.

Furthermore, the Supreme Court consists of Presidents of Divisions, Presidents of Panels and other judges.

The Supreme Court has two Divisions, namely the Civil and Commercial Division and the Criminal Division. They are headed by the Presidents of Divisions, who manage and organise their activities. The President of the Civil and Commercial Division in 2021 was JUDr. Jan Eliáš, Ph.D., who was appointed for a term of 5 years as of 1 January 2019; the President of the Criminal Division from 1 January 2016 until now has been JUDr. František Púry, Ph.D., who has been entrusted with the management of this Division since 1 September 2015. As of 31 December 2020, František Púry's first five-year term ended, but the President of the Supreme Court has renewed his term from 1 January 2021 for another 5 years.

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, Presidents of Divisions and Presidents of Grand Panels, the Divisions adopt opinions, and select and decide to include seminal decisions in the Collection of Decisions and Standpoints of the Supreme Court.

All opinions of the Civil and Commercial Division, selected decisions of the individual Panels and selected decisions of lower courts are published in the Colelction of Decisions and Standpoints of the Supreme Court.

The Plenary Session, composed of the President of the Supreme Court, the Vice-President of the Supreme Court, Presidents of Divisions, Presidents of Panels and other Supreme Court judges, 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 judges 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 extraordinary appeals and on the recognition and enforceability of decisions of foreign courts in the Czech Republic, and in criminal cases they also decide on complaints on the violations of the law. Each Panel of the Supreme Court is headed by a President who organises the work for the Panel, including assigning Panel members to cases.

The Council of Judges 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 judges for a term of five years. The last elections to the Council of Judges were held on 29 November 2017. The Council of Judges consists of the President and four other members. Since 1 May 2019, the President has been Mr Lubomír Ptáček.

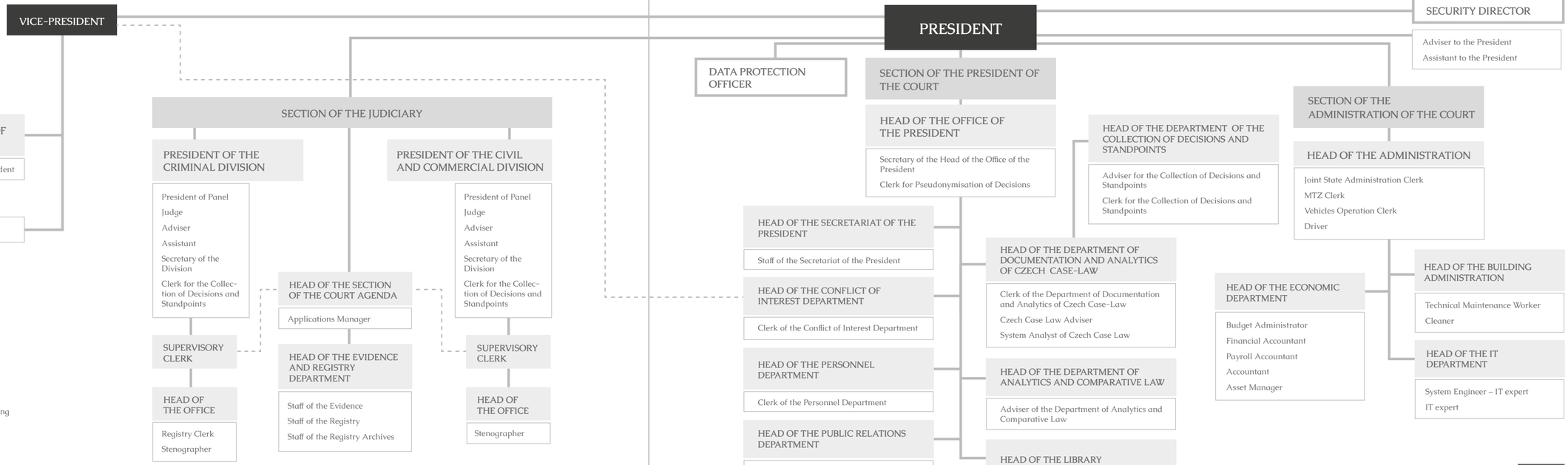
1. 2. Seat of the Supreme Court

Address of the Supreme Court: Burešova 570/20, 657 37 Brno
Telephone: + 420 541 593 111
Email 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 former 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.

On 1 October 2019, after many years of waiting, the Supreme Court's new wing was opened – adjacent to the original historical building in Bayerova Street. The lowest level of the new building holds technological facilities, as well as new archive of the Supreme Court. Above, there is an underground garage consisting of two floors with 20 parking spaces. Offices accommodate 143 employees, mainly judicial assistants. It is 26 years after its establishment that the Supreme Court finally acquires decent premises for its extensive library on the ground floor of the new wing of the building. A new courtroom was built on the first floor, which can additionally function as a small multipurpose hall. The adjacent terrace was designed as a relaxation zone.

1. 3. Organisational Structure



full managing competences

managing competences based on the authorisation or resulting from the organisational chart of the Supreme Court

1. 4. Supreme Court Judges in 2021

Criminal Division

JUDr. Petr Angyalossy, Ph.D.
JUDr. Radek Doležel
JUDr. Antonín Draštík
JUDr. Tomáš Durdík
JUDr. Jan Engelmann
Mgr. Pavel Göth
JUDr. Bohuslav Horký
JUDr. František Hrabec
JUDr. Aleš Kolář
JUDr. Ivo Kouřil
JUDr. Věra Kůrková
JUDr. Josef Mazák
JUDr. Marta Ondrušová
JUDr. Jiří Pácal
JUDr. František Púry, Ph.D.
JUDr. Blanka Roušalová
JUDr. Bc. Jiří Říha, Ph.D.
JUDr. Petr Šabata
JUDr. Milada Šámalová
JUDr. Pavel Šilhavecký
JUDr. Petr Škvain, Ph.D.
JUDr. Vladimír Veselý
JUDr. Roman Vicherek, Ph.D.

Civil and Commercial Division

Mgr. Vít Bičák
JUDr. Pavlína Brzobohatá
JUDr. Marek Cigánek
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. 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
JUDr. Jiří Němec
JUDr. Michael Pažitný, Ph.D.
Mgr. Milan Polášek
JUDr. Zbyněk Poledna
JUDr. Pavel Příhoda
JUDr. Lubomír Ptáček, Ph.D.
JUDr. Olga Puškinová
Mgr. Zdeněk Sajdl
JUDr. Pavel Simon
JUDr. Jiří Spáčil, CSc.
JUDr. Karel Svoboda, Ph.D.
JUDr. Petr Šuk
JUDr. Hana Tichá
JUDr. Pavel Tůma, Ph.D., LL.M.
JUDr. David Vláčil
JUDr. Petr Vojtek
JUDr. Pavel Vrcha, MBA
JUDr. Martina Vršanská
JUDr. Robert Waltr
JUDr. Jiří Zavázal
JUDr. Aleš Zezula
JUDr. Ivana Zlatohlávková
Mgr. Hynek Zoubek

1. 4. 1. Supreme Court Trainee Judges in 2021

Criminal Division

JUDr. Bohulsav Horký
JUDr. Roman Vicherek, Ph.D.

Civil and Commercial Division

JUDr. Mgr. Marek Del Favero, Ph.D.
Mgr. Miroslav Hromada
Mgr. Lucie Jackwerthová
JUDr. Jan Kolba
Mgr. Rostislav Krhut
Mgr. Michael Nippert
JUDr. Tomáš Pirk
JUDr. David Raus, Ph.D.
Mgr. Viktor Sedlák
JUDr. Pavel Tůma, Ph.D., LL.M.
JUDr. Ivo Walder

1. 4. 2. Curricula Vitae of Newly Assigned Supreme Court Judges

JUDr. Marek Cigánek (∗1965)
Judge of the Civil and Commercial Division, judge since 1990, judge of the Supreme Court since 2021

He graduated from the Faculty of Law of Jan Evangelista Purkyně University in Brno (now Masaryk University). From 1987 he worked as a judicial trainee at the Regional Court in Brno. In 1990, he was assigned to the Municipal Court in Brno as a judge, then as the President of Panel. From 1993, he served as a judge and then as the President of Panel at the Regional Court in Brno.

Mgr. Pavel Göth (∗1973)
Judge of the Criminal Division, judge since 2000, judge of the Supreme Court since 2021

He graduated from the Faculty of Law of Masaryk University in Brno. From 1997, he served as a judicial trainee and from 2000 as the President of Panel at the District Court in Sokolov. In 2003, he was assigned to the Brno Municipal Court to serve as the President of Panel and in 2009 he became the President of Panel of the Regional Court in Brno as a court of first instance. In 2016, he was transferred to the High Court in Olomouc, where he served as the President of Panel from 2018.

JUDr. Bohuslav Horký (∗1964)
Judge of the Criminal Division, judge since 1988, judge of the Supreme Court since 2021

He graduated from the Faculty of Law of Masaryk University in Brno. From 1986 he worked as a judicial trainee at the Municipal Court in Prague. Since 1988, he has served as the President of Panel at the District Court for Prague 2. In 1999, he became the President of Panel of the Municipal Court in Prague, where he later served as Vice-President. From 2013, he served as a judge at the High Court in Prague.

JUDr. Pavel Tůma, Ph.D., LL.M. (∗1979)
Judge of the Civil and Commercial Division, judge since 2009, judge of the Supreme Court since 2021

He graduated from the Faculty of Law of Masaryk University in Brno. From 2007 he worked as a judicial trainee at the Regional Court in Prague. In 2009, he was assigned as a judge to the District Court Prague – West. He worked at the Regional Court in Prague from 2013. From 2011 he was a member of the Enlarged Board of Appeal of the European Patent Office in Munich. In 2017, he became a judge of the High Court in Prague.

JUDr. Roman Vicherek, Ph.D. (∗1975)
Judge of the Criminal Division, judge since 2006, judge of the Supreme Court since 2021

He graduated from the Faculty of Law of Masaryk University in Brno. From 2004 he worked as a judicial trainee at the District Court in Ostrava. In 2006, he was assigned as a judge to the District Court in Ostrava, where he served as a Vice-President from 2015. From 2018 he worked at the Regional Court in Ostrava, where he was first assigned only temporarily, but became a judge of the Criminal Appeals Panel in 2019.

JUDr. Martina Vršanská (∗1965)
Judge of the Civil and Commercial Division, judge since 1995, judge of the Supreme Court since 2021

She graduated from the Faculty of Law of Charles University in Prague. From 1987 she worked as a judicial trainee of the Regional Court in Hradec Králové. In 1995, she was assigned as a judge to the District Court in Pardubice. In 2002 she was temporarily assigned to the Regional Court in Hradec Králové and from 2003 she worked at the Pardubice branch of the Regional Court in Hradec Králové.

2. DECISION-MAKING

2. 1. Plenary Session of the Supreme Court

The Plenary Session of the Supreme Court, composed of the President, the Vice-President, Presidents of Divisions, Presidents of Panels and other judges of the Supreme Court, is the most important collective body of the Supreme Court. In the interests of courts' uniform decision-making, it adopts unifying opinions on the decision-making activity of the courts in matters which concern both Divisions or which are disputed between the Divisions. It also discusses the Court's Rules of Procedure and decides on merging or splitting the Divisions. The hearings are closed to the public and convened and presided by the President of the Court; the President must always convene a hearing if at least one third of all the judges so request. The Plenary Session has a quorum in the presence of at least two thirds of all judges; a simple majority of those present is required to pass a resolution, but in matters of unifying opinions and merging or splitting the Divisions, a majority of all judges is needed (Section 23 of Act No 6/2002 Sb., on Courts and Judges, as amended). In 2020, it was not necessary to convene a hearing of the Plenary Session of the Supreme Court.

2. 2. Colelction of Decisions and Standpoints of the Supreme Court

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 Collection of Decisions and Standpoints of the Supreme Court ("the Collection") (Section 24 (1) of Act No 6/2002 Sb. 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. The Collection contains 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 Collection is divided into a civil and a criminal section.

Once the decisions selected for potential publication in the Collection have been assessed by the Records 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 Prosecutor General's Office and potentially, depending on the nature and importance of the questions being addressed, 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 the judges of the Division attending the meeting vote to approve them for publication. A simple majority of votes of all the judges of the Division is required to approve a decision for publication in the Collection.

The Collection is published in individual volumes, which were published ten times a year in printed form until volume No 10/2021. Since 2017, a more user-friendly electronic form has also been available to the public. Similarly, the so called "Blue Collection", containing a selection of important decisions of the European Court of Human Rights, has been available in electronic form since 2017. The Supreme Court published this collection as a printed book until the end of 2021 under the official title Selection of the Decisions of the European Court of Human Rights for Judicial Practice. From 2022 onwards, both collections will be created and new volumes published exclusively in electronic form, at https://sbirka.nsoud.cz/; https://sbirka.nsoud.cz/vyber-rozhodnuti-eslp-pro-justicni-praxi/.

Individual judgments from the Collection can also be found, along with legal recitals, on the Supreme Court website www.nsoud.cz, where the content of the next issue of the Collection is also announced in advance on the homepage.

2. 3. The Supreme Court Civil and Commercial Division in 2021

2. 3. 1. Overview of the Decision-Making Activities of the Civil and Commercial Division of the Supreme Court

The Supreme Court, as follows from Article 92 of the Constitution of the Czech Republic and Section 14(1) of Act No 6/2002, on Courts and Judges, as amended, is the highest judicial authority, inter alia, in matters falling within the civil competence of courts, and it is called upon to ensure the unity and legality of court decisions in civil court proceedings through its Civil and Commercial Division. It fulfils this role primarily by deciding on extraordinary remedies in cases provided for by the laws governing proceedings before courts, namely on extraordinary appeals of decisions of the courts of appeal, as well as – as regards its extra-judicial competence – by adopting opinions to overcome diverging decision-making by courts in certain types of cases, and finally by publishing selected decisions in the Collection of Decisions and Standpoints of the Supreme Court.

The amendment to Act No 99/1963, the Code of Civil Procedure (hereinafter the "Code of Civil Procedure"), implemented by Act No 404/2012 with effect from 1 January 2013, was also intended to fulfil these basic tasks of the Supreme Court; according to the explanatory memorandum, it pursued a conceptual change in the institute of extraordinary

appeal, the purpose of which was both to reduce the excessive burden on the Supreme Court and to strengthen the role of the Supreme Court as a unifier of judicial case law; while this second objective has been achieved (by significantly broadening the limits of the extraordinary appeal), the first has not. The incidence has increased in proportion to the expansion of decisions subjectable to extraordinary appeal.

The amendment to the Code of Civil Procedure, implemented by Act No 296/2017, effective from 30 September 2017, responded to this fact by amending Section 238 of the Code of Civil Procedure, establishing the cases in which an application for extraordinary appeal is not admissible, extending it to include decisions of the courts of appeal in the part relating to the decision on the costs of the proceedings, decisions deciding on the application for exemption from court fees or on the obligation to pay court fees, decisions deciding on a party's application for the appointment of a representative, and – finally, but with great conceptual importance – decisions by which the court of appeal quashed a decision of the court of first instance and referred the case back to the court of first instance for further proceedings.

At the end of 2021, the Civil and Commercial Division consisted of a President and fifty-four judges (six of whom were assigned temporarily) assigned to twelve judicial departments (the 32 Cdo judicial Department was abolished as of 1 June 2021), based on the work schedule issued by the President of the Supreme Court for that year, and on changes made to it during the year. In principle, this work schedule is based on aspects of specialisation, reflecting the existence of separable and relatively independent agendas of civil and commercial law. Simply put, the specialisations of the various judicial departments are as follows: extraordinary appeals in matters of enforcement of judgments and execution – Department 20; in labour-law and other matters – Department 21; in matters of property rights and community property – Department 22; in matters of commercial obligations, industrial property rights, protection against unfair competition and others – Department 23; in matters of inheritance and family law and others – Department 24; in matters of damages and protection of personality rights – Department 25; in tenancy matters – Department 26; in corporate and capital market matters – Department 27; in restitution and unjust enrichment matters – Department 28; in insolvency and exchange matters – Department 29; in matters of compensation for damage and other than proprietary harm caused by the exercise of public authority, as well as disputes involving the application of European procedural law – Department 30; in non-commercial contractual relations – Department 33. Department 31 then consists of the Grand Panel which decides in accordance with Section 20 of the Act on Courts and Judges.

Until 1 September 2016, when the Rules of Procedure of the Supreme Court were changed, the composition of individual procedural (three-member) Panels, called to hear and decide a specific case that, according to the Work Schedule, belonged to a certain judicial department, was basically in the hands of the "presiding judge" of the relevant judicial department (who was also determined by the Work Schedule); the presiding judges composed the deciding Panels primarily according to the criteria of internal specialisations, the expertise of individual judges

and their specific workload. Since 1 September 2016, the ruling Panel within the judicial Department is determined directly by the Work Schedule. The Work Schedule establishes the mechanism by which the contested case is immediately assigned to a particular judge (based on a system of regular rotation) and from which the composition of the three-judge Panel is determined (or rather pre-determined by the Work Schedule). This change in the Work Schedule was made with the intention of eliminating any objections based on a lack of respect for the rules of due process and the right to a lawful judge enshrined in Article 38(1) of the Charter of Fundamental Rights and Freedoms. The judge to whom the case has been assigned draws up a draft decision, which is then put to the vote in the Panel thus constituted.

2. 3. 1. 1. Adjudication of Extraordinary Remedial Measures

The focus of the decision-making activity of the Division's Panels lies in deciding on extraordinary appeals against final decisions of courts of appeal, which is one of the extraordinary remedies under the valid and effective wording of the Code of Civil Procedure and dominates the others in terms of its importance. Since 1 January 2013, the procedure has been regulated in Sections 236 to 243g of the Code of Civil Procedure, i.e. in Title Three of Part Four of that Act.

An extraordinary appeal is a remedial measure against final decisions of courts of appeal, i.e. against decisions of regional or high courts (in Prague against the decision of the Municipal Court) which terminate the appeal proceedings, as well as against certain specific procedural decisions of courts of appeal listed in Section 238a of the Code of Civil Procedure, and may be filed within two months of the delivery of the contested decision [Section 240(1) of the Code of Civil Procedure].

In accordance with Section 241(1) of the Code of Civil Procedure, the applicant for extraordinary appeal, if he or the person acting for him lacks legal training, must be represented by a lawyer when applying for extraordinary appeal (in some cases, he may also be represented by a notary).

An extraordinary appeal is admissible only in cases provided for by the law (Section 237 of the Code of Civil Procedure, a contrario Section 238 of the Code of Civil Procedure, Section 238a of the Code of Civil Procedure). If the extraordinary appeal is not legally admissible, it does not become so even if the court of appeal incorrectly instructs the party that an extraordinary appeal is admissible.

Amendment to the Code of Civil Procedure implemented by Act No 404/2012 has also significantly affected the rules on the admissibility of extraordinary appeals; it is henceforth admissible against all decisions of the courts of appeal terminating the appeal proceedings, regardless of the wording of the contested decision. Therefore, it is irrelevant whether the decision of the court of appeal changes or confirms the decision of the court of first instance, nor is it a condition that the application for extraordinary appeal be directed against decisions on the merits, as was previously the case (the admissibility of extraordinary appeal against overruling decisions of the courts of appeal was removed by Act No 296/2017).

An extraordinary appeal is admissible (Section 237 of the Code of Civil Procedure) if the contested decision of the court of appeal depends on the resolution of a question of substantive or procedural law, and at the same time:

a) the court of appeal deviated from the established decision-making practice of the court that decides on extraordinary appeals; or

b) this question has not yet been resolved in the decision-making of the court that decides on extraordinary appeals; or

c) this question is decided differently by the court that decides on extraordinary appeals; or

d) such a question is to be assessed differently by the court that decides on extraordinary appeals.

Section 238 of the Code of Civil Procedure stipulates when an extraordinary appeal is not admissible against a decision of the court of appeal terminating the appeal proceedings (the property census is relevant here – an extraordinary appeal is not admissible against judgments and orders issued in proceedings the subject of which at the time the decision containing the contested verdict was issued was a monetary performance not exceeding CZK 50 000, including proceedings for enforcement of a decision and execution proceedings, unless the proceedings concern relationships under consumer contracts and labour-law relationships).

Notwithstanding the limitations laid down in Section 238 of the Code of Civil Procedure, an extraordinary appeal in accordance with Section 238a of the Code of Civil Procedure is admissible against the decisions of the courts of appeal which have decided in the course of the appeal proceedings:

a) on who is the procedural successor of a party;

b) on the intervention of a party in the proceedings in place of an existing party (Section 107a of the Code of Civil Procedure);

c) in the intervention of another party [Section 92(1) of the Code of Civil Procedure]; or

d) on the substitution of a party [Section 92(2) of the Code of Civil Procedure].

An extraordinary appeal may be brought only on the grounds that the decision of the Court of Appeal is based on an error of law, whether of substantive or procedural law, which was decisive for the contested decision [Section 241a(1) of the Code of Civil Procedure]. No other grounds for an extraordinary appeal may be effectively invoked, which is worth emphasising, especially in relation to the not infrequent efforts of applicants for extraordinary appeal to challenge the contested decision by objecting to the incompleteness or incorrectness of the facts of the case (this does not apply, in the opinion of the Constitutional Court, to situations of extreme inconsistency

between the evidence produced and what the court ascertained as the facts of the case on that basis).

Since 1 January 2013, the Code of Civil Procedure has also tightened the requirements for the formal and substantive requirements of an extraordinary appeal; in addition to the general requirements [Section 42(4)] and the information on the decision against which it is directed, the extent to which the decision is contested and what the applicant for extraordinary appeal seeks, it must also contain a statement of the grounds for an extraordinary appeal and an indication of what the applicant for extraordinary appeal sees as fulfilling the prerequisites for the admissibility of the extraordinary appeal, as set out in the above-cited Section 237 of the Code of Civil Procedure. The lack of these particulars then constitutes a defect in the application for extraordinary appeal, often with fatal consequences, as it can only be remedied during the time limit for applying for the extraordinary appeal (in the proceedings before the Court of Appeal, the procedure specified in Section 43 of the Code of Civil Procedure does not apply, which means that the applicant for extraordinary appeal is not called upon to correct or supplement the application for extraordinary appeal). If the defect in the application for extraordinary appeal is not remedied, the court that decided on extraordinary appeals will reject the extraordinary appeal without being able to deal with its substance.

Therefore, the failure to state what the appellant considers to be the fulfilment of the prerequisites for the admissibility of the extraordinary appeal is also a ground for rejection of the extraordinary appeal in future, and it is possible for the court that decided on extraordinary appeals to rule in such cases through the President of the Panel or the judge in charge [Section 243f(2) of the Code of Civil Procedure]. If, for example, the applicant for extraordinary appeal argues that the court of appeal deviated from the decision-making practice of the court that decides on extraordinary appeals, it must specify in the application of extraordinary appeal which judicial conclusions the court of appeal failed to respect, which clearly places considerable demands on the applicant for extraordinary appeal.

However, these are not disproportionate with regard to the statutory mandatory (expert) representation (in particular by a lawyer). The legal regulation of the extraordinary appeal proceedings requires that the application for extraordinary appeal must be drawn up by a lawyer (or notary) [Section 241(4) of the Code of Civil Procedure]; the contents of a submission in which the applicant for extraordinary appeal has indicated the extent to which it challenges the decision of the court of appeal or in which it has set out the grounds for the extraordinary appeal without complying with the condition of mandatory representation shall not be taken into account [Section 241a(5) of the Code of Civil Procedure].

The Supreme Court shall, as a matter of principle, review the contested decision only to the extent to which the applicant for extraordinary appeal has contested it and from the point of view of the grounds of extraordinary appeal which the applicant has defined in the application for extraordinary appeal [exceptions to the binding nature of the scope

of the application for extraordinary appeal are laid down in Section 242(2) of the Code of Civil Procedure; the binding nature of the content of the extraordinary appeal argumentation is overruled in exceptional cases by the second sentence of Section 242(3) of the Code of Civil Procedure].

The Supreme Court decides on extraordinary appeals without a hearing in the vast majority of cases [Section 243a (1) of the Code of Civil Procedure].

The Supreme Court dismisses the extraordinary appeal proceedings if the applicant for extraordinary appeal is not legally represented in the manner required by law or if the applicant has withdrawn the application [Section 243c(3) of the Code of Civil Procedure].

If the extraordinary appeal is not admissible or if it suffers from defects which make it impossible to continue the extraordinary appeal proceedings or if it manifestly lacks grounds, the Supreme Court dismisses it [Section 243c(1) of the Code of Civil Procedure]. If the application for extraordinary appeal is dismissed for inadmissibility in accordance with Section 237 of the Code of Civil Procedure, all members of the Panel must agree [Article 243c(2) of the Code of Civil Procedure].

If the extraordinary appeal is admissible but the Supreme Court concludes that the contested decision of the court of appeal is correct, it dismisses the extraordinary appeal for lack of grounds [Section 243d(1)(a) of the Code of Civil Procedure].

However, if it concludes that the decision of the court of appeal is incorrect, it may (under the new rules effective from 1 January 2013) overrule it if the results of the proceedings so far show that the case can be decided [Section 243d(1)(b) of the Code of Civil Procedure].

Otherwise, the Supreme Court annuls the decision of the aourt of appeal and refers the case back to the court of appeal for further proceedings; if the reasons for which the decision of the court of appeal was annulled also apply to the decision of the court of first Instance, it will also annul that decision and refer the case back to the court of first instance for further proceedings [Section 243e(2) of the Code of Civil Procedure].

The Supreme Court does not rule only in three-member panels; the institution of the Grand Panel serves to ensure the unity of its decision-making practice (see Sections 19 and 20 of Act No 6/2002, on Courts and Judges), which the procedural panel addresses if it reaches a legal opinion in its case, which is different from the view expressed earlier in a decision of the Supreme Court. It is then obliged to refer the case to this Grand Panel (composed of the representatives of the various judicial departments), which is called upon to decide the case; in 2010 this was the case in 17 cases, in 2011 in 16 cases, in 2012 in 18 cases, in 2013 in 15 cases, in 2014 in 11 cases, in 2015 in 8 cases, in 2016 in 8 cases, in 2017 it also decided 8 cases, in 2018 in 3 cases, in 2019 in 6 cases, in 2020 in 10 cases and in 2021 in 4 cases.

The extraordinary appeal proceedings can be monitored continuously in the InfoSoud application, which is available on the website of the Supreme Court and on the website of the Ministry of Justice of the Czech Republic (www.justice.cz); all final and enforceable decisions are then published in an anonymised form on the website www.nsoud.cz.

2. 3. 1. 2. Other Agendas Handled by the Judges of the Civil and Commercial Division

Although the extraordinary appeal agenda is crucial for the Supreme Court and constitutes the main focus of its activities, the Supreme Court also decides on other matters as required by the Code of Civil Procedure or other laws. It is worth noting here that it decides disputes about substantive and territorial competence between courts, determines the court with territorial competence if the matter falls within the competence of the Czech courts but the conditions for territorial competence are lacking or cannot be ascertained [Section 11(3) of the Code of Civil Procedure], decides on motions for removal and transfer of a case if the competent court cannot hear the case because its judges are excluded or for reasons of convenience [Section 12(3) of the Code of Civil Procedure], it further decides on objections of bias against judges of high courts [first sentence of Section 16(1) of the Code of Civil Procedure], or on the exclusion of its own judges (by another panel in accordance with the second sentence of the same provision), and finally, it acts in proceedings on motions to set a time limit for the performance of a procedural act in accordance with Section 174a of the Act on Courts and Judges. In accordance with Section 51(2) and Section 55 of Act No 91/2012, the Supreme Court is called upon to decide on the recognition of final and enforceable foreign decisions in matters of divorce, legal separation, declaration of nullity of marriage and determination of the existence of a marriage, if at least one of the parties to the proceedings was a citizen of the Czech Republic, and also on the recognition of final and enforceable foreign decisions in matters of determination and denial of parentage, if at least one of the parties to the proceedings was a citizen of the Czech Republic.

If the aforementioned area then concerns other than decision-making matters, the Division performs its unifying role by adopting opinions, and it also strengthens the uniform decision-making of the courts by publishing the Collection of Decisions and Standpoints of the Supreme Court with important decisions of the Supreme Court and other courts (see Chapter 2.3.2.).

2. 3. 1. 3. Agendas of the Civil and Commercial Division of the Supreme Court According to the Relevant Registers

Cdo
– extraordinary appeals against final decisions of the courts of appeal in civil and commercial matters;

Cul
– in civil and commercial matters, motions to set a time limit for the performance of a procedural act in accordance with Section 174a of Act No 6/2002, on Courts and Judges;

ICdo
– incidental disputes arising from insolvency proceedings;

Ncu
– motions for recognition of foreign judgments in matrimonial matters and in matters of establishment and denial of paternity;

Nd
– competence disputes between courts;
– motions to transfer a case to another court of the same level for the reasons specified in Section 12(1), (2) and (3) of the Code of Civil Procedure if one of the courts is within the scope of competence of the High Court in Prague and the other within the scope of competence of the High Court in Olomouc;
– motions to exclude Supreme Court judges from hearing and deciding a case;
– motions for determination of the court that will hear and decide a case if the case falls within the territorial competence of Czech courts but the conditions of territorial competence are lacking or cannot be ascertained [Section 11(3) of the Code of Civil Procedure);
– other non-classified cases where a procedural decision is required;

NSČR
– cases referred to a court for decision in insolvency proceedings;

2. 3. 2. Unifying Activities of the Civil and Commercial Division of the Supreme Court

The Civil and Comemrcial Division performs its unifying role by adopting opinions on the case law of lower instance courts in certain types of cases [Section 14(3) of Act No 6/2002, on Courts and Judges, as amended), on the basis of an evaluation of final and enforceable decisions that are mutually contradictory in terms of the legal opinions thereby expressed. In 2021, the Civil and Commercial Division issued one unifying opinion on the issue of establishing paternity of an unborn child by a declaration in accordance with Section 777 of the Civil Code in proceedings for the establishment of paternity by a consensual declaration of the parents in accordance with Section 416 of the Special Judicial Proceedings Act (see Chapter 2.3.4.1.). The Supreme Court also pursues the same interest, i.e. to strengthen unified decision-making – by publishing in its Collection the relevant or otherwise important decisions (not only its own), based on the decisions of a majority of all judges of the relevant Division. The Civil and Commercial Division met a total of 9 times in 2021, among other matters to select key decided cases for publication in the Collection.

Every approved opinion of the Supreme Court's Civil and Commercial Division is published in the Collection 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 Civil and Commercial Division of the Supreme Court

It is a fact that the ratio of the quantity of new cases to the decision-making capacity of the Supreme Court necessarily causes a situation where decisions on extraordinary appeals are issued with a certain

delay. In some cases, this delay was as long as one or two years, especially in recent years. However, this is currently improving, mainly as a result of the favourable development of incidence. In principle, individual cases are dealt with in the order in which they are delivered to the court, taking into account the overall length of the (previous) court proceedings; the particular individual or public importance of the case may also play a role.

Between 2016 and 2020, the number of pending cases older than two years was reduced significantly (there were 82 such cases in 2015 – by the end of 2020, only 8 were registered). At the end of 2021, there were only 14 pending cases older than two years. The reasons why cases older than two years have not been concluded are mostly objective, and they mainly occur because a bankruptcy was declared, a procedural successor must be identified, the case is referred to the Grand Panel, an outcome of proceedings pending before the Constitutional Court is needed, or a preliminary question is submitted to the Court of Justice of the European Union. Moreover, such cases are often expected to be finalised in the near future.

The purpose of judicial assistants is to shorten the length of proceedings, increase the quantitative performance of judges and focus attention on the actual decision-making; currently, there are between one and three assistants per judge, and at the beginning of 2022 the total number of assistants in the Civil and Commercial Division was 113.

	Pending from earlier periods	New cases received	Decided	Pending
Cdo	1,662	3,762	3,855	1,569
Cul	0	10	10	0
ICdo (ICm)	163	142	167	138
Ncu	38	187	173	52
Nd	60	674	645	89
NSČR (INS)	96	97	123	70

(Summary of the number of cases assigned to the Civil and Commercial Division in 2021)

A significant increase in incidence was observed in connection with the amendment to the Code of Civil Procedure introduced by Act No 404/2012, which expanded the decision-making competences of the court that decideds on extraordinary appeals and brought a large number of applications for extraordinary appeal, the subject of which were mainly procedural issues lacking the potential for broader case law overlap, rarely requiring individual review by the highest court instance. Act No 296/2017 with effect from 30 September 2017 should have been the solution to the undesirable overloading of the Supreme Court, whose mission is primarily to unify the case law on generally applicable issues, at the moment when it was faced with another challenge (interpretation of new private law regulations). This amendment

to the Code of Civil Procedure brought with it fundamental changes in the admissibility of extraordinary appeals, more specifically the extension of the exclusions therefrom in Section 238 of the Code of Civil Procedure. Namely, decisions on a party's request for exemption from court fees, decisions rejecting a party's request for the appointment of a representative, or decisions by which the court of appeal overturned the decision of the court of first instance and remanded the case for further proceedings were excluded from extraordinary appeal proceedings (it should be added that in none of these cases there are legally relevant issues with a case law overlap usually presented in the extraordinary appeals). The last-mentioned amendment also eliminated the six-month period for rejecting an extraordinary appeal [second sentence of Section 243c(1) of the Code of Civil Procedure, as in effect until 29 September 2017]. This provision has led to increased efforts to deal with inadmissible extraordinary appeals, but it has complicated the timely resolution of cases which are, on the contrary, open to substantive examination and, as a rule, more important in terms of case law, if non-compliance therewith could result in the activation of the liability regime of the State in accordance with Section 13(1) of Act No 82/1998 on the grounds of maladministration (which also covers situations in which a decision was not issued "within the time limit prescribed by law"). The most recent amendment to the Code of Civil Procedure (as regards the extraordinary appeal proceedings) included among the exclusions in Section 238 of the Code of Civil Procedure also the resolutions which decided on the exemption from the deposit or the withdrawal of the exemption from the deposit in accordance with the Enforcement Code (Act No 286/2021).

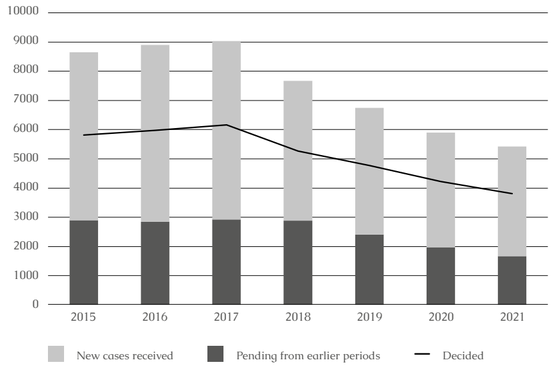
From the Supreme Court's point of view, the actual application of the amendment to the Code of Civil Procedure and the Court Fees Act in 2018 brought about the desired reversal of the earlier (not always justified) tendency to increase the decision-making burden. The resulting reduction in the incidence has helped to shorten the extraordinary appeal proceedings and to create space for a greater focus on issues with significant case law overlap.

The following overview of statistical data (Cdo register) for the period from 2015 to 2020 shows that while until 2017, despite the efforts made and the undeniable progress, the backlog could not be substantially reduced for a long time, the situation has changed markedly for the better between 2018 and 2021:

Year	Pending from earlier periods	New cases received	Decided	Pending
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
2020	1.970	3,927	4,234	1,663
2020	1,662*	3,762	3,855	1,569

(Cdo and former Odo agenda, 2005 – 2020)

*Due to a case contested in 2020 being ruled a mistake in the Cdo agenda in May 2021, an additional adjustment has been made to the 2020 statement in the number of pending cases – the correct number is 1 662.



The obvious reason for the earlier negative trend was that the incidence of extraordinary appeals was increasing significantly; in 2015, it reached 5 757 cases, 47% more than in 2012, and although in 2015 the judges of the Civil and Commercial Division dealt with the highest number of cases (5 812), the number of pending cases was still a considerable 2 838. Similarly, in 2016, the incidence of new cases rose to 6 065, and although even more cases were disposed of than in 2015 (5 971), the backlog of cases rose by 92 cases to 2 930. As for 2017, even though 40 more cases were submitted to the Court than in the previous year, an even higher number of files were dealt with, and the backlog of pending cases fell slightly to 2 884 cases. Only in 2018, under the influence of the aforementioned amendment to the Code of Civil Procedure introduced by Act No 296/2017, was there a substantial reduction in incidence (4 784 new cases), which had a positive effect on the number of pending cases, which as of 31 December 2018 amounted to 2 404 files. The year 2019 then brought a continuation of the mentioned decreasing tendency of incidence (4 340 files) as well as the number of pending cases (an 18 % decrease compared to 2018). In 2020, there was once again a decrease in incidence (3 927 files), which affected the number of pending cases, of which there were only 1 663 at the end of the year, i.e. almost 16% less than on the last day of 2019. The declining trend did not stop in 2021, which saw 3 762 new files and ended with 1 569 pending cases. The last two years have also seen a decline in incidence caused by the coronavirus pandemic, but this has also been reflected in the backlog of cases, which stood at just 1 569 at the end of the year, about 6% lower than on the last day of 2020.

The coronavirus pandemic, which has affected all areas of life, not just the judiciary, is already a challenge for the Supreme Court and can be expected to remain one in the near future. Although the epidemiological situation caused a reduction in the incidence of all courts during the

first two years, it cannot be ignored that the pandemic of a contagious disease is an area unexplored in the case law and its consequences will certainly be felt by the judiciary. In the area of civil justice, an increase in the agenda can be expected with a partial delay, unlike the administrative and constitutional judiciary, which had to deal with a number of proposals from the very beginning of the pandemic and provide resolutions on quite topical issues. From the point of view of the Civil Division, an increase in litigation can be expected, particularly in the area of compensation for damage, both for breach of contractual obligations and for liability of the State for damage caused by the adoption of anti-epidemic measures. At present, it is possible to see the first decisions of lower courts (for example, the dismissible decision of the District Court for Prague 7 in the matter of reimbursement of costs for PCR tests for cross-border workers). The competence of civil courts to decide the above issues was confirmed, inter alia, by the High Court in Prague in its resolution of 5 August 2020, file No Ncp 473/2020.

The COVID-19 disease has also affected the Supreme Court's operational and organisational aspects and has significantly affected its standard operations. At the beginning of the pandemic, a crisis staff was established at the Supreme Court, which is still functioning, and thanks to this staff, the Supreme Court has been able to respond flexibly to the rapidly changing situation and, through the measures and procedures chosen, maintain the efficiency of case handling at the level of previous years, as a result of which the Supreme Court's ability to deal with cases in a reasonable time was not impaired by the pandemic. Compared to the lower courts, the Supreme Court has the advantage that most of its proceedings are not held publicly, so there is no need to take measures to exclude the public during the most serious spells of a pandemic.

2. 3. 4. Selection of Important Decisions of the Civil and Commercial Division of the Supreme Court in 2021

2. 3. 4. 1. Opinion of the Civil and Commercial Division of the Supreme Court Published in 2021 in the Collection

In order to resolve some controversial issues and to unify the decision-making activities of lower courts, the Civil Division of the Supreme Court issued the following opinion in 2021, published in the Collection.

Regarding the issue of establishing paternity of an unborn child by a declaration in accordance with Section 777 of the Civil Code in proceedings for the establishment of paternity by a consensual declaration of the parents in accordance with Section 416 of the Special Judicial Proceedings Act

The inconsistent decision-making practice of the courts of first instance and courts of appeal is reflected in the opinion of the Civil Division of the Supreme Court of 14 April 2021, file No Cpjn 202/2020, published in the Collection under No 1/2021, which deals with the interpretation of Section 777(1) of the Civil Code, in particular with regard to the possibility of making a declaration under the cited provision towards the unborn child. In this opinion, the Civil Division concluded that the paternity of the unborn child could not be determined in accordance with the procedure provided under Section 777 of the Civil Code and the court would dismiss any petition to establish paternity of the unborn child in accordance with Section 777 of the Civil Code.

2. 3. 4. 2. Decisions of the Grand Panel of the Civil and Commercial Division of the Supreme Court Published in the Collection in 2021

Inclusion of a motor vehicle owned by a third party in the inventory of movable property

The question under which circumstances a bailiff may include a road motor vehicle in the inventory of movable property, although a registration document certifying the ownership of a third party is presented to him during the inventory, was clarified by the Grand Panel of the Supreme Court in its judgment of 9 September 2020, file No **31 Cdo 1330/2020**, published under No 13/2021 in the Collection of Civil Decisions, when it stated that the bailiff may do so only if he has reasonable doubts about the truthfulness of the data in the registration document.

Liability of the State for damage caused by a wrongful appointment of a guardian

The Grand Panel of the Supreme Court, in its judgment of 9 September 2020, file **No 31 Cdo 1511/2020**, published under No 16/2021 in the Collection of Civil Decisions, interpreted Section 13(1) and (2) of Act No 82/1998, in relation to the compensation for the damage which the victim was to have suffered as a result of the appointment of a guardian in contravention of Section 29(3) of the Code of Civil Procedure and which is derived from the reduction of assets as a result of the adoption of a final and enforceable decision which was issued in proceedings suffering from the alleged defect. The Supreme Court concluded that the claim for damages could only be successfully asserted on the basis of an unlawful (final) decision in the case.

Relative invalidity of set-off of an uncertain or indeterminate claim

The set-off of an uncertain or indeterminate claim was the subject of the judgment of the Grand Panel of the Supreme Court of 9 September 2020, file **No 31 Cdo 684/2020**, published under No 37/2021 in the Collection of Civil Decisions, in which the Supreme Court explained what generally constitutes an uncertain or indeterminate claim within the meaning of Section 1987(2) of the Civil Code and stated that the set-off of such a claim is generally a relatively invalid act against the debtor.

Performance under a contractual legal relationship as part of the community property of spouses

The nature of property values acquired by one of the spouses as a benefit from a contractual legal relationship, the extent of which exceeds the extent proportionate to the spouses' property relations and which the spouse accepted without the consent of the other spouse, was addressed by the Grand Panel of the Supreme Court in its judgment of 9 December 2020, file No **31 Cdo 2008/2020**, published under No 44/2021

in the Collection of Civil Decisions, in which it referred to them as part of the community property of spouses and further elaborated on the related issues.

The right to a hearing within a reasonable time in administrative proceedings

The right to a hearing within a reasonable time, which is identical in content to the right to a hearing without undue delay within the meaning of Article 38(2) of the Charter of Fundamental Rights and Freedoms, was inferred by the Grand Panel of the Supreme Court in its judgment of 9 May December 2020, file No: **31 Cdo 2402/2020**, published under No 45/2021 in the Collection of Civil Decisions, also for parties to administrative proceedings covered by Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms or the subject of which is a fundamental right or freedom, irrespective of whether the administrative proceedings were followed by a judicial review.

Set-off of claims in appeal proceedings

The Grand Panel of the Supreme Court in its judgment of 13 January 2021, file No **31 Cdo 1475/2020**, published under No 58/2021 in the Collection of Civil Decisions, concluded, inter alia, that the defendant is entitled to raise as a ground of appeal within the meaning of Section 205(f) of the Code of Civil Procedure the fact that, after the decision of the court of first instance was pronounced (issued), the defendant made a unilateral substantive act aimed at offsetting its claim against the recovered claim; however, the court of appeal will only take such a set-off into account if the assessment of its validity is not prevented by the fact that it is (must be) connected with the inadmissible assertion of facts relating to the origin (genuineness), amount and maturity of the defendant's claim used for the set-off, which occurred (arose) before the decision of the court of first instance was delivered or even before the motion for payment of the claim was brought.

It further elaborated on the effect of the court of appeal's failure to take the set-off into account on the continued existence of the set-off claims.

Validity of a contract for the lease of the same entity in the case of a plurality of contracts and tenants

The invalidity of a lease contract was addressed by the Grand Panel of the Supreme Court in the judgment of 14 April 2021, file No **31 Cdo 3679/2020**, published under No 94/2021 in the Collection of Civil Decisions, which concluded that even under the legislation in effect until 31 December 2013, a lease contract is not invalid simply because the same entity has been leased under several contracts to several tenants.

The right of a State-owned enterprise to manage State-owned items

The judgment of the Grand Panel of the Supreme Court of 10 June 2020, file No **31 Cdo 1050/2020**, published under No 3/2022 in the Collection of Civil Decisions, provides an interpretation of Section 57 of Act No 219/2000, on the property of the Czech Republic and its representation

in legal relationships. The Supreme Court recalls that when interpreting legal provisions, one cannot be satisfied with a mere grammatical or linguistic interpretation of the provision in question, especially where there are reasonable doubts about the content of a particular legal norm. Using a logical interpretation and paying attention to the meaning and purpose of Act No 219/2000, which was to achieve a definitive settlement of relationships to State property in relation to all State-owned enterprises in which the function of founder was transferred to municipalities, the Supreme Court concluded the following: Section 57 of Act No 219/2000 did not apply to those State-owned enterprises (where the function of the founder was transferred to municipalities) that had already been abolished as of the effective date of this Act; therefore, these State-owned enterprises did not lose the right to manage State-owned property in accordance with Section 57(5) of this Act.

2. 3. 4. 3. Some Other Selected Decisions Issued by the Civil and Commercial Division of the Supreme Court in 2020

Execution by sale of immovable property

In its resolution of 7 October 2020, file No: **20 Cdo 1961/2020**, published under No 32/2021 in the Collection of Civil Decisions, the Supreme Court held that the commencement and realisation of an execution by sale of immovable property after the dissolution and settlement of co-ownership by ordering its sale is not prevented by a previously commenced execution by sale of the co-ownership interest in that immovable property. Execution by sale of immovable property shall take precedence in such a case; the procedure in accordance with Act No 119/2001, which lays down rules for cases of concurrent execution of decisions, as amended, shall not apply. It further added that the sale of an entity at a public auction within the meaning of Section 1147 of the Civil Code also includes the procedure in accordance with Section 348 of the Code of Civil Procedure.

Putative juridical act (Section 552 of the Civil Code)

The Supreme Court expressed its following opinion on the issue of an putative judicial act in its judgment of 31 March 2020, file No **21 Cdo 2862/2019**, published under No 3/2021 in the Collection of Civil Decisions: A simulated juridical act, in which the parties acting outwardly only pretend their will to perform a juridical act and where their expression of will, due to the lack of seriousness of the expressed will, is not intended to produce the legal consequences associated with the pretended expression of will, is a putative juridical act (Section 552 of the Civil Code). The court shall take into account the putative nature of a juridical act of its own motion if the nullity comes to light in the proceedings.

Active capacity of an administrator of common property against the co-owners

The Supreme Court dealt with the issue of the position of the administrator of the common property in its judgment of 22 September 2020, file No **22 Cdo 994/2020**, published under No 42/2021 Collection of Civil

Decisions. Specifically, it held that if the administrator of the common property acts as an indirect representative of the co-owners, concludes contracts with third parties on his own behalf with regard to the management of the common property and further provides the co-owners with benefits from these contracts, he has active legal capacity vis-à-vis the individual co-owners to recover what they are obliged to pay for the benefits thus provided (services, water supply, energy supply, etc.).

Compensation for the cancellation of a time-barred servitude

In its judgment of 27 October 2020, file No: **22 Cdo 1491/2019**, published under No 50/2021 in the Collection of Civil Decisions, the Supreme Court concluded that if a court cancels a servitude that is already past the statute of limitations on the date of its decision, it is in principle not appropriate to award the beneficiary of the servitude compensation for its cancellation.

Pre-emptive right in accordance with Section 3056(1) of the Civil Code in conjunction with Section 3059 of the Civil Code.

The Supreme Court commented on the issue of the statutory pre-emptive right in accordance with Section 3056(1) of the Civil Code in its judgment of 24 November 2020, file No **22 Cdo 1952/2019**, published under No 63/2021 in the Collection of Civil Decisions, specifically in a situation of a structure on multiple tracts of land. It ruled that a statutory pre-emptive right is established between the owner of the structure and the owner of the tract of land on which a major part of the structure is located, in accordance with Section 3059 of the Civil Code in conjunction with Section 3056(1) of the Civil Code, irrespective of whether the conditions for the application of the provision on property encroachment are fulfilled. It further added that the statutory pre-emptive right also belongs to the co-owners of the tract of land on which a major part of the structure of another owner is located, and vice versa to the co-owners of the structure in relation to the tract of land on which the building is located in its major part.

Repayment of a mortgage loan by spouses on immovable property belonging exclusively to one of them

In its judgment of 28 January 2021, file No: **22 Cdo 3428/2020**, published under No 81/2021 in the Collection of Civil Decisions, the Supreme Court addressed the issue of repayment of a mortgage loan by spouses on immovable property owned exclusively by one of them, stating that if, during the term of the spouses' community of property, a mortgage loan on immovable property owned exclusively by one of the spouses is repaid from community funds, in which the family of the spouses lives, and the funds are therefore also spent on the needs of family life and the family household, it must be ascertained how much would have been spent to provide the same or similar accommodation on another legal basis (in particular rent). If the amount spent on mortgage repayments would have been the same or less, the person on whose property the funds were so spent would not, in principle, have been obliged to replace that input. However, if the monthly mortgage repayments would have been higher than the cost of securing a similar

housing on another legal basis, a pro rata reimbursement of what was spent on the mortgage repayments would be required.

Necessary passage

The Supreme Court addressed the issue of necessary passage in its judgment of 10 March 2021, file No **22 Cdo 1826/2020**, published under No 93/2021 in the Collection of Civil Decisions, stating that a court shall not allow a necessary passage across one or more tracts of land unless it is ascertained if the applicant for the necessary passage has access across other tracts of land that also constitute an obstacle to the connection with a public road.

The weaker party in negotiations between entrepreneurs

In its judgment of 16 March 2021, panel No **23 ICdo 56/2019**, published under No 80/2021 in the Collection of Civil Decisions, the Supreme Court has admitted the application of the corrective of good morals also in relations between entrepreneurs (taking into account its specificity and exceptionality). At the same time, it stated that the corrective of good morals does not preclude an assessment of whether other provisions of the Civil Code providing legal protection of one of the parties against abusive conduct of the other party (for example, the legal regulation on the protection of the weaker party) do not apply to the legal relationships of the parties. It also stressed that a consumer can be any person, including a natural person who is an entrepreneur, who concludes a contract with another entrepreneur outside the scope of his business. And if a natural person who is an entrepreneur has concluded a contract with another entrepreneur in the course of his business, it cannot be excluded that he will be entitled to legal protection as the weaker party under the terms specified in Section 433 of the Civil Code. The conditions for the application of the latter provision were subsequently analysed in more detail in the above-mentioned decision, inter alia, in relation to Section 1797 of the Civil Code and the amount of interest agreed between entrepreneurs.

A victim of unjust enrichment acting at his own risk within the meaning of Section 2992 of the Civil Code.

The issue of a victim on unjust enrichment acting at his own risk within the meaning of Section 2992 of the Civil Code was addressed by the Supreme Court in its decision of 13 May 2020, file No: **23 Cdo 82/2019**, published under No 108/2020 in the Collection of Civil Decisions. In its opinion, this is characterised by the fact that the victim of unjust enrichment has no objectively justified reason to rely on the fact that he is to receive something from another person(s) in return for his performance, yet that person's actions are oriented towards this person (or these persons), usually in the expectation of a proprietary or other advantage, a counter-offer or other benefit as a manifestation of good morals, gratitude or social recognition, etc., which cannot be legally enforced without at the same time knowingly enriching another by performing a debt (forced enrichment) in accordance with the second sentence of Section 2997(1) of the Civil Code. These are actions that the victim performs with a generally uncertain outcome. It added that the

victim does not act at his own risk merely because he provides the enriched person with a property benefit without legal justification.

Dietary supplements and unfair competition

In its judgment of 29 July 2020, file No: **23 Cdo 3500/2019**, published under No 46/2021 in the Collection of Civil Decisions, the Supreme Court stated that from the mere finding that products which have the public nature of dietary supplements are labelled in economic relations with information about the effect of these products on human health, it cannot be concluded that the marketing of such labelled products is an act contrary to good morals of competition capable of deceiving customers within the meaning of Section 2976(1) of the Civil Code. It added that a breach of the legislation on the labelling of food supplements with information on the effects of these products on human health constitutes an act of unfair competition if it is an act in the course of trade which constitutes a breach of good morals of competition and is also capable of causing harm to other competitors or customers. The ability of such conduct to cause harm to other competitors or customers need not be solely the result of deceiving the customers.

Limitation of the effects of a trademark

In its judgment of 21 July 2020, file No: **23 Cdo 3944/2019**, published under No 53/2021 in the Collection of Civil Decisions, the Supreme Court addressed the issue of limiting the effects of a trademark in accordance with Section 10(2) of Act No 441/2003, on Trademarks. In addition to the decisive circumstances for the creation of the limitation, it stated that this could arise for more users of an unregistered designation regardless of their relationship. It also addressed the possibility of changing the subject of such a limitation and the conditions thereof. It held that a separate transfer or assignment or licence of this limitation on the effects of the mark was not possible. It further added that if the owner of the trademark does not have a legitimate reason, he is not entitled to prohibit the use of the unregistered designation on products placed on the market in the Czech Republic in accordance with the limitation of the effects of the trademark in accordance with Section 10(2) of the Trademark Act.

Contract of guarantee

The Supreme Court dealt with the legal regime of guarantee contracts in its judgment of 21 December 2020, file No: **32 Cdo 758/2020**, published under No 70/2021 in the Collection of Civil Decisions. It stated that the rights and obligations under a guarantee contract concluded after 31 December 2013 are governed by Act No 89/2012, the Civil Code, regardless of whether the main (guaranteed) obligation is governed by this Act or by previous legislation.

Inheritance proceedings and property of zero or insignificant value

The Supreme Court addressed the issue of a disbalance between the value of the estate and the costs of the estate proceedings in its resolution of 27 August 2020, file No: **24 Cdo 785/2020**, published under

No 31/2021 in the Collection of Civil Decisions. It concluded that, in a situation where property of zero value or insignificant value cannot be handed over to the person who ensures of the deceased's funeral because of his opposition and an inheritance hearing would in principle be in order, it may be considered whether the costs incurred by the State and the parties in identifying the heirs and by the inheritance hearing itself would not be significantly disproportionate to the value and nature of the estate. A prospective conclusion that there is a significant disproportion between the property that should be subject to inheritance proceedings and the financial and temporal requirements of further proceedings on the estate may lead to the application of the provisions of Section 154 of the Code of Civil Procedure; the person to whom the property without value or of insignificant value will be handed over may also be the State.

Statement on the limitation of a person's legal capacity to act independently

The formal requirements for the limitation of a person's legal capacity to act independently were addressed by the Supreme Court in its judgment of 29 July 2020, file No: **24 Cdo 844/2020**, published under No 14/2021 in the Collection of Civil Decisions. It stated that the extent to which a decision limits a person's capacity to act independently cannot be defined by the use of abbreviations such as "etc.".

Territorial competence in proceedings for compensation for injury to honour, reputation and dignity

In its resolution of 30 November 2020, file No: **25 Cdo 2669/2020**, published under No 56/2021 in the Collection of Civil Decisions, the Supreme Court has interpreted that in a dispute for compensation for injury to honour, reputation and dignity by sending false information by email, the court in whose district the applicant had his residence at the time of the interference has territorial competent in accordance with Section 87(b) of the Code of Civil Procedure [Section 80 of the Civil Code and the second and third sentences of Section 85(1) of the Code of Civil Procedure]. It thus unified the case law after the decision of the Municipal Court in Prague, file No 22 Co 91/2019, which completely excluded the possibility of choosing the court based on the applicant's place of residence in distance interventions, was not approved for the Collection. The published decision does not take such an extreme position, but offers a broader concept of territorial competence for choice and at the same time provides a fairly precise definition in terms of place and time, so that there is no risk of endless contrary interpretation. Rather, it uses the case law of the CJEU as an auxiliary, yet very appropriate argument in favour of the chosen solution, including the appropriate designation of the place of action of the person concerned by the term "centre of interests of the injured party".

Definition of particularly serious bodily harm in accordance with Section 2959 of the Civil Code

The claim for compensation for particularly serious bodily harm to a close person (Section 2959 of the Civil Code) was first addressed in the judgment of 27 June 2019, file No **25 Cdo 4210/2018**, published under No 52/2021 in the Collection of Civil Decisions, in such a way that it must be only the most severe medical injuries having consequences comparable in severity to the death of a close person, or very severe body harm puts the life of the primary victim in jeopardy for a longer period of time or burdens that person with a significantly adverse health condition for a longer period of time, which will have an appreciable impact on the personality of the persons close to the victim and their mental suffering will be so intense that they must be compensated even though the consequences of the bodily harm will not be the most severe. The constitutional complaint against this decision was rejected by a judgement of the Constitutional Court of 16 February 2021, file No: I. ÚS 3449/19. The decision has already been followed upon by other case law concluding that in the case of less serious health consequences, secondary victims may be entitled to compensation for other than proprietary harm under the conditions set out in Section 2971 of the Civil Code. (file Nos 25 Cdo 64/2021 and 25 Cdo 1527/2020).

Damage to motorway barriers

In accordance with the judgment of 28 April 2020, file No: **25 Cdo 2202/2019**, published under No 74/2021 in the Collection of Civil Decisions, the barriers form a part of the motorway [Section 12(1)(d) of Act No 13/1997, on Roads) that is necessary for the road itself to be considered functional and fit for use. Therefore, it is not possible to talk about the evaluation of the barriers themselves by exchanging a part thereof for a new one, because only the whole entity, i.e. the motorway, could be evaluated. However, due to the nature of the motorway, replacing the barriers does not change its financial value, but rather maintains its functional value. Therefore, if the motorway barriers were fully functional before the damage was caused, the costs of repairing them by replacing the damaged parts with new ones are expediently incurred and thus represent real damage to the owner of that road.

Reimbursement of legal costs by an insured tortfeasor

The Supreme Court also resolved the controversial issue of the costs incurred by the injured party in adhesion proceedings when claiming compensation for injury against an injured party, which in principle are not covered by compulsory contractual insurance in accordance with Act No 168/1999, on the motor third-party liability insurance (see the earlier judgment of 11 April 2018, file No: **25 Cdo 4112/2017**, Rc 64/2019). However, in accordance with the judgment of 24 February 2021, file No: 25 Cdo 700/2019, published under No 95/2021 in Collection of Civil Decisions, if the insured victim has paid the costs of the proceedings to the injured party on the basis of a court decision in addition to the amount awarded, the insured persons has the right to reimbursement of these costs against the insurer, provided that the insured person has complied with the statutory notification obligation and followed the insurer's instructions during the proceedings.

Removal of defects in the owner's declaration of definition of residential units

Judgment of the Supreme Court of 10 February 2021, file No: **26 Cdo 1811/2020**, published under No 82/2021 in the Collection of Civil Decisions, deals with the issue of a group of parties in proceedings for the removal of defects in the owner's declaration in accordance with Section 1168 of the Civil Code and, in this context, the legal position of the Capital City of Prague and its municipal districts. In its decision, the Supreme Court concluded that the municipal district administering the units entrusted to it by the owner – the Capital City of Prague, also has a legal interest in the removal of defects in the declaration in accordance with Section 1168 of the Civil Code and that all unit owners affected by the defects in the declaration must be parties to the proceedings in accordance with Section 1168 of the Civil Code to remove the defects in the declaration.

Determination of the amount of monetary compensation for land not surrendered in accordance with Section 16(1) of Act No 229/1991

The Supreme Court addressed the method of determining the amount of monetary compensation for land not surrendered in restitution proceedings in its judgment of 16 February 2021, file No: **28 Cdo 3772/2018**, published under No 86/2021 in the Collection of Civil Decisions. According to the Supreme Court, the appropriate and reasonable amount of monetary compensation for the land not surrendered in accordance with Section 16(1) of Act No 229/1991, as amended, may be considered (subject to a change in circumstances) to be six times the price of the confiscated real estate determined in accordance with Decree No 182/1988, as amended by Decree No 316/1990.

Providing an entity to be used within the meaning of Section 2994 of the Civil Code

The Supreme Court addressed the issue of unjust enrichment by unauthorised use of the property of another in its judgment of 12 April 2021, file No: **28 Cdo 493/2021**, published under No 8/2022 in the Collection of Civil Decisions. It admitted that within the meaning of Section 2994 of the Civil Code, an entity can also be provided for use as a social favour.

Ineffectiveness of the reservation of title

Judgment of the Supreme Court of 25 February 2021, panel No **29 ICdo 21/2019**, published under No 98/2021 in the Collection of Civil Decisions, explains how the previously agreed ineffectiveness of the reservation of title in accordance with Section 2134 of the Civil Code affects insolvency proceedings. In this judgement, the court concludes that the performance under such a purchase contract belongs for the purposes of monetisation in insolvency proceedings to the buyer (debtor) in accordance with Section 205(4) of the Insolvency Act; therefore, the

ineffectiveness is also enforced against insolvency creditors who are satisfied from the buyer's (debtor's) property. Furthermore, the decision addresses insolvency administrator's authority to register property held by the debtor, in respect of which a reservation of title has been agreed so that it does not act against the debtor's (buyer's) creditors (Section 2134 of the Civil Code), and to assert this objection as a defence in the proceedings on the action for exclusion by which the seller seeks to exclude the property from the debtor's estate on the basis of the reservation of title.

Debt of a company de-merged by spin-off

The issue of statutory liability of successor companies for non-cash debt of a company de-merged by a spin-off is addressed in the resolution of the Supreme Court of 25 February 2021, panel No **29 Cdo 23/2020**, published under No 91/2021 in the Collection of Civil Decisions. If the defendant is de-merged by spin-off [in accordance with Section 243(1)(b)(1) of Act No 125/2008 Coll., as amended) after the commencement of the litigation, the creditor may claim the accession of the new company or companies or co-operatives to the proceedings on the defendant's side by virtue of the statutory liability for the defendant's debts [Section 257(1) of the same Act) in accordance with Section 92(1) of the Code of Civil Procedure.

After the de-merger of a commercial company by means of a spin-off with the formation of new companies, the applicant's motion to join the newly formed (successor) companies as additional defendants in the proceedings [Section 92(1) of the Code of Civil Procedure] on the grounds of liability for the debts of the divided company may be granted only if it is clear that the applicant seeks monetary performance against the newly joined defendants (Section 2028 of the Code of Civil Procedure). If the non-cash debt of the company being de-merged is its obligation to deliver the original debtor's performance from the ineffective juridical act to the estate in the event of a declaration of ineffectiveness of the juridical act, only the payment of equivalent monetary compensation corresponding to the amount which the de-merged company would have been obliged to pay if the debtor's original performance of the ineffective juridical act could not be delivered to the debtor's estate may be claimed against the intervening defendants by virtue of their statutory liability for the debts of the de-merged company [Section 236(2) of the Insolvency Act].

Veganism in terms of Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms

In its judgment of 17 March 2021, file No: **30 Cdo 4133/2019**, published under No 96/2021 in the Collection of Civil Decisions, the Supreme Court held that in terms of Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms, there is no significant difference between the values protected by this provision (namely freedom of thought, religion and belief). Veganism is also covered by the protection of this Article, and the operating conditions of a detention centre cannot be a limiting factor for not providing a vegan diet to a person in the detention centre.

2. 3. 4. 4. Some Other Selected Decisions Issued by the Civil and Commercial Division of the Supreme Court in 2021

Active substantive capacity to bring an action for the exclusion of property value from execution

In its judgment of 5 January 2021, file No: **20 Cdo 3298/2020**, the Supreme Court commented on the active substantive capacity of the debtor to file an action for exclusion of property value from execution (Section 267 of the Code of Civil Procedure), which the debtor lacks even when assets managed by the debtor in his own name but not on his own account are to be subject to execution even in alleged violation of a specific legal norm [in this case in accordance with Section 102 and Section 210(a) of Act No 240/2013, on Investment Companies and Investment funds].

Arbitration clause concluded by a consumer

In its resolution of 2 March 2021, file No: **20 Cdo 2353/2020**, the Supreme Court addressed the issue of which legal regulation to follow in the case of arbitration clauses concluded by consumers. It stated that if the obligor argues that he concluded the arbitration clause as a consumer, although Section 2(1) of Act No 216/1994 excludes the possibility of arbitration of disputes arising from contracts concluded by an entrepreneur with a consumer as of 1 December 2016, it is necessary to proceed in accordance with Section 35(2) of Act No 216/1994.

Release from the obligation by the debtor in case of repeated assignment of the claim

The Supreme Court addressed the issue of repeated assignment of the claim and the debtor's position in its resolution of 14 April 2021, file No: **20 Cdo 1271/2020**, in which it concluded that in the case of a repeated assignment of the same claim, the debtor is released from his obligation even if he settles after notification or proof of the assignment with the false creditor in relation to whom he first became aware of the assignment; also in this case, not only the fulfilment of the obligation, but also another legally recognisable method of settlement leads to the release of the obligation.

Transfer of rights by commission contract (Section 585 of the Commercial Code)

In its resolution of 17 February 2021, file No: **20 Cdo 2966/2020**, the Supreme Court stated on the issue of the commission contract that if other rights are transferred under the commission contract (Section 585 of the Commercial Code), the principal acquires ownership of them only on the basis of a transfer contract, which is also the contract on the assignment of receivables. Any breach of the commission agreement consisting in the beneficiary not assigning the receivables to the principal – the obligor, does not affect the validity of the contract on the assignment of receivables.

Order of claims for the reimbursement of costs in satisfaction insolvency proceedings.

The Supreme Court in its resolution of 31 March 2021, file No: **20 Cdo 3395/2020**, stated that the costs of the proceedings which were awarded to the entitled party in the incidental proceedings are satisfied in the insolvency proceedings in the same order as the claim that was the subject of the dispute [Section 202(1) of the Insolvency Act]. Enforcement of the judgment by the creation of a judicial lien cannot be ordered for these costs. Therefore, it is inappropriate to examine the fulfilment of the conditions of Section 409(2) of the Insolvency Act as in effect until 31 May 2019.

Passive substantive capacity in an employment dispute where the employer has been declared bankrupt

Simply put, the issue of against whom to bring action in a dispute over compensation for damage related to a work-related injury in the case of an insolvent employer was addressed by the Supreme Court in its judgment of 29 July 2021, file No: **21 Cdo 2113/2020**, in which it stated the following: In proceedings for compensation for damage incurred by an employee as a result of an accident at work, the passive substantive capacity lies with the insolvency administrator, not the debtor (the employer whose property has been declared bankrupt).

Legal nature of a medical opinion

In its judgment of 26 August 2021, file No: **21 Cdo 1096/2021**, the Supreme Court addressed the nature of a medical opinion in relation to Section 135(2) of the Code of Civil Procedure, concluding that a medical opinion issued by a provider of occupational health services and the decision of the competent administrative authority reviewing the medical opinion cannot be, even under the legislation in effect since 1 November 2017, when Act No 202/2017 became effective, amending Act No 373/2011, on Specific Health Services, as amended, and certain other acts, considered a decision on which the court could rely in civil judicial proceedings within the meaning of Section 135(2) of the Code of Civil Procedure.

Juridical act of set-off as acknowledgement of debt

Judgment of the Supreme Court of 22 July 2021, file No: **23 Cdo 3752/2019**, stated that also under the regime of Act No 89/2012, the Civil Code, a legal act of set-off which was intended to lead to the complete extinction of mutual claims is not in itself an acknowledgement of a debt (the main claim in this case), within both the meaning of Section 2053 of the Civil Code and Section 2054 of the Civil Code.

Status of spouses in the event of termination of a lease of an apartment without notice

In its judgment of 20 October 2021, file No: **26 Cdo 1377/2021**, the Supreme Court discusses the position of spouses in the case of termination of a lease of an apartment without notice in accordance with Section 2291 of the Civil Code and in the proceedings for review of the validity of such termination. It emphasises that the notice to remedy the defective condition as a substantive condition for the termination of a lease of an apartment in accordance with Section 2291 of the Civil Code must be directed to (delivered to) both spouses as joint tenants of the apartment. Further, the decision deals with the particulars of a notice in accordance with Section 2291(3) of the Civil Code and points out that if the tenant is to be called upon in accordance with Section 2291(3) of the Civil Code to remedy defective conduct consisting in a breach of duty in a particularly gross manner, such a breach of duty must have already occurred at the time of the notice and must be specified in the notice.

Extremely long definite contracts (lace contracts) in tenancy relationships

The relationship between Section 2000 of the Civil Code (regulating the right to demand the cancellation of a lace contract after ten years from its creation by the court) and Section 2204(2) of the Civil Code (regulating leases concluded for a period longer than fifty years and the possibility of their termination) and the applicability of Section 2000 of the Civil Code in tenancy relationships is addressed in the Supreme Court judgment of 10 November 2021, file No **26 Cdo 740/2021**. With regard to the relationship between Section 2000 and Section 2204(2) of the Civil Code, it concluded that this was not a relationship of speciality, but a provision governing a different issue. Section 2000 of the Civil Code is also applicable in tenancy relationships, even though these will be exceptional situations.

Settlement between a housing co-operative and its former member

In its resolution of 22 June 2021, file No: **27 Cdo 2711/2019**, the Supreme Court held that the legal regulation of the settlement between a member of a housing co-operative whose participation ceased without a legal successor and the housing co-operative is based on the principle of increased protection of the members of the housing co-operative, which implies that the settlement share of a member of a housing co-operative must always be determined with regard to the actual (market) value of the former member's co-operative share (determined as of the date of termination of membership) so that there are no unjustified differences between that market value and the amount of the settlement share.

Shareholders' agreement

The liabilities assumed by a shareholders agreement are addressed in the Supreme Court judgment of 16 March 2021, file No: **27 Cdo 1873/2019**. Shareholders may undertake in the shareholders' agreement to intercede with the members of the board of directors for a specific solution to a particular matter falling within the scope of business management, i.e. to present to the board of directors (its members) their opinion or arguments, which the board of directors will not be bound by but may take into account in its decision-making. They may also

undertake that the board of directors will take a decision on a particular matter. In such a case, it is not an obligation of intercession, but rather an assumption of responsibility for a certain result, and such an arrangement cannot be by default considered to contravene the statutory prohibition on giving instructions to the board of directors concerning business management.

In principle, the shareholders may assume the obligation of intercession or "guarantee of the result" only in relation to such actions (decisions) of the board of directors (its members) that are in accordance with the law and the articles of association, including the obligation to act with due care.

Objects of business of a joint-stock company

In its resolution of 12 May 2021, file No: **27 Cdo 3549/2020**, the Supreme Court considered a provision of the articles of association according to which the objects of business of a joint-stock company are "manufacture, trade and services not listed in Annexes 1 to 3 of the Licensed Trades Act", and held that such a provision is vague because it is not obvious from it what the objects of the company's business are, and the corresponding result cannot be reached even by interpretation.

Use of hunting land and court competence in civil judicial proceedings

In its resolution of 16 March 2021, file No: **28 Cdo 185/2021**, the Supreme Court held that the court is competent to hear and decide a civil case in which the applicant seeks monetary compensation for the use of hunting land by the holder of the hunting grounds in the framework of the annexation of the land to the hunting grounds.

The non-limitation of the right to bring an action in accordance with Section 18(1) of Act No 428/2012

In its judgment of 23 March 2021, file No: **28 Cdo 390/2021**, the Supreme Court ruled that the right to bring an action for the determination of the State's right of ownership in accordance with Section 18(1) of Act No 428/2012, more precisely for the determination of the State's right of ownership on the grounds that an item from the original property of registered churches and religious societies was transferred or passed from the State's property to the property of other persons in violation of the provisions of the restitution regulations prior to the effective date of this Act, is not subject to a statute of limitations.

List of registered claims as an enforcement title

Resolution of the Supreme Court of 29 July 2021, panel No **29 ICdo 129/2020**, addresses the question under which conditions a modified list of registered claims after the termination of insolvency proceedings is considered an enforcement title. The Supreme Court ruled that on the basis of the modified list of claims, after the insolvency proceedings have been discontinued in accordance with Section 396(2), Section 405(3) or Section 418(5) of the Insolvency Act, as in effect from 1 July 2017, a petition for enforcement or execution may be filed for an established unsatisfied claim that the debtor has not denied, even if the insolvency petitioner is only the debtor; this right is subject to a statute of limitations of 10 years after the proceedings are discontinued. The list of registered claims, even where it has become the enforcement title for a registered unenforceable claim which the debtor has not denied, does not constitute an obstacle which, after the annulment of the bankruptcy, would prevent a dispute over the same performance from being heard before the authority competent to hear such a case (it does not constitute an obstacle to a final decision).

Causality between the misconduct of police officers and the death of a detained person

Judgment of the Supreme Court of 10 November 2021, file No: **30 Cdo 883/2021**, addresses the issue of the causal link between police officers' misconduct (failure to remove a dangerous item from a person placed in a police cell and the absence of checks on that person) and the death of the detainee as a result of suicide (using a dangerous item that was not removed). The Supreme Court disagreed with the finding of the court of appeal that the immediate cause of death was the detainee's decision to die. Applying the principle of the protective purpose of the norm, the Supreme Court concluded that a causal link is established if there was a violation of the norm which should have prevented the occurrence of damage or harm to a specific subject, in a specific manner. The Supreme Court also drew attention to the particularly vulnerable position of a person deprived of liberty.

Liability of the State for harm caused by the enforcement of a prohibition of driving motor vehicles

Judgment of 26 November 2020, file No: **30 Cdo 3644/2019**, deals with the issue of the State's liability for damage caused by the enforcement of a driving ban which was unlawfully imposed in infraction proceedings. The Supreme Court has expressed its negative opinion on the question whether a civil court may itself conclude that an offender has committed an infraction even though the infraction proceedings have been discontinued by the administrative court after the removal of the conviction due to preclusion. The Supreme Court also stressed that in relation to a claim for compensation for other than proprietary harm, the court should take into account the fact that the perpetrator has committed an act which fulfils the qualified facts of one of the infractions.

Cogency and disposability of civil law norms

Judgment of the Supreme Court of 25 February 2021, file No: **33 Cdo 665/2019**, addresses the issue of the cogency and disposability of civil law norms, specifically, it addresses the nature of Section 597(1) of the Civil Code relating to the satisfaction of the creditor's claim against the debtor, to which it states that this provision does not expressly prohibit a different regulation of the scope of rights under liability for defects in the sense of their extension, and at the same time it does not follow from its nature that it cannot be deviated from.

Interest rate and good morals

The question of the validity of the interest rate arrangement in a consumer credit agreement is addressed by the Supreme Court in its judgment of 28 May 2021, panel No **33 ICdo 89/2020**, which recalls the case law conclusions on unreasonable interest rates and the need to base the judgment that a loan interest arrangement is unreasonable for breach of good morals within the meaning of Section 39 of the Civil Code on a careful consideration of all the relevant circumstances of the case.

2. 4. The Criminal Division of the Supreme Court in 2021

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

In 2020, the Criminal Division of the Supreme Court (hereinafter referred to as "the Criminal Division") was composed of a President of Division and 22 other judges; in addition, judges were temporarily assigned at different times. The Criminal Division judges are posted in seven adjudicating Panels that constitute seven court Departments. There is also a Grand Panel of the Criminal Division, a Records Panel and a separate panel for appeals against decisions of the Supreme Audit Office's Disciplinary Chamber.

The President 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 Work Schedule. The managing President of Panel assigns particular judges within the Panel to cases, also under the Work Schedule, 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 Sb. 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 judges in criminal cases, the Criminal Division also includes a Grand Panel of nine judges.

The Supreme Court's key mission is to unify the adjudicating practice of lower courts. In criminal matters, the Criminal Division of the Supreme Court is in charge of pursuing this mission. To this end, Act No 6/2002 Sb. 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 Collection of Decisions and Standpoints of the Supreme Court.

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

The Supreme Court is the most significant 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 extraordinary appeals and complaints on the violation of the law.

An extraordinary appeal 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 or more of the grounds for extraordinary appeals; such grounds are exhaustively set out in Section 265b (1) and (2) CrPR. The subject matter of proceedings on extraordinary appeals 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 extraordinary appeal may be filed, first, by the Prosecutor General – 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 extraordinary appeals through their defence counsels; an accused person's submission filed otherwise than through their defence counsel is not regarded as an extraordinary appeal and is, if applicable, treated in some other manner depending on its content. An extraordinary appeal has to be filed with the court that has decided on the merits of the case at the level of first instance, within two months from the delivery of the decision against which the extraordinary appeals is directed. The President of Panel of the first instance court serves a copy of the accused person's extraordinary appeal to the Prosecutor General, and a copy of the Prosecutor General extraordinary appeal to the accused person's defence counsel and to the accused person, advising them that they can submit their written observations on the extraordinary appeal and agree with the in camera hearing of the extraordinary appeal before the court of appeal. As soon as the time limit for filing an extraordinary appeals expires for all the persons entitled to do so, the first instance court delivers the file

to the Supreme Court. The Supreme Court dismisses extraordinary appeals 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 extraordinary appeal 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 extraordinary appeal by way of reference to the circumstances related to the statutory grounds for the dismissal. The Supreme Court rejects extraordinary appeals when it finds that they are unfounded (Section 265j CrPR). If the Supreme Court does not dismiss or reject an extraordinary appeal, it reviews the challenged decision and the preceding proceedings, but solely in the scope of and on the grounds specified in the extraordinary appeal. 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 extraordinary appeal 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 extraordinary appeal 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 complaint on the violation of the law. 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 complaint on the 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 complaint on the violation of the law 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 complaint on the violation of the law 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 decision 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 According to the Relevant Registers

The judges of the Criminal Division of the Supreme Court are empowered by the following legislation to take decisions within the scope of the following agendas in Panels mainly composed of the President of Panel and two judges:

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

Tcu
– decisions on motions to record data on the conviction of a Czech citizen by a foreign court in the Penal Register Records (Section 4(2), (3), (4) and Section 4a(3) of Act No 269/1994 Sb., on the Penal Register, as amended);
– decision on motions in accordance with Act No 104/2013 Sb., on International Judicial Cooperation in Criminal Matters, as amended (e.g. on motions of the Ministry of Justice to review a decision to exclude an extradited person from the jurisdiction of bodies in charge of criminal proceedings in accordance with Section 89(2) of the cited Act; on motions for a decision on whether the extradited person is excluded from the jurisdiction of bodies in charge of criminal proceedings in accordance with Section 92(6) and Section 95(2) of the cited Act; on motions to take the transferred person into transit custody after period of transit through the territory of the Czech Republic in accordance with Section 143(4) of the cited Act);
– decisions on motions for decision whether a person is excluded from the jurisdiction and competence of bodies in charge of criminal proceedings (Section 10(2) of the Code of Criminal Procedure);
– decisions on motions submitted by the Minister of Justice to review a decision on the admissibility of extraditing a person to a foreign prosecution; [Section 95(5), (6) of Act No 104/2013, on International Judicial Cooperation in Criminal Matters, as amended);

Tz
– Decisions on complaints on the violation of the law, filed by the Minister of Justice against public prosecutors' and courts' decisions in pro-

ceedings held under the rules of the Code of Criminal Procedure (Section 266 *et seq.* CrPR);

Td
– resolution of disputes over jurisdiction between lower courts, if the Supreme Court is the nearest jointly superior court in relation thereto (Section 24 of the Code of Criminal Procedure);
– decisions on motions for removal and referral of a case, if the Supreme Court is the nearest jointly superior court (Section 25 of the Code of Criminal Procedure);
– decisions on motions to exclude Supreme Court judges from hearing and deciding on a case (Section 31 of the Code of Criminal Procedure);

Tvo
– decisions on complaints against high courts decisions to extend remand pursuant to Section 74 of the Code of Criminal Procedure and against other decisions of high courts handing down rulings in the position of a court of first instance (e.g. on complaints against decisions to exclude high court judges from the execution of acts in criminal proceedings pursuant to Sections 30 and 31 of the Code of Criminal Procedure);

Tul
– decisions on applications for a time limit to be set for the execution of a procedural act (Section 174a of Act No 6/2002 Sb. on Courts and Judges, as amended);

Zp
– decisions on appeals against decisions of the Disciplinary Chamber of the Supreme Audit Office (Section 43(2) of Act No 166/1993 Sb. on the Supreme Audit Office, as amended);

Pzo
– decisions on applications for a review of the legality of an order to intercept and record telecommunications traffic and an order to obtain data on telecommunications traffic (Sections 314l to 314n of the Code of Criminal Procedure).

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 extraordinary appeals and complaint on the violation of the law in three-member Panels composed of the President of Panel 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 Sb. 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 the Criminal 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.

The Grand Panel of the Criminal Division has ruled twice in 2021 on the Tdo agenda. In the first case, the Grand Panel ruled by judgment of 16 March 2021, file No 15 Tdo 110/2021, which was published under No 19/2021 in the Criminal Part of the Collection. This decision concerned the judicial assessment of the criminal offences of theft committed at the time of the outbreak of the coronavirus known as SARS CoV-2, which causes the COVID-19 disease epidemic. The second case was decided by the Grand Panel of the Criminal Division by a resolution of 22 September 2021, file No 15 Tdo 525/2021, which has not yet been published in the Collection. Both of these decisions are discussed in more detail in paragraphs 2. 4. 4. 2. and 2. 4. 4. 4. of this Annual Report.

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 Records Panel composed of its President and another eight judges of the Criminal Division at the Supreme Court's Criminal Division. At its meetings, the Records 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 Collection. A simple majority of votes of all Criminal Division judges is required to approve a decision for publication in the Collection. In 2021, a total of six sessions of the Criminal Division of the Supreme Court were held, at which a total of 68 decisions were discussed (some of them repeatedly), of which the Criminal Division approved a total of 53 decisions for publication in the Collection. On a proposal by the President of the

Criminal Division or the President of the Records Panel, the Criminal Division's Records 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 Prosecutor General'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 Collection.

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

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

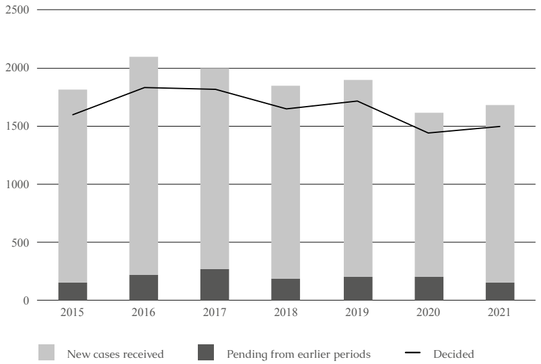
The first table represents an overview of the decision-making activity of the Criminal Division of the Supreme Court in 2021 in its overall agenda. The first column points out the amount of cases in each particular agenda allocated for adjudicating from the previous year (2020).

	Pending from 2020	Newly contested	Decided	Pending
Tdo	150	1,383	1,386	147
Tcu	2	224	193	33
Tz	8	136	119	25
Td	5	77	81	1
Tvo	1	23	22	2
Tul	-	4	3	1
Zp	-	-	-	-
Pzo	3	9	12	-

(Summary of the number of cases assigned to the Criminal Division in 2021)

Year	Pending from earlier periods	New cases received	Decided	Pending
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
2020	197	1,410	1,443	158
2021	158	1,519	1,505	172

(Sum of the Tdo and Tz agendas 2015 – 2021)



The graph illustrates the statistical development of cases received in all the agendas of the Criminal Division of the Suprme Court over a relatively long period of time, 2005 – 2021. It clearly indicates that the total number of cases received has been relatively stable, but at the same time the graph shows that the highest number of submissions to the Criminal Division of the Supreme Court over the entire period under review were received in 2016 and 2017. In 2020 and 2021, there is a certain decrease in the total number of cases submitted and dealt

with. It should be noted that the graph simply adds all the agendas, although the complexity, workload and organisation of the different agendas differ significantly.

2. 4. 4. Selection of Important Decisions of the Criminal Division of the Supreme Court in 2021

2. 4. 4. 1. Opinions of the Criminal Division of the Supreme Court Published in the Collection of Decisions and Standpoints of the Supreme Court

In order to resolve some controversial issues and to unify the decision-making activities of lower courts, the Criminal Division of the Supreme Court issues opinions published in the Collection; no opinion was issued in 2021.

2. 4. 4. 2. Decisions of the Grand Panel of the Supreme Court Published in the Collection of Decisions and Standpoints of the Supreme Court

The following decision of the Grand Panel of the Criminal Division of the Supreme Court was published in the Collection in 2021:

Regarding the fulfilment of the legal characteristic of the qualified facts of the criminal offence of theft, consisting in the fact that the offence was committed during "another event seriously endangering lives or health of people", that is during the occurrence of the coronavirus known as SARS CoV-2

Judgment of the Grand Panel of the Criminal Division of the Supreme Court of 16 March 2021, file No: **15 Tdo 110/2021**, published under No 19/2021 in the Collection of Decisions and Standpoints of the Supreme Court of the Czech Republic in Criminal Matters (hereinafter the "Collection of Criminal Decisions"), addresses the question of whether an offender who committed theft at the time of the occurrence of the coronavirus known as SARS CoV-2 which caused the COVID-19 epidemic can fulfil the legal characteristic of the qualified facts of the criminal offence of theft, consisting in the fact that the offence was committed during "another event seriously endangering lives or health of people" [Section 205(4)(b) of the Criminal Code]. The judgment concluded that the said feature can be fulfilled by committing an act at this time, but it is not only the temporal and spatial connection of the committed act with such an event, but also a certain factual connection therewith, i.e. that this event specifically affected the commission of the crime of theft. This relationship will be established, for example, if the event or restriction or another measures taken as a result thereof and its resolution enabled or facilitated the offender in committing the crime, or if the offender expected it to help him escape detection and capture, or if his action was directed directly against these measures and restrictions in order to frustrate or complicate them, etc. The declaration of a state of emergency itself (Articles 5 and 6 of Constitutional Act No 110/1998, on the security of the Czech Republic, as amended by Constitutional Act No 300/2000) and committing an act during this state is not a sign

of the qualified facts of the crime of theft in accordance with Section 205(4)(b) of the Criminal Code. However, the declaration of a state of emergency, the reasons that led to it and publicly available information about it may be supportive for the conclusion that another "event seriously endangering lives or health of people" occurred at that time and place and that the perpetrator at least could and should have been aware of it [Section 17(b) of the Criminal Code].

2. 4. 4. 3. Selected Decisions Approved by the Criminal Division of the Supreme Court in 2021 for Publication in the Collection of Decisions and Standpoints of the Supreme Court

Among the significant decisions approved by the Criminal Division of the Supreme Court in 2021 for publication in the criminal part of the Collection, the following can be mentioned:

Regarding the prohibition of retroactivity to the detriment of the offender in the criminal offence of fraud in accordance with Section 209 of the Criminal Code committed by a legal person

Resolution of the Supreme Court of 13 May 2020, file No: **7 Tdo 327/2020**, and Resolution of the Supreme Court of 29 April 2020, file No: 3 Tdo 432/2019, were published together under No 30/2021 in the Collection of Criminal Decisions and they address the issue of the prohibition of retroactivity to the detriment of the offender, who is a legal person, in the criminal offence of fraud in accordance with Section 209 of the Criminal Code, in the committing of which a natural person participated partly before the introduction of criminal liability of legal persons. It follows from the recital of law of the decision that it is not a violation of the prohibition of retroactivity to the detriment of the offender [Article 40(6) of the Charter of Fundamental Rights and Freedoms, Section 1 of the Criminal Code], which also applies to a legal person as an offender [Section 1(2) of the Act on Criminal Liability of Legal Persons], if the legal persons was convicted for the crime of fraud in accordance with Section 209 of the Criminal Code, which it committed by acting after the entry into effect of Act No 418/2011, on Criminal Liability of Legal Persons and Proceedings Against Them, in such a way it enriched itself or another to the detriment of property of another, if a natural person acting on behalf of the legal person deliberately took advantage of a mistake made by another or the same natural person before 1 January 2012. This applies, for example, if a natural person (e.g. as a member of a governing body of a certain commercial company), by inducing or taking advantage of a mistake of the competent State authority or by concealing material facts in the period before 31 December 2011, obtained the issue of a decision on the approval of the operation of a photovoltaic power plant operated by the commercial company and the subsequent payment of higher support for renewable energy sources, if the commercial company, after 1 January 2012, through the same natural person or through other persons on the basis of instructions from this natural person, invoiced and had such support paid to it, although it was not entitled thereto.

Regarding the impossibility of extraordinary appeal review of an annulled decision or statement

Resolution of the Supreme Court of 18 August 2020, file No: **6 Tdo 854/2020**, published under No 21/2021 in the Collection of Criminal Decisions, addresses the impossibility of reviewing a decision in an appellate procedure in the event that the contested decision or statement has been annulled (e.g. in connection with the imposition of an aggregate sentence or a joint punishment for a continued criminal offence). In accordance with the recital of law of the decision, such a review is not possible – the application for extraordinary appeal is inadmissible to the given extent and, if it is not directed at the same time against another statement of the same decision, which has not been annulled, it must be refused in accordance with Section 265i(1)(a) of the Code of Criminal Procedure.

Regarding the relationship between the criminal offences of obstruction of justice and obstruction of a sentence of banishment in accordance with Section 337(3)(a) of the Criminal Code and damnification of creditors in accordance with Section 222(1)(a) of the Criminal Code

Resolution of the Supreme Court of 4 November 2020, file No: **7 Tz 38/2020**, published under No 17/2021 in the Collection of Criminal Decisions, concerns the criminal offence of obstruction of justice and obstruction of a sentence of banishment in accordance with Section 337(3)(a) of the Criminal Code, which to be committed requires the perpetrator to interfere with or considerably aggravate execution of a decision by a particular disposition of an etity or other asset value concerned by such a decision (e.g. an enforcement order). Another conclusion of the recital of law is that if the accused disposed of an entity that is not concerned by the issued enforcement order, he could not have fulfilled the qualified facts of the aforementioned criminal offence; however, we may then consider his liability for e.g. the criminal offence of damnification of creditors in accordance with Section 222(1)(a) of the Criminal Code, if in the capacity of a debtor he disposed of an item that is useful for the satisfaction of a creditor's claim, which he thereby at least partially thwarted.

Regarding the authorisation of the defence counsel appointed only for the purpose of removing defects in the appeal filed by him in accordance with Section 251(2) of the Code of Criminal Procedure.

Resolution of the Supreme Court of 13 October 2020, file No: **6 Tdo 1042/2020**, published under No 18/2021 in the Collection of Criminal Decisions, addresses the scope of the authority of a lawyer who was appointed to the accused as a defence counsel only for the purpose of eliminating the defects of an appeal filed by him [Section 251(2) of the Criminal Code]. According to the recital of law of the decision, such a lawyer cannot be considered to have the powers referred to in Section 41(5) of the Code of Criminal Procedure, i.e. also the right to file an appeal on behalf of the accused, and thus is not a defence counsel for the accused who must be served with a copy of the judgment of the court of appeal [Section 130(2) of the Code of Criminal Procedure]. Therefore, the fact that the court of first instance served him with a copy of

such judgment cannot affect the time limit for filing an application for extraordinary appeal in accordance with Section 265e(2) of the Code of Criminal Procedure.

Regarding the nature of the misdemeanours of obstruction of a sentence of banishment in accordance with Section 337(1)(b) of the Criminal Code and its concurrence with the criminal offence of theft in accordance with Section 205 of the Criminal Code

In its resolution of 23 September 2020, file No: **8 Tdo 838/2020**, published under No 13/2021 in the Collection of Criminal Decisions, the Supreme Court concluded that the misdemeanour of obstruction of a sentence of banishment in accordance with Section 337(1)(b) of the Criminal Code is a continuous crime. If, in the course of committing this offence, the offender commits the crime of theft in accordance with Section 205 of the Criminal Code, these offences are not committed in a single act, but in multi-acting concurrence.

Interpretation of the "without an authorisation" element in the crime of poaching in accordance with Section 304 of the Criminal Code

Resolution of the Supreme Court of 24 September 2020, file No: **3 Tdo 340/2020**, published under No 22/2021 in the Collection of Criminal Decisions, addresses the issue of unauthorised hunting within the meaning of the qualified facts of the crime of poaching in accordance with Section 304 of the Criminal Code and it concludes that such unauthorised hunting is any conduct that goes beyond the legal conditions of hunting in accordance with Act No 449/2001, on Hunting, as amended (hereinafter the "Hunting Act"). Therefore, the "without an authorisation" must be interpreted in the whole context of the Hunting Act, i.e. not only with regard to Sections 46 and 48a thereof, but also with regard to Section 45(1) thereof and the object of the crime of poaching, which is the protection of nature, i.e. wildlife and fish, as well as the protection of hunting rights and the exercise of fishing rights. Therefore, it is true that a person who has complied with the formal requirements of Section 46(1) of the Hunting Act (i.e. has a hunting permit, hunting licence, firearms licence, etc.) and hunts game in violation of other legal prohibitions, especially in violation of the express prohibition in accordance with Section 45 of the Hunting Act, acts beyond the scope of the issued permit, and thus acts "without an authorisation" within the meaning of the qualified facts of the crime of poaching in accordance with Section 304(1) of the Criminal Code.

Regarding who may be, within the meaning of Section 265d(1)(c) of the Code of Criminal Procedure, an accused who is entitled to apply for extraordinary appeal; regarding the possibility (or impossibility) of imposing a protective measure of seizure of property in accordance with Section 101(2)(e) of the Criminal Code

Resolution of the Supreme Court of 12 December 2019, file No: **5 Tdo 1069/2019**, was published under No 57/2021 in the Collection of Criminal Decisions with two recitals of law. The first of these expresses the view that a person whose property has been seized at the request of a public prosecutor filed after that person has been finally acquitted or

his criminal prosecution has been finally discontinued is also a person who is entitled to apply for extraordinary appeal, since he can be classified as an "accused" within the meaning of Section 265d(1)(c) of the Code of Criminal Procedure. The second recital of law provides that a protective measure in the form of seizure of property in accordance with Section 101(2)(e) of the Criminal Code may not be imposed on a person who has acquired the property in good faith, although such property could otherwise be seized.

Regarding the concept of "military material" within the meaning of Section 265(1) of the Criminal Code; regarding culpability in the case of reasonable reliance on the correctness of an expert opinion of a competent authority; regarding the conditions for imposing the protective measure of seizure of property of a person other than the accused in accordance with Section 101 of the Criminal Code

Resolution of the Supreme Court of 25 November 2020, file No: **5 Tdo 1147/2020**, published under No 28/2021 in the Collection of Criminal Decisions, contains several important conclusions in three recitals of law. According to the first of these, military material within the meaning of Section 265(1) of the Criminal Code is not, in principle, depreciated and inactive ammunition after its previous delaboration, which is marked with a depreciation mark. The second recital of law deals with the issue of culpability and provides that where the accused reasonably relies on the correctness of an expert opinion of a competent authority that states that the item he is handling is not military material, without any doubt, his intentional culpability in relation to that normative feature cannot usually be inferred. It is not decisive that it is subsequently established that the item in question can be considered military material. An authority within the meaning of this recital of law may be, for example, the Military Technical Institute, which expresses an opinion on the nature of certain material. The third recital of law states that a protective measure in the form of seizure of property in accordance with Section 101 of the Criminal Code cannot be imposed on a person other than the accused if he has not been granted the status of a participant, has not been served with advice and has not had the opportunity to exercise the rights in accordance with Section 42(1) and (2) of the Code of Criminal Procedure, in particular to express his opinion on the possible decision on the seizure of the property before it is made.

Regarding the fee for owning a television set as "another similar compulsory payment" within the meaning of Section 240(1) of the Criminal Code

Resolution of the Supreme Court of 15 December 2020, file No: **7 Tdo 1229/2020**, which was published under No 36/2021 in the Collection of Criminal Decisions, addresses the concept of "other similar compulsory payment" within the meaning of Section 240(1) of the Criminal Code on the crime of evasion of taxes, fees and similar compulsory payments. The recital of law of this decision states that the term may also include radio and television fees under Act No 348/2005, on Radio and Television Fees, as amended. The Supreme Court reached this conclusion on the basis of an evaluation of the nature of the television fees and their comparison with other payments listed in Section 240(1) of the Criminal Code. It based its conclusion on the historical development and also on the fact to whom the fees are paid and for what purpose, how they are managed, how and why the obligation to pay the television fee is established by law, what is the actual nature of the television fee and of the relationship between Czech Television and the payer, and what is the significance of the television fee in terms of the public interest. The conclusions reached in the decision on television fees can also be applied to radio fees.

Regarding the issue of an examination of a dwelling or part thereof as a crime scene and the issue a house search in relation to the accused's right to a fair trial

Resolution of the Supreme Court of 15 4. 2020, file No: **11 Tdo 1358/2019**, published under No 24/2021 in the Collection of Criminal Decisions, addresses the procedure of a police authority in pretrial proceedings that performs an act consisting in examining a dwelling or part thereof as a crime scene in accordance with Section 113(1) of the Code of Criminal Procedure on the basis of the consent of its occupants. Such a procedure is not unlawful in the light of the consent given within the meaning of Article 12(1) of the Charter of Fundamental Rights and Freedoms. However, a situation may arise that in the course of this examination where other acts typical of a house search may be carried out without the statutory conditions within the meaning of Section 83(1) of the Code of Criminal Procedure being met. In such a case, the evidence seized through these actions and not voluntarily surrendered within the meaning of Section 78(1) of the Code of Criminal Procedure shall be deemed unlawful. Such evidence cannot be used at all in the proceedings, otherwise the accused's right to a fair trial under Title 5 of the Charter of Fundamental Rights and Freedoms and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms would be infringed. Acts which are typical of a house search within the meaning of this decision include, for example, moving objects, uncovering hitherto hidden areas and looking into them.

Regarding when there is no "non bis in idem" obstacle to judgment in the case of an accident deliberately caused for the purpose of obtaining an insurance claim

Resolution of the Supreme Court of 17 February 2021, file No: **3 Tdo 93/2021**, was published under No 34/2021 in the Collection of Criminal Decisions and deals with a situation in which the perpetrator, who with the intention of extorting benefits from insurance deliberately caused an insurance event, specifically a traffic accident, was found guilty of the misdemeanour of insurance fraud in accordance with Section 210(2) of the Criminal Code, although he had previously been punished by the competent administrative authority for an infraction in accordance with Section 125c(1)(k) of Act No 361/2000, on Road Traffic, as amended, because he had infringed the provisions of Sections 4(a), 4(b) and 5(1)(b) of the same Act and had failed to drive properly. In the recital of law in the cited decision, the Supreme Court concluded that there was no violation of the "non bis in idem" principle in the present case and that the aforementioned sanction did not constitute grounds to proceed in accordance with Section 11(1)(k) of the Code of Criminal Procedure.

Regarding the possibility of deciding on the award of outstanding maintenance as a claim for damages in adhesion proceedings in the event the misdemeanour of negligence of mandatory support in accordance with Section 196 of the Criminal Code was committed

Judgment of the Supreme Court of 17 February 2021, file No: **8 Tz/2020**, published under No 35/2021 in the Collection of Criminal Decisions, deals with the issue of the claim for compensation for maintenance owed as property damage caused to the victim within the meaning of the last sentence of Section 43(1) of the Code of Criminal Procedure. According to the conclusions of this decision, such a claim can be decided in accordance with Section 228(1) of the Code of Criminal Procedure [or, as the case may be, Section 229(1) and (2) of the Code of Criminal Procedure] only if the maintenance claim has not yet been decided in civil proceedings. However, if the defendant's maintenance obligation for the relevant period of committing the misdemeanour of negligence of mandatory support in accordance with Section 196 of the Criminal Code has already been decided, even with a non-final decision, in civil proceedings, such a decision constitutes an obstacle to the filing of a motion by the victim for a decision on the defendant's obligation to pay damages in accordance with Section 44(3) of the Code of Criminal Procedure.

Regarding the nature of the crime of making illicit contact with a child in accordance with Section 193b of the Criminal Code and the manner in which the proposal to meet a child can result in committing this crime

Resolution of the Supreme Court of 25 November 2020, file No: **8 Tdo 1041/2020**, published under No 39/2021 in the Collection of Criminal Decisions, contains the legal opinion that the misdemeanour of illicit contact with a child in accordance with Section 193b of the Criminal Code is a prematurely completed offence. Therefore, the mere suggestion of a meeting made by the perpetrator to a child under the age of fifteen for the purpose of committing one of the sexually motivated offences, the list of which in this provision is merely demonstrative, is punishable. The perpetrator's proposal for such a meeting may be made by any means, e.g. through information or communication technologies, on paper or orally. The evidence taken must clarify which of the crimes referred to by qualified facts the perpetrator intended to commit at the time the proposal to meet was made.

Regarding the infringement of trademark rights and other designations in accordance with Section 268 of the Criminal Code, the infringement of protected industrial rights in accordance with Section 269 of the Criminal Code, the description of the act, the mistake of fact and the person of the expert in relation to these crimes

Resolution of the Supreme Court of 9 December 2020, file No: **5 Tdo 1231/2020**, published under No 45/2021 in the Collection of Criminal Decisions, contains several different legal conclusions concentrated in four recitals of law, three of which relate to the crimes of infringement of rights to a trademark and other signs in accordance with Section 268 of the Criminal Code and infringement of protected industrial rights in accordance with Section 269 of the Criminal Code. The first recital of law stipulates that the conclusion that these crimes have been committed is conditional on establishing which intangible objects of protection have been interfered with by the perpetrator and determining which other than criminal legislation protects such rights. In the case of national trademarks or industrial designs registered with the national industrial property office, the national legislation applies (in the Czech Republic, Act No 207/2000, on the Protection of Industrial Designs, as amended, or Act No 441/2003, on Trademarks, as amended); if it concerns EU trademarks or industrial designs registered with the European Union Intellectual Property Office (EUIPO), the norms of secondary European law apply (e.g. Council Regulation (EC) No 6/2002 of 12 December 2001 on community Designs); if it concerns internationally registered trademarks or industrial designs registered with the World Intellectual Property Organization (WIPO), then international treaties (e.g. the Hague Agreement concerning the International Registration of Industrial Designs) are decisive. The second recital of law of the decision follows up on the first one, when it states that the description of the act in the decision on the merits (e.g. in the decision to initiate the prosecution, the indictment or the judgment) must, in the case of crime in accordance with Sections 268 and 269 of the Criminal Code, clearly identify the industrial rights that have been infringed by indicating the competent authority with which they are registered, the identification number, the entity in whose favour they are registered, or other information (e.g. the date of registration), together with a specification of the manner in which they have been infringed (e.g. an indication of the specific item or subject by which those particular industrial rights have been infringed). If it were to be a comprehensive list of individual industrial rights which would disproportionately burden the operative part of the decision on the merits, identification by means of a summary description may also be admissible, with reference to the detailed list contained in the criminal file. To preserve the rights of the defence and to a fair trial, the accused must be made aware of such a list and must be given the opportunity to defend each item. The third recital of law of the approved decision contains the conclusion that the perpetrator's mistake as to whether it was a protected trademark or a protected industrial design, i.e. the mistake with the normative elements of the qualified facts of crimes in accordance with Sections 268 and 269 of the Criminal Code (see also the decision under No 47/2011 in the Collection of Criminal Decisions) and on their other than criminal legal regulation, which is not referred to in the Criminal Code, shall be assessed in accordance with the rules on mistake of fact (by analogy, see the decision under No 10/1977 in the Collection of Criminal Decisions). The fourth recital of law of the decision, which differs in theme from the previous ones, states that the victim [Section 43(1) of the Code of Criminal Procedure] or his employee cannot, as a matter of principle, be an expert, a person giving an expert opinion or an expert consultant because of their relationship to the case and the resulting doubts about their impartiality.

Regarding the territorial competence of the court in relation to the crime of solicitation in accordance with Section 189(1) of the Criminal Code

Resolution of the Supreme Court of 17 February 2021, file No: **7 Td 7/2021**, which was published under No 33/2021 in the Collection of Criminal Decisions, deals with the question of the territorial competence of the court in relation to the crime of solicitation in accordance with Section 189(1) of the Criminal Code. According to its recital of law, the place where the crime was committed in terms of the territorial competence of the court [Section 18(1) of the Code of Criminal Procedure] is the place where the perpetrator induces, arranges, hires, allures, or entices another person to practise prostitution, or the place where the perpetrator profits from prostitution carried out by another, i.e. where he obtains a pecuniary benefit therefrom. However, it is not, without further facts, the place where the prostitution was performed.

Interpretation of the term "missing person" within the meaning of Section 211(2)(a) of the Code of Criminal Procedure

Resolution of the Supreme Court of 14 4. 2021, file No: **8 Tdo 246/2021**, published under No 41/2021 in the Collection of Criminal Decisions, adopted the legal opinion that in order to conclude that a person is missing within the meaning of Section 211(2)(a) of the Code of Criminal Procedure, it is not necessary to issue a in accordance with Section 66 of the Civil Code, according to which a court may declare a person who has left his residence, has not reported his whereabouts and his whereabouts are not known to be missing. It is sufficient here that the bodies in charge of criminal proceedings have unsuccessfully searched for such a person or have unsuccessfully attempted to question him, and it has also been established that he has left his residence, has not reported his whereabouts and his whereabouts are not known.

Regarding when the condition of voluntariness of the perpetrator's conduct is not excluded in the case of effective remorse in accordance with Section 33 of the Criminal Code, even if his act has been detected

In its judgment of 31 March 2021, file No: **6 Tdo 1360/2020**, published under No 50/2021 in the Collection of Criminal Decisions, the Supreme Court concluded that in terms of the extinction of the perpetrator's criminal liability as a result of effective remorse in accordance with Section 33 of the Criminal Code, the mere fact that the crime committed by the perpetrator was discovered need not by default exclude the voluntariness of the perpetrator's conduct by which he prevented or remedied a harmful consequence within the meaning of Section 33(a) of the Criminal Code. What is important is his subjective perception of whether or not he was in immediate danger of criminal prosecution.

Regarding committing the crime of evasion of taxes, fees and similar compulsory payments in accordance with Section 240(1) of the Criminal Code by concealing unstamped cigarettes, thereby evading excise duty

Resolution of the Supreme Court of 16 May 2018, file No: **8 Tdo 395/2018**, published under No 44/2021 in the Collection of Criminal Decisions, adopted the legal opinion that the perpetrator of the crime of

evasion of taxes, fees and similar compulsory payments in accordance with Section 240(1) of the Criminal Code may also be a person who has concealed a large quantity of unstamped cigarettes in a house in which he resides, even if he is not the owner of the house or the owner of the cigarettes. In such a case, it can be concluded that the perpetrator stores the cigarettes in question and that he is a payer of excise duty within the meaning of Section 4(1)(f) and Section 9(3)(e) of Act No 353/2003, on excise duties, as amended, and that he has not fulfilled the obligation to pay this tax by using a tobacco sticker in accordance with Section 114(2) of the Excise Duties Act and the Decree on Tobacco Stickers (currently Decree No 82/2019).

Regarding that the perpetrator of the crime of laundering the proceeds of crime may also be someone who has committed another (predicate) crime from which such proceeds originate

In its resolution of 30 June 2021, file No: **5 Tdo 591/2021**, the Supreme Court concluded that the perpetrator of the offence of laundering items or other asset values acquired by a criminal offence in accordance with Section 216(1) alinea 1 of the Criminal Code, as in effect before 31 January 2019, or in accordance with Section 216(2) alinea 1 of the Criminal Code, as in effect after 1 February 2019, can also be the perpetrator of the crime from which the thing that was obtained as proceeds of this (i.e. predicate, source) crime and the origin of which is concealed. Such an assessment is not contrary to the prohibition of forcing a perpetrator to incriminate himself, and a final and enforceable conviction of a perpetrator for a crime (e.g. against property) by which he obtained an item as proceeds of that crime does not constitute a "non bis in idem" obstacle to the case for the prosecution of the same offender for the crime of laundering the proceeds of criminal activity committed by concealing the origin of such an item obtained by that (predicate, source) crime, as they are different acts.

Regarding the exclusion of intentional culpability with regard to the misdemeanour of breach of duty to make a true declaration of property in accordance with Section 227 of the Criminal Code

Resolution of the Supreme Court of 22 October 2020, file No: **5 Tdo 1114/2020**, addressed the issue of intentional culpability in the misdemeanour of breach of duty to make a true declaration of property in accordance with Section 227 of the Criminal Code. The Panel of the Supreme Court has reached the legal opinion that this misdemeanour is generally not committed by a governing body of a commercial company – tax debtor, if that body, as a person obliged to make a declaration of assets on the basis of a tax administrator's request in accordance with Section 180 of Act No 280/2009, the Tax Code, as amended, takes steps to comply with this request by entrusting the preparation and submission of such a declaration to other persons qualified to do so, who work for the commercial company and on whom the governing body reasonably relies. In such a case, because of the (albeit unreasonable) reliance on specific circumstances, the governing body does not act even with indirect intent in accordance with Section 15(1)(b) of the Criminal Code, even though the authorised persons failed to file a declaration of property for the obligated company.

Regarding the assessment of the nature of a message delivered by electronic mail within the meaning of Section 183(1) of the Criminal Code

In resolution of the Supreme Court of 21 4. 2021, file No: **6 Tdo 148/2021**, published under No 52/2021 in the Collection of Criminal Decisions, it was concluded that a message sent and delivered via electronic mail ("email") is an "other private document" within the meaning of Section 183(1) of the Criminal Code, since each email box to which messages are delivered is protected by a unique access password and the messages themselves are stored on servers inaccessible to unauthorised persons. Although a message delivered by email passes through other computers before reaching the target computer, it cannot be inferred from this fact that such a message should constitute a form of public communication, i.e. a communication that is not defined by specific predetermined subjects.

Regarding the opinion that a violation of a preliminary measure imposed in criminal proceedings does not constitute the misdemeanour of obstruction of justice and obstruction of a sentence of banishment in accordance with Section 337(2) of the Criminal Code.

In accordance with the judgment of 25 February 2019, file No: **4 Tz 13/2019**, published under No 46/2021 in the Collection of Criminal Decisions, a preliminary measure of the court, the violation of which may constitute the misdemeanour of obstruction of justice and obstruction of a sentence of banishment in accordance with Section 337(2) of the Criminal Code, means only a preliminary measure in accordance with Sections 400 to 414 of Act No 292/2013, on special court proceedings, as amended, but not an interim measure imposed in accordance with Section 88b et seq. of the Code of Criminal Procedure. In the event of non-compliance with the conditions of the preliminary measure imposed in accordance with the Code of Criminal Procedure, the legal consequences are provided for in Section 88o of the Code of Criminal Procedure.

Regarding the interpretation of the conditions under which the crime of murder is committed after prior consideration within the meaning of Section 140(2) of the Criminal Code

Resolution of the Supreme Court of 23 May 2018, file No: **8 Tdo 474/2018**, addresses the interpretation of the conditions for committing the crime of murder after prior consideration within the meaning of Section 140(2) of the Criminal Code and concludes that such consideration (premeditation) is not a general form of intent, but rather a special qualifying circumstance that characterises the perpetrator's decision-making, from which deliberate culpability is derived and which must be inferred from the circumstances under which the act was committed. It can be associated with both direct and contingent intent. The fact that the act remained at the stage of attempt in accordance with Section 21(1) of the Criminal Code [or in preparation in accordance with Section 20(1) of the Criminal Code] is also irrelevant to the conclusion that it constitutes premeditation. Premeditated murder may also be committed by a perpetrator who was under the influence of an addictive substance at the time he committed the act if, even under

that influence, he was able to take into account in advance all the decisive circumstances of committing the act, including the choice of the place and time of the act, the use of a weapon or other means suitable for killing another, with the aim of its successful execution.

2. 4. 4. 4. Other Selected Decisions of the Criminal Division Panels of the Supreme Court Issued in 2021

In 2021, the Panels of the Criminal Division of the Supreme Court also made some other important decisions, the inclusion of which in the Collection of Decisions and Standpoints of the Supreme Court has not yet been decided. Of these, the following can be noted:

Regarding the competence of the Grand Panel of the Criminal Division of the Supreme Court in the event of diverging legal opinions between the Panels of the Civil and Commercial Division and the Criminal Division; regarding the non-fulfilment of the elements of the misdemeanour of breach of duty to make a true declaration of property in accordance with Section 227 of the Criminal Code in the event of providing false or grossly distorted information in the list of assets as an annex to the insolvency petition or the petition for remission of debts

Resolution of the Grand Panel of the Criminal Division of the Supreme Court of 22 September 2021, file No: **15 Tdo 525/2021**, solved two areas of problems. The first was a procedural question as to which Grand Panel of a Division should decide in a case where there was a diverging legal opinion on a particular issue between a Panel of the Civil and Commercial Division in an earlier decision and a Panel of the Criminal Division in a present case. The Grand Panel of the Criminal Division concluded that a Panel of the Criminal Division, if it reaches in its decision a legal opinion that differs from the legal opinion taken in an earlier decision of a Panel of the Civil and Commercial Division, shall refer the case in accordance with Section 20(1) of Act No 6/2002, on Courts and Judges, as amended, to the Grand Panel of the Criminal Division of the Supreme Court, which is competent to make such a decision, if the matter has not already been dealt with in an opinion of the full court or of one of the Divisions of the Supreme Court. In the second question, the Grand Panel of the Criminal Division held that the misdemeanour of breach of duty to make a true declaration of property in accordance with Section 227 of the Criminal Code is not committed by a person who provides false or grossly distorted information in the list of assets in accordance with Section 104(1)(a) or Section 392(1)(a) of Act No 182/2006, on bankruptcy and settlement (the Insolvency Act), as amended. The misdemeanour of breach of duty to make a true declaration of property may be committed in insolvency proceedings only in relation to the declaration of property in accordance with Sections 214 to 216 of the Insolvency Act.

Regarding what may constitute a bribe and the insufficiency of the application of liability in accordance with another legal provision within the meaning of Section 12(2) of the Criminal Code

In the resolution of the Supreme Court of 30 June 2021, file No **5 Tdo 467/2021**, it was concluded, inter alia, that remuneration for adminis-

trative and other services provided to the applicant for a subsidy by an employee of a public authority who participates in the subsidy procedure (even if only by checking whether the conditions for payment of the subsidy have been met) constitutes a bribe within the meaning of Section 331(1)(1) of the Criminal Code and Section 334(1) of the Criminal Code. The subsequent termination of the labour-law relationship with such an employee is not a sufficient assertion of liability in accordance with another legal provision (the Labour Code) within the meaning of Section 12(2) of the Criminal Code, and criminal liability and the criminal consequences associated therewith must be inferred as well.

Regarding committing the criminal offence of forgery and alternation of money in accordance with Section 233(2)(2) of the Criminal Code by putting counterfeit currency into circulation

According to the Resolution of the Supreme Court of 30 June 2021, file No **5 Tdo 650/2021**, the criminal offence of forgery and alternation of money under Section 233(2)(2) of the Criminal Code is completed if the perpetrator successfully spends the forged or altered money as genuine or valid or as money of a higher value, i.e. if the other party to whom it is intended for payment for goods or services accepts it, because only then is the money successfully put into circulation. If the other party does not accept the money on suspicion that it is forged or altered money, the perpetrator only attempts to commit a criminal offence in accordance with Section 21(1) of the Criminal Code.

Regarding the misdemeanour of approval of criminal offence in accordance with Section 365(1) of the Criminal Code

In its resolution of 13 October 2021, file No **7 Tdo 1002/2021**, the Supreme Court deals with the interpretation of the misdemeanour of approval of criminal offence in accordance with Section 365(1) of the Criminal Code. This concerned a situation in which the accused posted a post via the Internet in a discussion on a website under an article about the shooting of a motorcyclist riding through a meadow, who was subsequently transported to hospital with serious injuries, which read as follows: "Thank you to the brave shooter!!! Death and the torments of hell to all motorcyclists! For the devilish terror perpetrated on the defenceless (i.e. those noisy beasts are convinced that other living beings are defenceless, but apparently fearless fighters still exist)", by which he publicly approved the actions of an unknown perpetrator, which were qualified as an attempted murder in accordance with Sections 21(1) and 140(1) of the Criminal Code. The Supreme Court stated that in order to conclude that the qualified facts of the misdemeanour of approval of criminal offence in accordance with Section 365(1) of the Criminal Code were fulfilled, it is not necessary to establish whether the perpetrator of the approved criminal offence has been prosecuted and convicted for this offence. The identity of the perpetrator does not even have to be established and he does not have to be prosecuted at all, e.g. for reasons of statute of limitations or immunity. It is also not necessary that the perpetrator of the misdemeanour of approval of criminal offence knows all the circumstances of the approved act or the resulting legal assessment by the bodies in charge of criminal proceedings.

However, the Internet is a valid platform for the expression of opinions, and there is no reason to view opinions and comments, including the approval of a criminal offence, more liberally on the Internet than, for example, in the printed media. Therefore, everyone should express himself or herself with caution and prudence on the Internet, because freedom of expression is not limitless.

Regarding the fulfilment of the qualified facts of the criminal offence of spreading of alarming news in accordance with Section 357(2) of the Criminal Code, namely "spreading alarming news that is untrue"

The resolution of the Supreme Court of 26 October 2021, file No **3 Tdo 1031/2021**, deals with the fulfilment of the qualified facts of the criminal offence of spreading of alarming news in accordance with Section 357(2) of the Criminal Code, namely "spreading alarming news that is untrue". The lower instance courts found the defendant guilty of committing this criminal offence for the act of contacting the emergency telephone line of the Prague Municipal Police via his mobile phone and providing information that two wrecked vehicles were parked on Hradčanské náměstí in Prague, on which the municipal police had only installed a wheel clamp, which he considered insufficient and the wrecks were still there. He demanded that municipal police officers declare the vehicles wrecks so they could be removed. The accused pointed out that the vehicles were parked in one of the most important squares in the country and that it was inappropriate to deal with this issues by using a wheel clamp. In response to the operator's information that the Police of the Czech Republic had the legal option of towing vehicles for security reasons, which the municipal police lacked, the accused stated that he was "escalating this issue to the police because he had a reason to suspect that there were bombs in the vehicles, so if it can be done this way and he is really convinced of it", ending the call with the words "so don't let it blow up here, thank you". When the accused was subsequently contacted by a police officer from the Central Operations of the Police of the Czech Republic, who asked the accused how he had arrived at his suspicion that there were bombs in the vehicles, he stated: "Simple reasoning, simple reasoning, they are parked this close to the castle and abandoned." The above statement of the accused subsequently resulted (according to the lower instance courts) in a rescue operation of the integrated rescue system – the Police of the Czech Republic, the Fire Rescue Service and rescue workers – consisting in the closure of the surroundings and pyrotechnical search, which proved to be unjustified, since the pyrotechnical search of both vehicles revealed that there were no bombs or other similar explosive systems. The Supreme Court reached a different conclusion than the courts of lower instance. It stated that before calling in the pyrotechnic team, the police had first sent a patrol to check the situation, and they also had information that the vehicles in question had already been searched for pyrotechnics once, three days prior to the notification by the accused (at that time, it was an operation of the Police of the Czech Republic in cooperation with the Presidential Protection Unit, and the police proceeded to carry out a pyrotechnical check of these vehicles because of a potential danger on the basis of identical objective circumstances – abandoned motor vehicles near a protected object). Only after the patrol arrived on the scene was a pyrotechnic team requested, along

with other components of the integrated rescue system. Based on the same thought process, the police authorities assessed the event three days previously, when the location of the vehicles was first dealt with in terms of a possible violation of traffic regulations and only then, after evaluating the objectively identical circumstances, were they assessed as a possible safety risk. In the Supreme Court's view, it cannot be concluded that the integrated rescue system was activated unnecessarily on the basis of a false notification by the accused. On the contrary, the evidence shows that the integrated rescue system was only activated by the police patrol on the spot after the initial investigation. In order to fulfil the qualified facts of the criminal offence of spreading of alarming news in accordance with Section 357(2) of the Criminal Code, the news must be objectively false, i.e. contrary to the reality (the actual situation) or significantly and purposefully distorting the image of reality. When assessing the specific conduct of the perpetrator, the nature and character of his statement must be carefully evaluated in order to distinguish between the spreading of alarming news and an (albeit subjective) assessment of the situation. In the present case, the accused, as is clear from the recital of facts of the conviction, did not communicate any false statement to the police, as he communicated his personal judgment or suspicion. The accused stated that there could be bombs in the vehicles, but did not state that there was a certainty that there were bombs in the vehicles, although he would have been aware that there was no certainty that there were bombs in the vehicles. The defence of the accused that he realised there was a possible security threat when he called the municipal police has not been refuted. The falsity of the communication cannot be inferred ex post from the fact that no bomb was found in the vehicles, because otherwise any communication of suspicious facts with the assessment that there might be a threat would always be punishable if the reported danger was not confirmed. The decisive factor would then be not the culpability of the perpetrator (his awareness of whether the information is true or not), but circumstances independent of his culpability. This line of thought would then impose strict liability, which is impermissible in criminal law. A consistent application of the view of lower instance courts could result in a general apathy of anyone considering notifying the authorities and a decrease in the number of public notifications of imminent danger for fear of possible criminal prosecution. In the present case, the accused person's assessment of the situation was logical and certainly cannot be considered false. The police patrol proceeded to call the pyrotechnical team on the spot, i.e., in a situation where, after an on-site investigation, the patrol apparently assessed the vehicles in question as potentially dangerous, just like the accused person did.

2. 5. Special Panel Established under Act No 131/2002 Sb. on Adjudicating Certain Jurisdictional Disputes

The Special Panel, established under Act No 131/2002 Sb., is composed of three Supreme Court judges 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. President of the Special Panel changes in the middle of the three-year term. During the first half of their term of office, the President is a judge from the Supreme Administrative Court and during the other half from the Supreme Court. 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 judgments between courts and executive bodies, territorial, interest or professional self-governments, 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 2020 to 2021:

	Caseload	Decided in that year	Percentage of that year's caseload	Pending as of 31 December
2020	19	19	100 %	20
2021	32	30	94 %	22
2003 to 2021	1,304			

In 2020, the members of the special panel established under Act No 131/2002 were Supreme Court judges Mgr. Vit Bicak, JUDr. Roman Fiala, and JUDr. Pavel Simon. The reserves appointed on behalf of the Supreme Court were JUDr. Petr Škvail, Ph.D., JUDr. Radek Doležel and Mgr. David Havlík.

From the Supreme Administrative Court, the following were appointed: Mgr. Ing. Bc. Radovan Havelec, JUDr. Tomáš Rychlý, Ph.D., and JUDr. Michal Mazanec, who was chaired the special panel since January 2021. 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. Awards for Supreme Court Judges

On 15 October 2021, JUDr. Roman Fiala, President of the Civil and Commercial Division of the Supreme Court, Vice-President of the Supreme Court from 2011 to 2020, received the Antonín Randa Bronze Medal at a ceremony in the Karolinum in Prague. The renowned award, named after the university professor and founder of modern Czech civil law science, was given to Roman Fiala for his significant contribution to civil law, especially for his merits in the field of inheritance law, and for his long-standing active cooperation with the voluntary professional organisation of Czech lawyers called Jednota českých právníků (Czech Lawyers' Union), which awards the medals. This is far from the first time that Roman Fiala has been awarded for his professional merits; for example, he was the Lawyer of the Year 2015 in the Civil Law category.

The former President of the Civil and Commercial Division of the Supreme Court, JUDr. Mojmír Putna, has become the first Czech judge to be awarded the Jan Vyklický Award. The award, given for exceptional achievements in the judiciary, was established by the professional association of judges only in 2018 as a memorial to former union president Jan Vyklický, who had recently died. Austrian judge Günter Woratsch was the first person to be awarded in 2019 for his outstanding achievements in the judiciary at a broad international level, including his extraordinary contribution to the development of the professional organisation of judges in the Czech Republic. Mojmír Putna, who recently retired as a Supreme Court judge after reaching the age of 70, also worked closely with Günter Woratsch in the past and through this cooperation became one of the founding members of the Judicial Union of the Czech Republic.

In October 2021, the Minister of Justice Marie Benešová awarded the "Bene Meritus" plaque for lifetime contribution to the judiciary to former President of the Supreme Court JUDr. Iva Brožová. Among the 13 honoured individuals was the long-standing President of the Civil Division of the Supreme Court and the current President of the Regional Court in Prague, JUDr. Ljubomír Drápal.

2. 7. Additional Activities of Supreme Court Judges

In addition to the adjudicating and unifying efforts of the Supreme Court judges were also involved in other specialist activities in 2021. These involved, in particular, law-making, training and publishing.

2. 7. 1. Law-Making

In accordance with the legislative rules of the government, the judges of the Supreme Court actively participate in commenting on draft acts. In the long term, they are obliged to receive the drafts of new legal norms within the inter-ministerial comment procedure which regulate the activities of the Supreme Court or which concern matters falling within its scope of competence. More precisely, the Supreme Court is obliged, within the inter-ministerial comment procedure, to receive draft acts for comments if these proposals concern the Supreme Court's scope of competence or the procedural rules by which it is governed. In addition, judges participate in the preparation of certain draft acts or draft amendments directly as the creators or co-creators of the relevant draft.

The position of the Supreme Court in the legislative field should be further strengthened in 2022; the Supreme Court should start receiving the drafts of all legal norms for comments, and if they comment on them, the government and ministries will be obliged to deal with them accordingly.

In 2021, the judges of the Criminal Division were actively involved in particular in the preparation of the new Code of Criminal Procedure and the new Code of Civil Procedure. The President of the Criminal Division, JUDr. Bc. Jiří Říha, Ph.D., heads the "small committee" for the recodification of the Code of Criminal Procedure; the Vice-President of the Supreme Court, JUDr. Petr Šuk, heads a newly created expert group consisting of representatives of various courts, academics and people from legal practice, which is involved in the second phase of the preparation of the Code of Civil Procedure. In addition to Petr Šuk, JUDr. Jiří Zavázal, President of the Civil and Commercial Division of the Supreme Court, also became a member of the committee.

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

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

Some of the judges also teach students of universities and tertiary education law schools as in-house and external teachers. Some are also members of scientific councils of higher education institutions, or of higher education institutions themselves. Nor do the judges neglect their participation in professional examinations of jurists, mostly of future judges and lawyers.

2. 7. 3. Publications

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

2. 8. Administrative Staff in the Judiciary Section

The basis of the internal organisation of the Section of the Judiciary is the judicial departments (Panels), which are formed in accordance with the applicable Work Schedule. The clerical and other office work for one or more judicial departments or Panels is carried out by the Office, which consists of the Head of the Office and three or four stenographers, and registry clerks at the Criminal Division.

Stenographers and registry clerks perform expert, professional, skilled, responsible and demanding clerical activities that require active knowledge of court registry user programmes and other information systems. Many of the activities of the stenographers and registry clerks are carried out independently in accordance with the applicable legislation and the internal rules of the Supreme Court, or as instructed by judges, assistants or the Head of the Office. Their daily activities include the administrative processing of the entire court agenda, including the assembly of documents into often quite extensive procedural files. At the Criminal Division, the registry clerks organise and subsequently draw up minutes of both the videoconferences, through which, for example, interrogations of the accused are conducted, and also of public sessions, the number of which has recently increased significantly, especially in the case of complaint on the violation of the law.

The Head of the Office organises, directs and controls the work of the clerical staff and ensures the smooth operation of the Office for the individual judicial departments (Panels) and their judges and assistants. They are fully responsible for the proper maintenance of court registers and court files. Daily activities of the Head of the Office also include the publication of the judgment announcement by posting a written copy of the full judgment or a shortened version thereof with supporting reasons on the official board and the electronic official board of the Supreme Court.

The Supervisory Clerk is responsible for the operation of all the Division's Offices, which the clerk manages, directs and controls on an ongoing basis in terms of organisation and methodology. The Supervisory Clerk prepares statistical documents on the activities of the Division, prepares methodologies for administrative staff, judges and assistants, cooperates with other sections of the Court, for example with the Public Relations Department, for which the clerk prepares documents for the processing of requests in accordance with Act No 106/1999, on Free Access to Information, as amended, etc. In 2020 and 2021, the Supervisory Clerks also participated in the implementation of the new APSTR and CoReport applications at the Supreme Court, which should facilitate and streamline the work of the administrative staff of the Offices.

Administrative Staff for the Civil and Commercial Division	
Supervisory Clerk	1
Head of Office	4
Stenographer	12
Secretary of the Division	1
Clerk 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	9
Stenographer	0
Secretary of the Division	1
Clerk of the Collection of Decisions and Standpoints	1
Total	15

2. 9. Section of the Court Agenda

The Section of the Court Agenda is a separate section, although it is organisationally integrated into the Section of the Judiciary, and the Head of the Section of the Court Agenda is directly subordinate to the President of the Court. The staff of the Section of the Court Agenda must be familiar with the Supreme Court's agendas and structure, and their activities cannot be performed without active knowledge of all court registers.

Staff of the Section of the Court Agenda	
Head of the Section of the Court Agenda	1
Head of the Registry and of the Evidence Department	1
Staff of the Evidence	4.5
Staff of the Registry	2.5
Staff of the Registry Archives	1
Applications Manager	1
Total	11

The Head of the Section of Court Agenda methodically directs and supervises the staff of the Evidence, Registry and Registry Archives and the Applications Manager. Furthermore, in accordance with the mandate of the President of the Court, the Head methodically directs and controls the Supervisory Clerks who ensure the operation of the Offices, performs professional supervision, and comprehensively coordinates and controls the file service and pre-archival care for the files and documents of the Supreme Court in all sections and departments of the Court in accordance with Act No 499/2004, on Archiving and Records Management and Amending Certain Acts, as amended, and the Office and Filing Rules of the Supreme Court, implements projects at the Supreme Court related to the development of the digitisation of justice, in 2021 this included in particular the implementation of the CoReport and APSTR applications, performs system analyses of user requirements for the development of information systems of (not only) the Supreme Court, for example, the Head initiated the creation of a new module, Registry Archives for Judicial Information Systems, and is currently actively involved in its implementation and the Supreme Court will be a pilot court in the implementation of this module; the Head also ensures and coordinates co-operation related to the administration and development of information systems used at the Supreme Court, both within the Supreme Court and with State administration bodies in the field of justice and contractors involved in the technical implementation of the administration and development of these information systems.

The Section of the Court Agenda contains the Evidence and Registry Department, which is divided into the Evidence, the Registry and the Registry Archives. The Registry and Evidence Department is managed and controlled by the Head of the Registry and of the Evidence Department, who is responsible for the smooth operation of the Department.

The staff of the Evidence receive and process all electronic submissions delivered to the Supreme Court and register all submissions and files received by the Supreme Court in paper and electronic form into the Supreme Court Information System (ISNS), in accordance with the rules set out in the Work Schedule and the Office and Filing Rules of the Supreme Court. In 2021, the staff of the Evidence processed 17 020 data messages delivered to the Supreme Court's electronic registry and registered 7 950 new submissions and files in the relevant registers. In 2021, in order to ensure the protection of personal data (GDPR), the Evidence and Registry Department completed work on the modification of 303 831 natural persons registered in the List of Names module, which is part of the Supreme Court Information System (ISNS).

The staff of the Registry ensure the initial registration of all documentary consignments and files delivered to the Supreme Court, the delivery service of all documents and files sent from the Supreme Court, the registry and sale of stamps to the parties to proceedings and, if necessary, the reproduction (printing of copies) of documents for the employees of the Supreme Court. In 2021, the staff of the Registry processed and entered into the Supreme Court Information System (ISNS) 9 062 documentary submissions delivered to the Supreme Court and delivered (sent from the Supreme Court) approximately 9 800 documentary consignments and files weighing up to 2 kg and 5 300 parcels over 2 kg.

The staff of the Registry Archives ensure professional management of files and documents (pre-archival care) stored in the Supreme Court's Registry Archives; in accordance with Act No 499/2004, on Archiving

and Records Management and Amending Certain Acts, as amended, and the Office and Filing Rules of the Supreme Court, the staff of the Registry Archives also ensure the preparation and conduct of shredding procedures, including the transfer of selected archival materials to the National Archives and the destruction of files and documents that have not been selected as archival documents by the National Archives. The staff of Registry Archives keep records of the files and documents deposited in the Supreme Court's Registry Archives, and in 2021 they took over and registered approximately 13 000 files and documents of the court administration, which are stored in 82 archive boxes or binders in the Registry Archives.

The smooth operation of the Supreme Court's applications (ISNS, ISIR, IRES) is ensured by the Applications Manager. Other activities of the Applications Manager include, for example, training and providing methodological support to application users, setting access permissions to applications for individual users in accordance with the Office and Filing Rules of the Supreme Court. The Applications Manager also participates in the implementation of projects in the field of digitisation of justice; in 2021, the manager was actively involved in the implementation of the APSTR application at the Supreme Court.

3. NATIONAL AND FOREIGN RELATIONS

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

As in previous years, the Department of Analytics and Comparative Law of the Supreme Court focused primarily on analytical and research activities in 2021, as far as European and comparative law is concerned, for practical use not only by the Supreme Court, but also by the lower courts in the Czech Republic and their judges.

The Department's activities included, in particular, the creation of analyses in the area of the decision-making practice of the Court of Justice of the European Union, European Court of Human Rights, European Union legislation and comparison of legislation or case law in other countries, especially EU Member States.

The department continued to carry out an irreplaceable part of its activities in the past year – it maintained regular contact with foreign courts, but also with other bodies and international organisations, which, despite the current epidemic situation, it not only managed to keep at current levels, but also actively further develop, in particular with the help of electronic means of distance communication. In this respect, the Supreme Court's day-to-day participation in a number of platforms for the cross-border exchange of legal information and experience reflected in the decision-making activities of the Supreme Court, was not left out.

However, the cross-border activities of the Supreme Court, which are externally covered and de facto administered by the Department of Analytics and Comparative Law not only in terms of communication, but especially in terms of expertise, were far greater than the above points describe. On the contrary, the Supreme Court, as the supreme judicial institution of a member state of the European Union and the Council of Europe, continued to participate in a number of partial activities to various extents; a selection of the most interesting ones follows.

3. 1. 1. Analytical Activity

As already mentioned, the Department of Analytics and Comparative Law is primarily involved in analytical activities related to the issues that the Supreme Court or lower courts encounter in their decision-making practice.

The interesting areas on which analytical activities focused in the past year included practical aspects of private international law, including, for example, prorogation agreements in favour of the courts of several States in the light of the Brussels I bis Regulation, interpretation and limitation of choice of law for the protection of employees in the context of the Rome Convention, and issues of service of documents in criminal matters in relations between the Czech Republic and Ukraine. Other equally interesting topics dealt with by the department included selected issues such as the legal status of a theatre director, recourse of a foreign insurance company and the value of a shipment within the meaning of the CMR Convention.

Nor did it leave aside the basis for the broader work of the Supreme Court, such as the analysis of the number of judges in different countries or the analysis of judges' secondary activities and their social media presence. The latter analysis served as a basis for a round table on the above topics, which the department organised and facilitated.

3. 1. 2. Selection of the Decisions of the European Court of Human Rights for Judicial Practice and Bulletin

The preparation of the publication Selection of the Decisions of the European Court of Human Rights for Judicial Practice is another activity where Department of Analytics and Comparative Law has long been involved. The collection contains translations of important decisions into the Czech language, which helps make this case law accessible to the general professional public.

The Department is also engaged in the preparation of annotations of selected decisions for the Internet database of selected decisions of the European Court of Human Rights, which operates under the auspices of the Office of the Government Representative 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 continues to make regular annotations that gradually fill the publicly available database, thus helping to popularise and raise awareness of the case law of the Strasbourg court.

Last but not least, it is necessary to mention the Bulletin of the Department of Analytics and Comparative Law, which, as its name suggests, presents the original output of this Department. The Bulletin is published four times a year in electronic form – on the Supreme Court's website – and is also accessible, for example, in the ASPI information system. The Bulletin aims in particular to provide information on current decisions of the Supreme Courts of the Member States of the Union, the European Court of Human Rights and the Court of Justice of the European Union.

3. 1. 3. Comparative Law Liaisons Group

Following the example of previous years, the Supreme Court participated as much as possible in day-to-day cooperation with partner European courts.

As already mentioned, the Supreme Court, through its Department of Analytics and Comparative Law, participates, inter alia, in the Network of the Presidents of the Supreme Judicial Courts of the European Union, which deals mainly with general issues of common interest of presidents; however, more current issues are also addressed.

However, the European supreme courts are also involved on a daily basis in resolving questions that need to be answered for the needs of their decision-making practice. Aware of this fact, the Comparative Law Liaisons Group was established, with the Czech Republic participating from the very beginning. The continuing goal of this international group is to facilitate cooperation in the exchange of legal information. This concerns in particular the content of legislation and case law in matters that are the subject of decision-making by one of the highest courts belonging to this group. This group's activities result in analytical material which presents to the judges of the Supreme Court how the legal matters in question are approached before other cooperating supreme courts.

The individual issues that have been addressed through this network included, for example, in the area of civil law, the question of the upper limit of compensation for wrongful termination of employment, the concept of habitual residence within the meaning of the Rome III and Brussels II bis Regulations, the information duty of insurance companies and the liability of Internet service providers in the context of unfair competition misconduct. In the area of criminal law, we can mention, for example, compensation for victims of terrorism-related crimes, selected aspects of criminal liability of legal persons and recognition of a criminal decision of a Brazilian court (as a court of a non-EU country).

3. 1. 4. The Judicial Network of the European Union

The Department of Analytics and Comparative Law participates, among other matters, in the content creation of the Judicial Network of the European Union. This network was created on the initiative of the President of the Court of Justice of the European Union and the Presidents of the constitutional and supreme courts of the Member States. The primary objective of this network is the facilitation of access to information and documents between the courts of the European Union. To this end, an Internet interface has been set up to reflect efforts to strengthen judicial cooperation by supporting the deepening of dialogue in preliminary ruling proceedings, disseminating national decisions of relevance to the Union and strengthening mutual knowledge of Member States' law and legal systems.

In the case of cooperation between the European Court of Human Rights and national supreme courts, the Network of Supreme Courts, set up for the effective exchange of information, plays an important role, and the Supreme Court also participates in this network through the Department of Analytics and Comparative Law.

3. 1. 5. Round Table Discussion on Current Issues in Judicial Ethics

On 10 November 2021, the Supreme Court, with the help of members of the Department of Analytics and Comparative Law, organised a round table on current issues of judicial ethics for the Presidents and Vice-Presidents of the Supreme Court and Supreme Administartive Court, high and regional courts, representatives of the Ministry of Justice, representatives of some other judicial institutions, academics and other experts who have long been involved in judicial ethics. The event was held thanks to the Supreme Court's participation in the Global Judicial Integrity Network. This initiative was launched in 2018 under the auspices of the United Nations, specifically the United Nations Office on Drugs and Crime. The two central themes were the social media presence and secondary activities of judges.

3. 2. Participation of the President and Vice-President of the Supreme Court in Foreign Events

Although the year 2021, like the previous year, was partly affected by the COVID-19 pandemic in terms of the possibility for strengthening cross-border co-operation through in-person participation in international events, this co-operation was not halted. On the contrary, several important foreign contacts were established, especially at the level of the President of the Court.

3. 2. 1. President of the Supreme Court

On 23 April 2021, the General Assembly of the Network of the Presidents of the Supreme Judicial Courts of the European Union met in a remote format. Within this framework, elections were held for the Network Council, where the President of our Court was elected among others.

The President also visited the highest judicial institutions of Romania and Bulgaria from 10 to 13 August 2021. On 10 August 2021, he met with the President of the Romanian Supreme Court, Corina Alina Corbu, with whom he discussed, among other things, the status of the Supreme Judicial Council in Romania and the current case law of the European Court of Human Rights and the related consequences of violations of the Judicial Code of Ethics and other aspects. The next day, the President visited the President of the Romanian Constitutional Court, Valer Dorneanu. Their discussion focused, for example, on issues related to the relationship between the Supreme and Constitutional Courts in the Czech Republic and Romania. On the same day, the President also met with First Deputy Prosecutor General Bogdan Licu, which also provided an opportunity to discuss the position of the prosecution within the system of separation of powers. The meeting with the President of the Supreme Council of the Judiciary, Bogdan Mateescu, did not go unnoticed, either. On 13 August 2021, the President subsequently met with the President of the Bulgarian Supreme Court of Cassation, Lozan Panov. They discussed specific aspects of competences within the Bulgarian prosecutor's office. Last but not least, the President met with the Czech Ambassador to Romania, Halka Kaiserová, and the Czech Ambassador to Bulgaria, Lukáš Kaucký.

On 7 September 2021, the President visited the Slovak Supreme Court, where he met with its President, Ján Šikuta. On this occasion, the Vice-Presidents of the two Courts also met – Petr Šuk for the Czech side and Andrea Moravčíková for the Slovak side. The working meeting focused, among other matters, on the issue of professional training of judges.

From 30 November to 7 December 2021, the President visited important judicial institutions in Germany and France. On 30 November 2021, he met with the President of the Hamm Higher Regional Court, Gudrun Schäpers, and also with the President of the Dortmund City Court, Jörg Heinrichs. A day later, he met, for example, with the Vice-President of the Hamm Higher Court and its other representatives. The common topics included, for example, the selection of new judges and judicial assistants, the judicial code of ethics, the relationship between individual courts and the media, and the presentation on social media. On 2 December 2021, the President met with the President of the Federal Court of Justice, Bettina Limperg, and with other judges from that institution; a day later, a working meeting was held at the Federal Constitutional Court. The topics discussed at the meeting included, among others, constitutional complaints filed against decisions of supreme courts and the constitutionality of anti-epidemic measures. On 4 December 2021, the President visited the President of the French Court of Cassation, Chantal Arens. The meeting, which was also attended by Marie Dubuisson, a representative of the High Council for the Judiciary, focused, among other matters, on public confidence in the judiciary and the technological challenges faced by the judiciary.

3. 3. Significant Visits of Judges of the Supreme Court Abroad

From 19 to 25 September 2021, judge of the Supreme Court, Petr Škvain completed an internship at the Human Rights in Criminal Proceedings (HRCP) Research Institute, which was established at the Faculty of Law of the University of Passau (Germany). It was particularly focused on increasing the expertise in the field of the case law of the European Court of Human Rights. Last but not least, he also attended professional and expert consultations.

3. 4. Significant Foreign Visitors to the Supreme Court

On 16 June 2021, the President of the Slovak Supreme Court, Ján Šikuta visited the Czech Supreme Court. The working meeting, which was also attended by Vice-President of the Czech Supreme Court, Petr Šuk, focused mainly on current issues of the judiciary, including public confidence in the judiciary and citizens' access to courts and the enforcement of justice.

From 5 to 6 October 2021, the President of the Austrian Supreme Court, Elisabeth Lovrek visited Brno. She was accompanied by the Vice-President of this Court, Matthias Neumayr and by two of its judges, Gottfried Musger and Erich Schwarzenbacher. Areas discussed included the work of the courts during a pandemic, issues of judicial ethics, common and different elements of both justice systems, and practical experience in dealing with diverse legal issues.

On 23 November 2021, the President received Mohamed Ismail, Vice-President of the Egyptian State Council. During the meeting, which took place within the framework of the Vice-President's visit to the Czech Supreme Administrative Court, the issues of judicial ethics and the work of the courts in times of pandemic were also discussed.

4. ECONOMIC MANAGEMENT

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

The operational appropriations of the Supreme Court are used mainly for the actual operation of the court and also for the maintenance and repair of the building's facilities; the Supreme Court building is a national heritage building.

In the autumn of 2019, a new wing of the Supreme Court building was put into operation, which solved in particular the issue of the lack of quality work space for assistants to the judges. In 2021, the Supreme Court spent funds mainly on restoring the condition and equipment of judges' and employees' offices in the original historic building.

In 2021, the Supreme Court completed one of its major investment projects, the replacement and renovation of approximately 400 historic windows, balcony doors and façade elements. The total investment of approximately CZK 25.5 million was included in the Building Renovation Plan in the scope of Article 5 of Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency and, in addition to its aesthetic significance, it also led to a reduction in heat loss of the building and an improvement in the energy balance of the Supreme Court building.

At the same time, the Supreme Court was busily planning the renovation of the Plenary Hall, which was added to the historic Supreme Court building in 1984. The Plenary Hall, originally built for meetings of the former Regional Council of the Communist Party of Czechoslovakia, is still in its original state, which is not suitable for the judiciary, nor does it meet the needs of lectures or lecturing activities, for which it is also used. The renovation should ensure high-quality and dignified conditions not only for the judiciary itself, but also for the representation of the Czech Republic in the judicial sphere, where the role of the Supreme Court is irreplaceable. The Supreme Court plans to use the renovated Plenary Hall not only for the needs of the judiciary, but also for national and international events and conferences, which it regularly organises given its role in the judicial system.

A great deal 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

judges 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 budges 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	Adjusted budget	Actual drawdown
2018	351,328	351,848	359,124
2019	357,782	404,023	403,709
2020	430,871	478,441	443,168
2021	416,069	478,415	435,712

(amount in 1,000s of CZK)

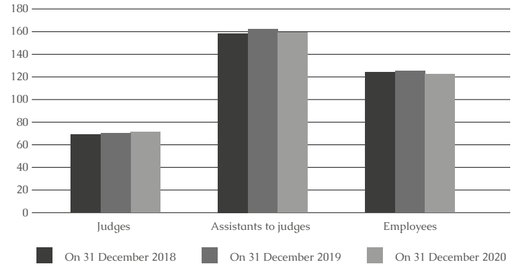
5. PERSONNEL DEPARTMENT

In 2021, the Supreme Court increased the number of its permanently assigned judges by one; the number of judicial assistants decreased slightly compared to the previous year-end. The number of other staff remained unchanged.

	On 31 December 2019	On 31 December 2020	On 31 December 2021
Judges	70	71	72
Assistants to judges	162	159	156
Employees	125	122	122

As of 31 December 2021, the following judge retired from the Supreme Court due to a transfer to a lower court at his own request: JUDr. Pavel Vrcha, Judge of the Civil and Commercial Division.

After 31 December 2021, the following judge ceased to hold the position of a judge of the Supreme Court: JUDr. Olga Puškinová, Civil and Commercial Division



6. PUBLIC RELATIONS DEPARTMENT, PROVISION OF INFORMATION

6. 1. Information Office

In 2021, 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 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 2021, parties and their legal counsels 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. This is specifically regulated by Section 243f(5), (6) of the Code of Civil Procedure and Section 265r(8), (9), (10) and Section 274a(2), (3) of the Code of Criminal Procedure. The parties to certain selected proceedings, usually civil proceedings which were concluded by a judgment, were thus initially informed about the outcome of the extraordinarry appeal proceedings newly also in this manner. However, even thereafter, there was always a proper service of the final and complete decision in the standard manner.

6. 2. Spokesperson

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 106/1999 Sb. on Freedom of Information. They are assisted in the processing of requests by an adviser on issues pertaining to Act No 106/1999 Sb.

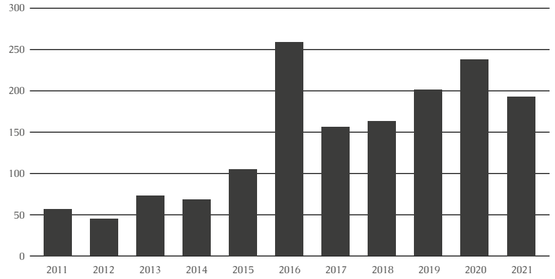
Every year, the Supreme Court's Public Relations Department compiles the Supreme Court Yearbook, published in Czech and English, prepares and publishes the electronic quarterly AEQUITAS, and releases other materials reporting on the Court's activities. Other channels of communication with the public are the Supreme Court's website at www.nsoud.cz and social media, i.e. Twitter, LinkedIn and Instagram.

In 2021, the spokesperson issued a total of 63 press releases.

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 filmed or audio-recorded interviews.

6. 3. Information under Act No 106/1999 Sb., on Free Access to Information

In the period from 1 January to 31 December 2021, the Supreme Court received a total of 193 written requests for information in accordance with Act No 106/1999, on Free Access to Information, as amended (hereinafter the "Information Act"). Of these, 160 were requests from natural person and 33 from legal persons. Compared to 2020, the "Zin" agenda has seen a decrease of 44 requests (19% decrease). In addition, one case from 2020 was reopened following a decision by the Appellate Body.



Number of requests to provide information during the period from 1 January – 31 December

A total of 26 requests (13% of the total requests) were not processed on their merits. Out of this number, 13 requests were withdrawn by the applicants, 12 requests were suspended in their entirety by the obliged entity for lack of competence and one request was referred to the Supreme Court for specific extraordinary appeal proceedings without substantive processing. In addition to the 12 requests that were suspended in their entirety, partial suspension was made in four other proceedings (in the case of file No Zin 71/2021, part of the request was suspended for lack of competence of the obliged entity and another part for non-payment of the fee). Thus, the most frequent reason for postponing a request was the fact that the request for the provision of information did not relate to the obligated entity's scope of competence in accordance with to Section 2(1) of the Information Act.

A total of 168 applicants were sent the requested information or a decision to reject or partially reject the request. This has always happened within the statutory deadlines for processing or postponing the request.

A total of 91 requests were granted in full, of which in 10 cases the applicants were fully referred to the published information. In another 36 cases, the information was provided partially and in another three cases the applicants were partially referred to the published information.

In 2021, only two requests resulted in the assessment of a fee for an exceptionally extensive search in accordance with Section 17(1) of the Information Act. However, due to non-payment of the fee, both of these requests were suspended.

The obliged entity rejected 36 requests in full and 40 in part. The most common reason for rejecting a request in full was that the applicants demanded the provision of new, i.e. non-existent information. Another very common reason for the rejection of requests for information was to protect the Supreme Court's decision-making in accordance with Section 11(4)(b) of the Information Act.

Several requests were also rejected because the applicants sought to know the obliged entity's opinion. The most common reason for partial rejection of a request was the fact that the obliged entity protected the personal data of participants in criminal or civil proceedings. In such a case, it partially rejected requests for information precisely to the extent of personal data which it did not provide.

A total of five appeals were lodged by the applicants against the decision to fully or partially reject a request. In four cases, the appeals were rejected by the appellate body, the Office for Personal Data Protection, and the original decision of the obliged entity was upheld.

In one case, the decision of the obliged entity to reject the request was overturned by the appellate body. In its decision of 24 March 2021, No UOOU-01219/21-3, the appellate body annulled the decision of the Supreme Court and referred the case back for a new hearing. Therefore, the obliged entity reconsidered the matter and rejected part of the request on the grounds of preserving the Supreme Court's cybersecurity, and in the remaining part it asked the applicant to pay a fee for an exceptionally extensive search for information. The request for

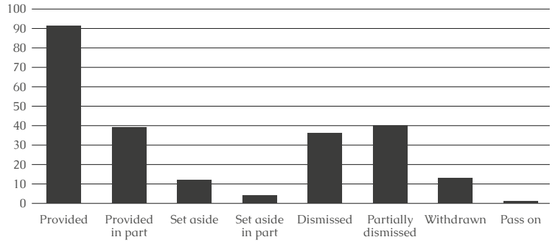
information was deferred in its remainder for the non-payment of the assessed fee.

In 2021, one applicant complained about the processing of the request for information, i.e. about the form, content or scope of the information provided. The reason for the complaint about the processing of the request for information file No Zin 40/2021 was the manner in which the applicant's question "whether the Supreme Court assigned cases according to the following illustrative case, i.e. in a sequential rotational order according to specialisation (agenda)" was answered. The applicant supplemented that request with an incorrect number of Panels in each agenda and, for that reason, an incorrect illustrative example of assignment. His request was that the obliged entity confirm the applicant's construction. The obliged entity considered that it had fully dealt with the request for information in this part by providing the following information: "However, the applicant has incorrectly depicted the rotation in the said judicial department as he has identified the wrong number of Panels for each agenda. The structure of the assignment of cases in the 28 Cdo Panel should therefore be as follows" (followed by the correct number of Panels in each agenda). The applicant's request was thus granted in its entirety, even though the applicant could have expected, for example, a different stylistic formulation of the reply.

The appellate body took the following position on the matter (quoting from the decision of the Office for Personal Data Protection of 6 May 2021, ref No UOOU-01991/21-3): "As to the specific inquiry, or rather request for information as to whether the Supreme Court assigns cases according to the following illustrative case, i.e. in a sequential rotational order according to specialisation (agenda), it was sufficient for the obliged entity to simply answer yes or no, however, given that the applicant's misconception about how the assignment worked was clear from the request (he incorrectly illustrated the rotation of the aforementioned judicial division in his example, as he had identified the wrong number of Panels for each agenda), the obliged entity further clarified how the process is actually carried out. Therefore, the Office agrees with the reasoning of the obliged entity that it has exhausted the subject of the request for information in its entirety, while providing the applicant with a number of accompanying information for his better understanding, not only on this particular inquiry."

In accordance with Section 5(4) of the Information Act, the Supreme Court published all answers to requests for information in due time on its website www.nsoud.cz, i.e. in a way that allows remote access. It published the information mostly in a pseudonymised, but unabridged form. For some more comprehensive answers, it then used the legal possibility to inform about the provided information by publishing accompanying information expressing its content.

In 2021, in addition to the above-mentioned requests for information in accordance with the Information Act, the Public Relations Department of the Supreme Court processed more than 10,000 written, telephone and also personally submitted requests and inquiries from the public, parties to proceedings or journalists.



Method for processing requests submitted in 2021

7. HANDLING OF COMPLAINTS UNDER ACT NO 6/2002 SB., ON COURTS AND JUDGES

Pursuant to Act No 6/2002 Sb. on Courts and Judges, 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 2021, there was only one justified complaint filed with the Supreme Court, which concerned the delay in proceedings before the Supreme Court.

In 2021, 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	1	0	0
Misconduct of court personnel	0	0	0
Impairment of the decorum of proceedings	0	0	0

(Handling of complaints under Act No 6/2002 Sb. in 2021)

8. DEPARTMENT OF DOCUMENTATION AND ANALYTICS OF CZECH CASE-LAW

Since its foundation on 1 October 2011, the Department of Documentation and Analytics of Czech Case-Law (the "Documentation Department") has steadily contributed to the Supreme Court on account of the expert work it produces. In terms of its activities, the Documentation 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 Records 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 Documentation 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 Documentation Department processes underlying documentation for the Supreme Court's comments on newly emerging legislation, or amendments thereto, provides assistance to individual judges and judicial assistants and supports the work of the Supreme Court's Department of Analytics and Comparative Law.

In 2018, the Documentation 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 Documentation 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 2021, the Documentation 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. The database now contains 1 168 court decisions; decisions newly provided to the Supreme Court are being processed on an ongoing basis.

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 Documentation 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 Documentation 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.

In January 2021, a request was addressed to the Supreme Court, on the basis of which the Documentation Department proceeded to continuously monitor and compile an inventory of newly issued decisions concerning family law regulation by the court that decides on extraordinary appeals.

The Documentation Department not only provides professional legal support, but it also works hard to develop the technical facilities of the court. In 2021, for example, it ensured the development and updating of systems used by the court, it carried out ongoing individual user training of court staff, including in the ASPI and Beck-online legal systems, in order to ensure and maintain the professional level of technical skills of their users.

In 2021, within the framework of the ECLI (European Case Law Identifier) project, the Documentation Department ensured the continuous identification of Supreme Court decisions and selected decisions of the High and Regional Courts with the ECLI identifier. Therefore, all indexed decisions are available to the public on-line and via the ECLI search engine on the e-justice portal. At the beginning of 2021, the Documentation Department approached its equivalent department at the Supreme Administrative Court, offering mainly technical support in the implementation of the ECLI at the Supreme Administrative Court. The Documentation Department has edited the existing metadata of the Supreme Court decisions following the revised metadata scheme of the ECLI 2.0 version in accordance with the amended wording of the Council Conclusions on the European Case Law Identifier (ECLI) and a minimum set of uniform metadata for case law (2019/C 360/01) of 24 October 2019. In this respect, among other matters, the Docu-

mentation Department plans to take into account in the metadata for ECLI and also the dates of the Constitutional Court decisions available to the Supreme Court within the agenda of constitutional complaints (internally designated constitutional complaints). In view of the global SARS-CoV-2 coronavirus pandemic, the meetings of the Expert Working Group on ECLI and ELI (European Legislation Identifier) within e-Law were once again postponed this year.

In March 2021, the Supreme Court established a Department of the Collection of Decisions and Standpoints. The operation of the Department of the Collection of Decisions and Standpoints was ensured by staff assigned to the Documentation Department. Therefore, with even less staff, the Documentation Department had to deal with an increasing amount of work, including technical support for the newly created Department.

8. 1. Department of the Collection of Decisions and Standpoints

In March 2021, the Department of the Collection of Decisions and Standpoints was established to take over and continue processing the agenda related to the publication of the Collection of Decisions amd Standpoints of the Supreme Court (the "Collection"). However, the essential task for the Department was to oversee the project of the digitisation of the Collection, i.e. its financing, creation of technical and legal documentation, participation in the development of the Collection application with an external supplier, the Ministry of Justice and other IT experts. The same applies to the periodical Selection of the Decisions of the European Court of Human Rihjts for Judicial Practice.

Through this project, the Supreme Court is following the current trends of digitisation and tries to ensure easier access to its fundamental decisions, better familiarity of the professional public with the decisions included in the Collection and, finally, its easier, more economical, greener and faster publication.

The Department of the Collection of Decisions and Standpoints works closely with Documentation Department to implement its agenda, in which it is fully involved.

9. THE SUPREME COURT LIBRARY

The Supreme Court Library exists primarily to serve judges, judicial assistants, 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 31,000 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 2021, the stock was expanded to include nearly 350 new titles. The library's services are used by approximately 1 000 people. Library staff answered more than 500 internal and external enquiries.

10. IT DEPARTMENT

The IT Department of the Supreme Court ensures the smooth operation of all sections and departments of the Supreme Court in terms of technology. One of its main priorities, shared with the entire justice sector, is the security of data and sensitive information. Increasing the level of protection of information technologies and software products consists not only in their modernisation, but also in regular provision of information and education to its users, i.e. all judges and staff. Therefore, all users are still required to undergo cyber security training every 12 months, culminating in a detailed test. This obligation is based on the valid legal regulations of the Ministry of Justice and other regulations that relate to information technologies.

In connection with the current global coronavirus situation, the Supreme Court's IT Department also had to respond to the multiplied demand to ensure the smooth operation of remote forms of working, with all necessary security measures. The services enabling communication via videoconferencing were also expanded and increased accordingly in 2021, in particular through the acquisition of the necessary IT equipment.

The provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of personal data (hereinafter the "GDPR") continue to be relevant to the provision of sensitive information and personal data. In particular, in connection with this 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, its software and access thereto were in full compliance with the newly applicable legal standards.

Today, not only the acceleration of all communication services is required, but also its reliability and security. Therefore, their operation at the Supreme Court is ensured in accordance with all applicable legal standards and regulations. Necessary attention is paid not only to the quality and capability of newly acquired IT equipment, but also to the credibility of all suppliers and contractors.

11. THE CONFLICT OF INTEREST DEPARTMENT

11. 1. Departmental Activities

Act No 159/2006 Sb. on Conflict 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 Conflict of Interest Department of the Supreme Court performs all activities in accordance with the law in relation to public officials – judges; in the past, it consisted of two employees, but due to the increased workload of the department, it was strengthened with an additional position as of 1 January 2021.

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 Sb. 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 2021 filed "interim notifications" for the period they were in office in the 2020 calendar year, and were required to do this by 30 June 2021.

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 the procedure for the submission of interim notifications for 2020, 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 enquiries and provided personal consultations. All necessary information was published in a specially created section on the Supreme Court's website.

In 2021, the department also received and recorded entry and exit notifications for judges who were freshly appointed or retiring.

In 2022, 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 2021, the department is expected to submit interim notifications for the period judges were in office in the 2020 calendar year. In addition, entry and exit notifications will be received and recorded.

11. 2. Statistical Data

As of 1 January 2021, 2,999 judges in office were registered in the Central Register of Notifications kept by the Ministry of Justice. As of the end of the statutory deadline for filing an interim notification for 2019, i.e. by 30 June 2021, one judge had died. Therefore, the legal obligation to file an interim notification for 2020 applied to 2,998 judges.

As of 31 December 2021, an interim notification for 2020 was filed for 2 997 judges. One judge did not file a notification for serious health reasons.

In accordance with Conflict of Interest Act, 101 judges took office in 2021. Those who had a deadline for submitting entry notifications in 2021 filed their notifications.

The notification obligation in connection with the termination of office in 2021 arose for 109 judges, 2 judges died. Judges, who had a deadline for submitting exit notifications in 2021 filed their notifications, with the exception of two judges. One judge who did not file the 2020 interim notice at the same time did not file the exit notice for serious health reasons. A notification obligation to file an exit notification arose for one judge, but the judge subsequently died.

12. DATA PROTECTION OFFICER

In 2021, the next phase of the implementation of the requirements arising from the General Data Protection Regulation into the internal processes of the Supreme Court was implemented. We can mention, for example, the adoption of a new Personal Data Protection Policy for the CCTV system in the Supreme Court building, the amendment to the Supreme Court's operating rules and the modification of the Supreme Court's filing and shredding plan. Judges and court staff were also trained in the area of personal data protection.

Co-operation was initiated with the Ministry of Justice and the Prosecutor General's Office concerning the amendment to the Ministry of Justice Instruction on ensuring information security in the environment of information and communication technologies in the agenda of the Ministry of Justice. Several meetings were held, attended by representatives of the Supreme Court, and a working group was formed to develop the "Personal Data Protection Policy", which is attached to this Instruction, and to comment on other policies related to the Policy.

In response to the coronavirus pandemic, advice and co-operation was provided on taking measures with regard to the protection of personal data; in particular with regard to compliance with the information obligation.

A methodology for the processing of personal data in connection with photographs and audiovisual recordings taken by the Supreme Court at events it organises has also been prepared.

As part of the Data Protection Officer's oversight activities, an audit report on personal data security in 2020 was issued.

An opinion was also prepared on the publication of personal data when judgments are announced on the official board of the court.

In relation to the high courts, which are supervised for the processing of personal data in relation to the exercise of judicial powers, communication continued on the internal rules governing the protection of personal data.

CLOSING REMARKS BY THE VICE-PRESIDENT OF THE SUPREME COURT

Although 2021 was, for our society as a whole, a year of uncertainty, change and new challenges, the Supreme Court passed the test. It has remained, along with the entire judiciary, a stable, solid and reliable beacon in rather turbulent waters. This 2021 Yearbook, however detailed, is not able to cover everything that happened in the past year. Nevertheless, it paints a fair picture of an institution which is tasked with, above all, protecting the rights and freedoms of (especially) the citizens of this country, through the unification of legal interpretation.

The Supreme Court is not, and must not become, an isolated island. On the contrary, given the absence of another (central) body that would connect the judiciary with those outside it, the Supreme Court's (other) role is to represent the judiciary and be the "voice of justice". I believe that it will continue to play this role in the years to come, as it did in 2021.

We enter the next year hoping to continue to succeed not only in fulfilling our mission as dictated by the law, but also in exceeding the expectations of the professional and lay public in this role. And we will certainly try to do exactly that.

Yours, Petr Šuk

Petr Šuk
Vice-President of the Supreme Court

The Supreme Court Yearbook 2021

Publisher
© The Supreme Court
Burešova 20
657 37 Brno

Editor: Mgr. Petr Tomíček
Graphics and DTP: studio KUTULULU, Brno
Printing: POINT CZ, s.r.o., Brno

1st edition, March 2022