The Supreme Court Yearbook

2022

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CONTENTS

FOREWORD BY THE PRESIDENT OF THE SUPREME COURT

Dear Readers,

We had a feeling 2022 would be a challenging year. And we had been preparing for this. We all knew that the world had changed after the coronavirus pandemic, even in areas of human endeavour that would have never crossed our minds. And in the end, this was not the worst that last year had to offer. That was yet to come. Perhaps none of us would have thought at the beginning of 2022 that Europe would be torn apart by war and the suffering of the people of Ukraine just across our borders, and that the threat of nuclear weapons would be discussed in a very real terms. It certainly prompted many of us to rethink our values and priorities. However, even in such difficult times, we cannot give up on the basic responsibilities that each of us has, whether as an individual or as part of our institution. And if we can see how unjust and cruel the world can be elsewhere, then it is all the more necessary to show that everything is different here, in good order and lawful.

Back in the first week of January 2023, we were pleased to issue a press release noting that the Supreme Court Judges were once again able to slightly reduce the overall backlog of cases with which they ended the 2022 calendar year. A total of 71 judges, with significant input from 10 trainee judges, handled a total of 6,935 cases across all agendas in 2022, with the registry registering 6,912 new cases in the agendas. We have maintained a high standard of length when dealing with individual cases. In the most exposed agendas, i.e. criminal extraordinary appeals in the Tdo register, the average time taken by each panel to decide on an extraordinary appeal was between 40 and 50 days; the average length of civil extraordinary appeal proceedings in the Cdo agenda is approximately 160 days. Our panel do not only decide quickly, but also with quality. This is evidenced, among other things, by the fact that in 2022, the Constitutional Court decided on 1,330 constitutional complaints challenging decisions of the Supreme Court. In only 3% of the proceedings, namely in 43 cases, the Constitutional Court upheld the complaints and overturned our decision. This is a similar percentage to the previous year. We must also remembered that while the judges of the Supreme Court are bound to rule strictly within the limits of the applicable laws, the Constitutional Court is the only one in our country with the power to repeal a law or a relevant part thereof. This is not an exceptional occurrence and some of the decisions overturned by the constitutional justices should be viewed from this perspective.

Each year, at the beginning of the yearbook, I highlight some of the most important decisions or opinions from both of our Divisions. The inconsistent decision-making practice of the Courts of First Instance and Courts of Appeal is reflected in the opinion of the Civil and Commercial Division of the Supreme Court of 9 March 2022, file No Cpjn 201/2021, where the Division concluded, inter alia, that if a conflict of interest arises in enforcement proceedings for the recovery of maintenance from the parent of a minor child – entitled person – between the other parent, who represents the child, and the child, a guardian must be appointed to represent the minor for the period and to the extent necessary to avoid a conflict of interest. The child's guardian is usually appointed by an authority for social and legal protection of children or a lawyer. In its opinion of 8 June 2022, file No Cpjn 202/2022, the Civil Division has expressed its opinion on the question of determining the amount which may not be deducted from the monthly wages of a debtor. The courts did not proceed uniformly in determining whether the non-seizable amount should be increased by the amount referred to in Section 26a(2)(a) of Act No 117/1995 Sb., as amended by Act No 17/2022 Sb. The Civil Division upheld such increase, stating that it shall also apply when determining the non-seizable amount for the purpose of determining the amount of the insolvency debtor's instalment in the case of discharge from debts through a repayment plan with realisation of assets in accordance with Section 398(1) and (3) of the Insolvency Act.

Opinion of the Criminal Division of the Supreme Court of 21 September 2022, file No Tpjn 301/2018, took the view in the first legal sentence that human and veterinary medicinal products intended for therapeutic purposes in humans or animals cannot be considered precursors within the meaning of Sections 283(1) and 286(1) of the Penal Code, even if they themselves contain a precursor, such as ephedrine and pseudoephedrine. It is irrelevant whether such medicinal products originate from a Member State of the European Union or from third countries. The second legal sentence of the opinion then states that the unauthorised handling of a medicinal preparation containing ephedrine or pseudoephedrine, in particular its use for the illicit production of narcotic drugs or psychotropic substances, may, under other conditions, fulfil the qualified facts of the completed act of the unauthorised production and other disposal with narcotic and psychotropic substances and poisons in accordance with Section 283 of the Penal Code, an attempt in accordance with Section 21 of the Penal Code to commit a criminal act under Section 283 of the Penal Code or preparation for this act in accordance with Section 20(1) of the penal Code to Section 283(2) to (4) of the Penal Code, or participation as an accessory in accordance with Section 24(1)(c) of the Penal Code to Section 283 of the Penal Code. These provisions shall also apply where there is an unauthorised import, export or transit of medicinal products containing ephedrine or pseudoephedrine for the purpose of their use in the specific illicit manufacture of narcotic drugs or psychotropic substances. The perpetrator's conduct here cannot be assessed as the criminal act of production and possession of items for illegal production of narcotic and psychotropic substances and poisons in accordance with Section 286 of the Penal Code, since in these cases the criminal act in accordance with Section 286 of the Penal Code is subsidiary to the criminal act

in accordance with Section 283 of the Penal Code, and the concurrence of these criminal acts is thus excluded. In the third legal sentence of this comprehensive opinion, it is stated that "another item" intended for the illicit production of narcotic drugs or psychotropic substances other than precursors within the meaning of Section 286 of the Penal Code may also be considered to be medicinal preparations containing precursors such as ephedrine and pseudoephedrine which the perpetrator procured or possessed for this purpose for himself or another.

An important decision of the Grand Panel of the Criminal Division of the Supreme Court was published in the Collection of Decisions and Standpoints, under No 7/2022 in the Criminal Decisions part. The first issue, resolved in the resolution of the Grand Panel of the Division of the Supreme Court on 22 September 2021, file No 15 Tdo 525/2021, was an interesting procedural question: which Grand Panel of which Supreme Court 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 its 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 of the Supreme Court, 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 of the Supreme Court, shall refer the case in accordance with Section 20(1) of Act No 6/2002 Sb. 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 addressed in an opinion of the Plenary Session 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 Penal 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 Sb., on Bankruptcy and Settlement (the Insolvency Act). 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.

With reference to, not only, these major decisions from last year, I would like to point out that the quality of the Czech judiciary enjoys a good reputation throughout Europe. This is partly based on the swiftness of our proceedings, although some critics try to convince the public otherwise. For example, according to the European Commission's EU Justice Scoreboard 2022, we are the third fastest in the entire European Union in civil justice in terms of contested civil and commercial proceedings at all levels of the judicial system. And even though there is still room for improvement, I know for a fact that the speed of our civil judicial proceedings is a point of envy for many developed Western countries. I have personally seen this, for example, in repeated meetings with representatives of the highest judicial institutions of Europe, with fellow presidents of the supreme judicial courts. By the way, I like meeting them, and they and their justice systems can be inspiring for us in many ways.

As the second half of 2022 was marked by the Czech Presidency of the Council of the European Union, the Supreme Court took on the task of organising the Colloquium of the Network of Presidents of the Supreme Judicial Courts of the Member States of the European Union from 13 to 15 October. On that occasion, we welcomed over 50 personalities of the European judiciary in Brno; we discussed judicial ethics, as well as ways to increase the credibility of the judiciary, especially the courts, in the eyes of the public. Vsevolod Kniaziev, the President of the Supreme Court of Ukraine, was able to be there in Brno when Ukraine officially became an observer country of the Network of the Presidents of the Supreme Judicial Courts of the EU, following a vote of the individual members. I am quite pleased to be able to welcome our dear guests, the highest representatives of European justice, once again this year in Brno, on the occasion of the 30th anniversary of the establishment of our institution, as the celebrations will culminate on 14 and 15 September.

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 Collection 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 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 10 October 2022. The Council of Judges consists of the President and four other members. Since 1 May 2019, the President has been Mr Lubomír Ptáček.

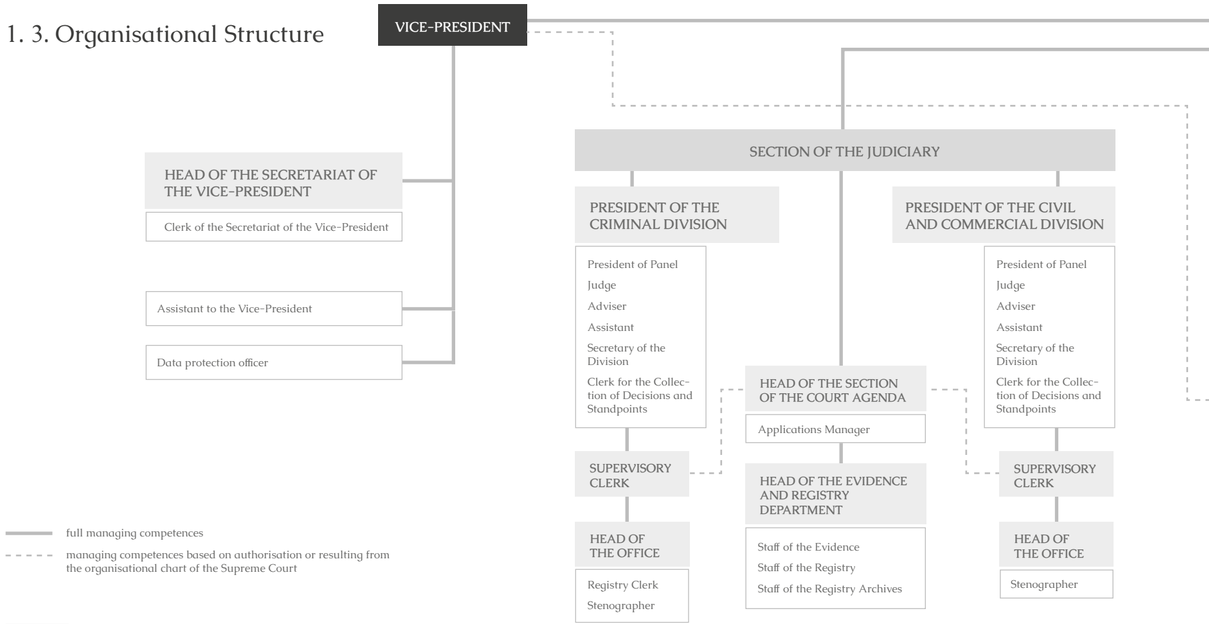
1. 2. Seat of the Supreme Court

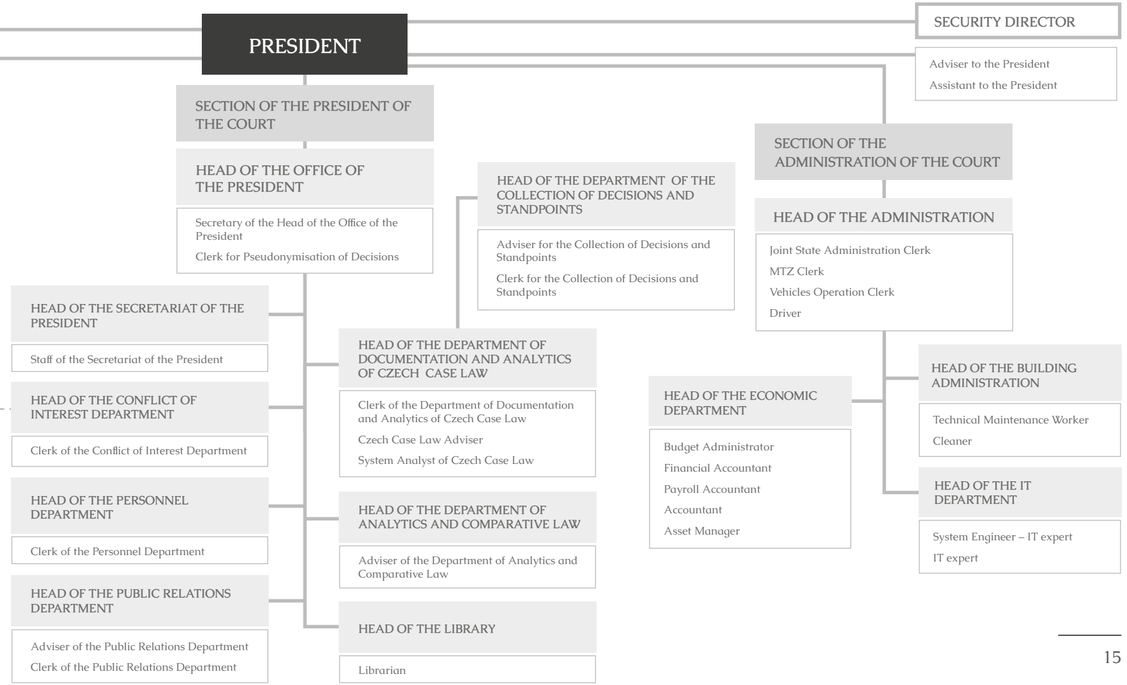
Address of the Supreme Court: Burešova 570/20, 657 37 Brno
Telephone: + 420 541 593 111
Email address: podatelna@nsoud.cz
Data mailbox ID: kccaa9t
Website: www.nsoud.cz
Twitter: @Nejvyssisoud
LinkedIn: https://cz.linkedin.com/company/nejvyšší-soud
Instagram: https://instagram.com/nejvyssisoud

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 at 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 the 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. 26 years after its establishment, the Supreme Court finally acquired 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





1. 4. Supreme Court Judges in 2022

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.
Mgr. Zdeněk Sajdl
Mgr. Viktor Sedlák
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. 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 2022

Criminal Division

Mgr. Roman Raab
JUDr. Monika Staniczková

Civil and Commercial Division

Mgr. Vladimír Beran
JUDr. Mgr. Marek Del Favero, Ph.D.
JUDr. Bořivoj Hájek
Mgr. Miroslav Hromada
JUDr. Michaela Janoušková
JUDr. Jan Kolba
Mgr. Rostislav Krhut
Mgr. Jana Misiačková
JUDr. Tomáš Pirk
JUDr. Hana Polášková Wincorová
JUDr. Martina Štolbová

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). Last year, the Plenary Session of the Supreme Court met only once, namely on 10 November 2022 to discuss amendments to the Rules of Procedure.

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

In terms of providing information about the Supreme Court's unifying activity and also 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 2022

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 Sb., on Courts, Judges, Lay Judges and State Administration of Courts and Amending Certain Other Acts, as amended (hereinafter also the "Act on Courts and Judges"), is the supreme 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.

At the end of 2022, the Civil and Commercial Division consisted of a president and fifty-four judges (eight of whom were assigned temporarily) assigned to twelve judicial departments (the 32 Cdo Depart-

ment was abolished as of 1 June 2021), based on the work schedule issued by the President of the Supreme Court for that year, or 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 obligations and others – Department 23; in matters of inheritance, 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 – Department 30; in matters of obligations, protection of consumers and others – Department 33. Department 31 then consists of the Grand Panel, which decides in accordance with Section 20 of the Act on Courts and Judges.

The composition of the individual procedural (three-member) panels has been determined directly by the work schedule over the past six years, including for 2022. The schedule established the mechanism by which the contested case was immediately assigned to a particular judge (based on a system of regular rotation) and from which the composition of the three-judge panel was determined (or rather pre-determined by the work schedule). The judge to whom the case was assigned drew up a draft decision, which was then put to the vote in the panel thus constituted. At the end of 2022, the new Rules of Procedure of the Supreme Court, effective as of 1 January 2023, were adopted, which, among other things, will return the matter of composition of the individual panels called to hear and decide a specific case to the hands of the presiding chair of the relevant judicial department (as determined by the work schedule); the presiding chairs will compose the panels primarily according to the criteria of internal specialisations, expertise of individual judges and their specific workload.

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 the 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.

The 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 Sb., 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 2016 this was the case in 8 cases, in 2017 in 8 cases, in 2018 in 3 cases, in 2019 in 6 cases, in 2020 in 10 cases, in 2021 in 4 cases and in 2022 in 6 cases (in one of which the case was referred to a three-judge panel of the Supreme Court).

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 Commercial 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 Sb., on Courts and Judges, as amended), on the basis of an evaluation of final and effective decisions that are mutually contradictory in terms of the legal opinions thereby expressed. In 2022, the Civil and Commercial Division issued two unifying opinions, the first on the issue of representation of a minor in enforcement proceedings for the recovery of maintenance in his favour and the second on the determination of the non-seizable amount that may not be deducted from the obligor's monthly wages (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 of Decisions and Standpoints the relevant or otherwise important decisions (not only its own), based on the decisions of a majority of all the judges of the relevant Division. The Civil and Commercial Division met a total of 10 times in 2022, among other matters to select key decided cases to be published in the Collection.

Every approved opinion of the Civil and Commercial Division of the Supreme Court is published in the Collection of Decisions and Standpoints and is also posted in electronic form on the website of the Supreme Court 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 2022, the number of pending cases older than two years was reduced significantly (there were 82 such cases in 2015 – by the end of 2021, only 7 were registered). At the end of 2022, there were only 7 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 2023 the total number of assistants in the Civil and Commercial Division was 108.

	Pending from earlier periods	New cases received	Decided	Pending
Cdo	1,568	3,893	3,875	1,586
Cul	0	10	10	0
ICdo (ICm)	138	167	147	158
Ncu	52	163	178	37
Nd	89	750	753	86
NSČR (INS)	70	209	207	72

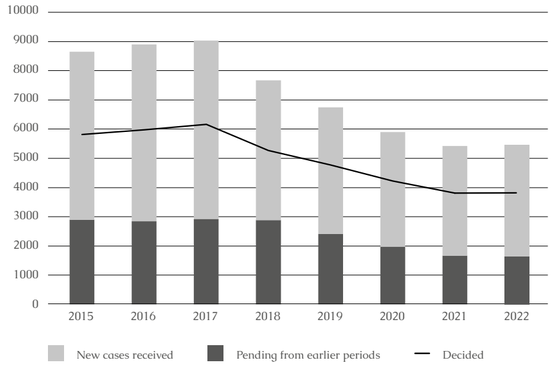
(Summary of the number of cases assigned to the Civil and Commercial Division in 2022)

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 2022 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 2022:

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
2021	1,662*	3,762	3,855	1,569
2022	1,568	3,893	3,875	1,586



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.

Between 2016 and 2022, the number of pending cases older than two years was gradually reduced significantly (there were 82 such cases in 2015 – by the end of 2021, only 14 were registered). At the end of 2022, there were only 7 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 years 2020 and 2021 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. During 2022, the incidence increased slightly; there were about 3.5% more new cases than in 2021 (3,893 files), and 3,875 cases were closed, so there was a slight increase in the backlog, taking the number to 1,586.

The anticipated surge in the agenda related to the end of the coronavirus pandemic and the resumption of the courts of appeal without restrictions in 2022 has not occurred, and the effects of the contagious disease pandemic and its end are likely to be more pronounced in the coming years. 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. In the context of the pandemic, the Supreme Court has so far mostly decided on extraordinary appeals raising the issue of waiving the delay in the deadline for a procedural act in accordance with Act No 191/2020 Sb., the "Lex Covid" (e.g. resolution of the Supreme Court of 24 August 2022, file No: 27 Cdo 2076/2021, discussed in more detail in chapter 2.3.4.4. below).

2. 3. 4. Selection of Important Decisions of the Civil and Commercial Division of the Supreme Court in 2022

2. 3. 4. 1. Opinion of the Civil and Commercial Division of the Supreme Court Published in 2022 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 Civil Division of the Supreme Court issued the following opinions in 2022, published in the Collection of Decisions and Standpoints of the Supreme Court.

Representation of a minor entitled person in the recovery of his maintenance

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 9 March 2022, file No **Cpjn 201/2021**, published under No 1/2022 in the Collection of Civil Decisions. In this opinion, the Civil Division concluded, inter alia, that if a conflict of interest arises in enforcement proceedings for the recovery of maintenance from the parent of a minor child – entitled person – between the other parent, who represents the child, and the child, a guardian must be appointed to represent the minor for the period and to the extent necessary to avoid a conflict of interest. The child's guardian is usually appointed by an authority for social and legal protection of children or a lawyer.

Determination of the non-seizable amount under Section 278 of the Code of Civil Procedure for 2022

In the opinion of 8 June 2022, file **No Cpjn 202/2022**, published under No 2/2022 in the Collection of Civil Decisions, the Civil Division of the Supreme Court expressed its opinion on the issue of determining the amount that may not be seized from the obligor's monthly wages. The courts did not proceed uniformly in determining whether the non-seizable amount should be increased by the amount referred to in Section 26a(2)(a) of Act No 117/1995 Sb., as amended by Act No 17/2022 Sb. The Civil Division upheld such increase, stating that it shall also apply when determining the non-seizable amount for the purpose of determining the amount of the (insolvency) debtor's instalment in the case of discharge from debts through a repayment plan with realisation of assets (Section 398(1) and (3) of the Insolvency Act).

2. 3. 4. 2. Decisions of the Grand Panel of the Civil and Commercial Division of the Supreme Court Published in the Collection in 2022

Liability of a road owner for defects in accessibility

In the judgment of 9 December 2020, file No **31 Cdo 1621/2020**, published under No 27/2022 in the Collection of Civil Decisions, the Grand Panel of the Civil Division of the Supreme Court held that if the conditions of the road owner's strict liability for harm under Act No 13/1997 Sb., on Roads, are not met, the general liability of the road owner under the Civil Code is not excluded.

Liability of a healthcare provider for damage to a patient's health

The obligation to compensate a patient for personal injury caused by a health care provider was dealt with by the Grand Panel of the Civil Division of the Supreme Court in its judgment of 9 February 2022, file No **31 Cdo 2376/2021**, published under No 86/2022 in the Collection of Civil Decisions, in which it held that to oblige a provider to compensate for harm solely on the basis of the "loss of chance" doctrine, i.e. without a sufficiently obvious causal connection between its actions (or omissions) and the harmful consequence, is contrary to the constitutional rule that no one may be forced to do what the law does not require.

Entitlement of a non-self-sufficient person for compensation for the provision of personal care by a family member

The amount of compensation due to a non-self-sufficient victim for personal care (Section 449(1), (3) of the Civil Code) provided by family members beyond the scope of ordinary family cooperation and solidarity was decided by the Grand Panel of the Civil Division of the Supreme Court in its judgment of 10 November 2021, file No **31 Cdo 1904/2021**, published under No 48/2022 in the Collection of Civil Decisions, concluding that the court should base its findings on the extent of the care required, the time spent exercising such care and the remuneration that would probably be charged for such care by care service providers in accordance with Decree No 505/2006 Sb. and which is not covered by the special-purpose care allowance in accordance with Act No 108/2006 Sb.

Time limit for payment of a court fee after request of a Court of First Instance

In its resolution of 12 January 2022, file No **31 Cdo 1622/2021**, published under No 75/2022 in the Collection of Civil Decisions, the Grand Panel of the Civil Division of the Supreme Court commented on the time limit for payment of a court fee determined by a court. It held that if the Court of First Instance asked the petitioner to pay the court fee for the extraordinary appeal within 15 days of the delivery of the resolution (invitation), the fact that the resolution became final and effective after the expiry of that period has no effect on the running of that period.

2. 3. 4. 3. Selected Decisions Approved by the Civil and Commercial Division of the Supreme Court in 2022 for Publication in the Collection of Decisions and Standpoints of the Supreme Court

Recognition of a foreign decision

The Supreme Court dealt with the possibility of deciding again on a motion for recognition of a foreign decision that has already been decided in the past in its resolution of 1 April 2021, file No **20 Cdo 2432/2020**, published under No 46/2022 in the Collection of Civil Decisions. In this resolution, the Supreme Court expressed the opinion that a new motion for recognition of a foreign decision previously recognised in the Czech Republic is precluded by res iudicata in accordance with Section 15(1)(c) of Act No 91/2012 Sb., governing private international law.

Service of a geometric plan

In its resolution of 13 April 2022, file No **20 Cdo 588/2022**, adopted for publication in the Collection of Decisions and Standpoints by the Civil and Commercial Division of the Supreme Court on 14 December 2022, the Supreme Court dealt with the service of a geometric plan. It concluded that a judgment, an integral part of which is formed by a geometric plan, drawn up as an original in paper form, cannot be served by means of a public data network to a data box, as its nature does not allow it.

Effectiveness of acceptance of a proposal to conclude a contract

The Supreme Court addressed the effectiveness of an acceptance of a proposal to conclude a contract in labour-law relationships in its judgment of 19 May 2021, file No **21 Cdo 3382/2020**, published under No 73/2022 in the Collection of Civil Decisions. It concluded that the effectiveness of an acceptance of a proposal to conclude a contract within the meaning of Section 1745 of the Civil Code may be determined by agreement of the parties to a labour-law relationship at a time other than the time at which the agreement to the content of the proposal is received by the proposer of such contract. Such other moment may be the execution of a written draft contract (already executed by the proposer) by the party to whom the draft is addressed. This also applies in the case of a draft contract for which the Labour Code requires a written form. The Supreme Court further held that a different agreement between the parties to determine the effective time of acceptance

of a proposal to conclude a contract may occur not only before the offer is submitted by the proposer to the party to whom the proposal is addressed; the proposal for such an agreement may also be contained in the offer itself.

Protection of family household of spouses or family

The protection of residence of spouses or family in a building in which the family household of the spouses or the family is located within the meaning of Section 747 of the Civil Code was addressed by the Supreme Court in its judgment of 16 March 2022, file No **21 Cdo 252/2021**, which was accepted for publication in the Collection of Decisions and Standpoints by the Civil and Commercial Division of the Supreme Court on 9 November 2022. The Supreme Court expressed the opinion that this protection applies not only to the house itself as a building and to the land on which the house is located, but also to the land adjacent to the house if it forms a single functional unit for the purpose of living in such unit. Such land may include land providing access to the house or land that is an adjacent fenced garden.

Settlement of joint debts forming part of community property

The Supreme Court dealt with the issue of settlement of joint debts in its judgment of 29 June 2021, file No **22 Cdo 753/2020**, published under No 23/2022 in the Collection of Civil Decisions. The Supreme Court stated that in proceedings for the settlement of the community property, the court should, as a general rule, attribute the community debts to both spouses equally, unless there are exceptional circumstances justifying the attribution of the debt to only one of them or to both of them in other than equal proportion. If in proceedings for the settlement of the community property a joint debt is attributed to only one of the spouses, the other spouse cannot in principle be ordered to pay a proportionate part of the attributed debt.

Action for protection of the right of ownership

The question whether a landowner may seek by a negatory action the removal of the consequences of an unjustified interference with his property right consisting in the fact that a movable object of another person is placed on his land without a legal reason, in the event that this movable object, which was previously located without a legal reason on another of his land, where it was placed by its owner, was moved by the landowner to another of his land, was dealt with by the Supreme Court in the judgment of 31 August 2021, file No **22 Cdo 1925/2021**, published under No 77/2022 in the Collection of Civil Decisions. It explained that the owner of land on which another person's property is placed without a first reason cannot be denied protection under Section 1042 of the Civil Code simply because he moved the property, even to another of his own land, without fulfilling the conditions of self-help in accordance with Section 14(1) of the Civil Code, if he had reasonable grounds for doing so. These grounds can be economic (i.e. the object being in a certain place prevents the economic use of the land) or other (e.g. the object is an eyesore).

Res iudicata in proceedings for a declaration that immovable property is not encumbered by a security interest established by a decision of a tax administrator

The relationship between a court's decision on an action against a tax administrator's decision on the establishment of a security interest in immovable property filed in accordance with Section 65 et seq. of the Code of Administrative Justice and the proceedings on an action for a declaration that immovable property is not encumbered by a security interest established by a tax administrator's decision was dealt with by the Supreme Court in its resolution of 5 November 2021, file No **21 Cdo 1212/2021**, published under No 55/2022 in the Collection of Civil Decisions. It concluded that the court's decision on the action against the tax administrator's decision on the establishment of a security interest in immovable property filed in accordance with Section 65 et seq. of the Code of Administrative Justice does not constitute an obstacle to the proceedings on the action for a declaration that the immovable property is not encumbered by a security interest established by the tax administrator's decision.

Determination of the normal market price within the meaning of Article 23 of the CMR Convention

The Supreme Court addressed the issue of determining the normal market price of a consignment in disputes for compensation for damage incurred during transport, which is subject to the CMR regulation, in its judgment of 31 August 2021, file No **23 Cdo 1628/2020**, published under No 52/2022 in the Collection of Civil Decisions. The Court held that the normal market price within the meaning of Article 23(2) of the CMR Convention is the price resulting from the operation of normal market mechanisms. A purchase price agreed between a seller and a buyer can be in principle considered as such. If the normal market price of a consignment cannot be determined in the above manner, the court shall calculate the compensation on the basis of the general value of the goods of the same nature and quality at the place and time the consignment was accepted for transport.

Conflict of rights arising from defective performance and rights arising from mistake and settlement of mutual performance

The Supreme Court dealt with the issue of conflict of rights from defective performance and rights from mistake in its judgment of 19 April 2022, file No **23 Cdo 2042/2020**, which was accepted for publication in the Collection of Decisions and Standpoints by the Civil and Commercial Division of the Supreme Court on 9 November 2022, and held that a buyer may successfully invoke the objection of relative invalidity due to a mistake about the decisive circumstances consisting in the agreed characteristics of the object of purchase, regardless of whether the defective performance (the object of purchase) was subsequently provided to the buyer and whether the buyer also acquired rights arising from the defective performance. At the same time, it emphasised that, in exercising the right to reimbursement of performance under an invalid contract, the applicant does not have to express in the claim the mutual conditionality of performance. The court will examine whether

the right to reimbursement claimed in the action is conditional on the applicant's restitution obligation only on the defendant's objection and, if justified, it will express reciprocity in the operative part of the decision. Where the parties are to reimburse each other for monetary performance or compensation, the court will only award the applicant the amount by which the monetary performance provided by the applicant to the defendant (monetary compensation) exceeds the monetary performance (monetary compensation) provided by the defendant to the applicant.

Legal presumptions and fictions in contracts

The Supreme Court has ruled on the issue of validity of parties' contractual arrangements when they use verbal expressions in the contract which usually express legal presumptions or legal fictions in legal norms (e.g. "it is deemed", "it is assumed", "it is understood that", etc.). In its judgment of 23 March 2022, file No **23 Cdo 1001/2021**, adopted for publication in the Collection of Decisions and Standpoints by the Civil and Commercial Division of the Supreme Court on 14 December 2022, the Supreme Court held that if the parties to a contract use verbal expressions that usually express legal presumptions or legal fictions in legal norms (e.g. "it is deemed", "it is assumed", "it is understood that", etc.) to express a certain consequence foreseen by them, such a contractual arrangement is not invalid for this reason alone. In assessing whether such an arrangement is contrary to a statutory prohibition or good morals, it is necessary to examine in each individual case the content of the arrangement. At the same time, it is necessary to assess the legal position of the parties in which they concluded the arrangement. The Supreme Court came to these general conclusions in a specific case of an agreement between two entrepreneurs in their business activity that "the work is deemed to be handed over if the client fails to appear to accept the work, unreasonably and repeatedly (at least twice)", aiming to contractually regulate the conditions for handing over the work as one of the prerequisites for the contractor's right to payment of the agreed price. Such an agreement between the parties is not prohibited by the Civil Code per se, nor is it contrary to good morals.

Application of monetary compensation for other than proprietary harm in insolvency proceedings

The Supreme Court dealt with the application of monetary compensation for other than proprietary harm in insolvency proceedings, specifically with the obstacles to the application of such a claim before the general courts, in its resolution of 30 September 2021, file No **29 Cdo 1745/2021**, published under No 63/2022 in the Collection of Civil Decisions. In this resolution, the Court explained that if the unjustified interference with personality rights, from which the injured party derives the right to compensation for other than proprietary harm, occurred before the decision on the bankruptcy of the person responsible for such interference (but no later than before the expiry of the deadline for filing claims defined in the bankruptcy decision), monetary compensation for other than proprietary harm is a claim to be filed in the insolvency proceedings, subject to the limitations set out in Section 109(1)(a) of the Insolvency Act.

Incapacity to inherit

Incapacity to inherit within the meaning of Section 1481 of the Civil Code was dealt with by the Supreme Court in the resolution of 16 June 2021, file No **24 Cdo 106/2021**, published under No 47/2022 in the Collection of Civil Decisions. It concluded that the decisive factor for deciding on the incapacity to inherit is whether the court in the proceedings on the estate concludes that the act committed by the heir (e.g. participation in the suicide of the testator in accordance with Section 144 of the Penal Code) is directed against the testator; a final and effective judgment of the court in criminal proceedings determining that it was a deliberate criminal act committed by the heir is not sufficient.

Determination of the amount of compensation for loss of amenity

In its judgment of 15 December 2021, file No **25 Cdo 1361/2021**, published under No 90/2022 in the Collection of Civil Decisions, the Supreme Court held that in determining the amount of compensation for pain and loss of amenity, the interpretation of Section 2958 of the Civil Code based on a non-binding aid, also referred to as the Methodology for Compensation for Other Than Proprietary Harm, is a competent and appropriate approach to fulfilling the legal principle of decency (second sentence of Section 2958 of the Civil Code) and the requirement of reasonable expectations (Section 13 of the Civil Code). In order to objectify and medically classify permanent health effects, the court shall determine the percentage in which the injured person is disabled from engaging in life activities as defined in the modified International Classification of Functioning, Disability and Health, based on the opinion of a medical expert in the field of pain and functional capacity assessment in physical injury. Using this percentage of 400 times the average gross monthly nominal wage for the recalculated number of employees in the national economy for the year preceding the year in which the victim's health stabilized, the court shall express objectified compensation for the loss of amenity, which it will adjust to the final form by increasing or decreasing it (modification) according to the specific circumstances of the case and the circumstances of the victim by taking into account in particular his age, the intensity of previous involvement in social activities or the circumstances listed in Section 2957 of the Civil Code.

Determination of damages for pain and suffering

The Supreme Court followed up on a previous decision in its judgment of 24 February 2022, file No **25 Cdo 2207/2020**, accepted for publication in the Collection of Decisions and Standpoints by the Civil and Commercial Division of the Supreme Court on 9 November 2022. In this judgment, it concluded that to objectify pain, the court shall find a pain score determined in accordance with Part B of the Methodology. To determine the amount of compensation, the resulting point total shall be multiplied by an amount corresponding to the value of one point, which is one per cent of the said average wage for the calendar year preceding the year in which the claim arose (pain occurred). The court thusly quantifies the basic compensation, which must also be modified according to the specific circumstances of the case using the considerations given by law (Section 2957 of the Civil Code) and case law.

Liability for harm caused by an employee

The Supreme Court attempted to resolve the issue of the unclear wording of Section 2914 of the Civil Code on liability for harm caused by an assisting person in the judgment of 26 October 2021, file No **25 Cdo 1029/2021**, published under No 51/2022 in the Collection of Civil Decisions, in which it concluded, for the time being, for the circle of assistants from among employees, that the employer is obliged to compensate exclusively for the harm caused by the employee's negligence to a third party in the course of work performed for the employer while being bound by the employer's instructions.

Legal nature of the advance on the profit share

An exhaustive interpretation of the legal nature of the advance on the profit share (and the process of making a decision on its payment), as well as clarification of the concept of "sufficient funds" in accordance with Section 40(2) of Act No 90/2012 Sb., on Companies and Cooperatives (Business Corporations Act), is provided by the Supreme Court judgment of 9 March 2022, file No **27 Cdo 3330/2020**, accepted for publication in the Collection of Decisions and Standpoints by the Civil and Commercial Division of the Supreme Court on 9 November 2022. According to the conclusions of the Supreme Court, if the conditions provided for by law (or even by the articles of association) are met, the shareholders are entitled to an advance on the profit share, representing the shareholder's claim against the company and the company's corresponding obligation to pay the advance.

Settlement of community residence of spouses after the dissolution of the marriage

The Supreme Court has dealt with the issues related to the settlement of the spouses' community residence after the dissolution of the marriage in its judgment of 23 March 2022, file No **26 Cdo 1040/2021**, adopted for publication in the Collection of Decisions and Standpoints by the Civil and Commercial Division of the Supreme Court on 9 November 2022, and it concluded that the separate regulation of the settlement of community property (Section 736 et seq. of the Civil Code) and the separate regulation of the cancellation and settlement of co-ownership (Section 1140 et seq. of the Civil Code) do not allow the application of Section 768 of the Civil Code.

Final and effective court decision on the division of replacement land in a restitution case

The Supreme Court dealt with the exception from the statutory condition for the issuance of a decision of the Building Authority on the division or consolidation of land resulting from Sections 76(1), 77(d) and 82(1) of the Building Act in its judgment of 27 April 2021, file No **28 Cdo 509/2021**, published under No 13/2022 in the Collection of Civil Decisions. It concluded that a decision in accordance with a special legal regulation within the meaning of Section 82(3) of Act No 183/2006 Sb., the issuance of which does not require a decision of the Building Authority on the division of the land, is also a final and effective court judgment on the substitution of the expression of will of the obliged

person to conclude a contract with the entitled person, in accordance with Section 11a(1) of Act No 229/1991 Sb., on the gratuitous transfer of replacement land in a situation where, although the land is not suitable for delivery to the entitled person in its entire area, its transferability is determined with respect to the part separated by a geometric plan which becomes an integral part of the judgment.

Excessive use of a co-ownership share by letting the whole thing to be used by another

The situation when one of the co-owners of an immovable property, without an agreement with the other co-owners, without a decision of the majority co-owner or without a court decision, lets the entire property into the use of another, thereby excessively using his own co-ownership share, was dealt with by the Supreme Court in its judgment of 23 June 2021, file No **28 Cdo 1519/2021**, published under No 25/2022 in the Collection of Civil Decisions. It held that the co-owner concerned may also be considered to seek unjust enrichment from the user of the thing who, taking into account all the circumstances of the case, was not objectively reasonably convinced that the co-owner who allowed him to use the whole thing was entitled to do so.

Continuity of entries in the Cadastre of Real Estate

Judgment of the Supreme Court of 30 November 2021, file No **24 Cdo 2728/2020**, published under No 80/2022 in the Collection of Civil Decisions, states that the continuity of a proposed entry with the existing entries in the Cadastre is not given if the application for authorisation of the entry under a donation contract in favour of the donee (one of the heirs), which he concluded with the testator as the donor, was filed after the resolution confirming the acquisition of the inheritance on the basis of the heirs' legal portions became final and effective, on the basis of which the registration of the donated co-ownership right in immovable property in favour of the heirs has been registered with legal effects preceding the filing of the application for authorisation of registration under the donation contract.

Lawyer's duty of confidentiality when asserting claims against a client in insolvency proceedings

The duty of confidentiality of a lawyer who asserts his claim in insolvency proceedings conducted on the property of his client was addressed by the Supreme Court in the judgment of 31 January 2022, panel No **29 Cdo 12/2020**, accepted for publication in the Collection of Decisions and Standpoints by the Civil and Commercial Division of the Supreme Court on 12 October 2022. In this judgment, it explained that to the extent necessary for the proceedings on the contesting action by which the insolvency administrator seeks against the lawyer to determine the ineffectiveness of the legal act by which the insolvency debtor (client or his legal successor) paid him a claim for representation fees and for legal advice and services rendered, and (at the same time) the payment (return) of the consideration provided to the insolvency estate, the lawyer is not bound by the duty of confidentiality; within the meaning of Section 21(4) of the Advocacy Act, such a dispute shall be deemed to be

a dispute (for payment of the counsel fee) between the lawyer and the client or the client's legal successor.

Lack of an applicant's capacity to be a party to the proceedings

The Supreme Court dealt with the issue of overcoming the lack of an applicant's capacity to be a party to the proceedings on the date of their commencement in its resolution of 11 May 2021, file No **30 Cdo 207/2021**, published under No 1/2022 in the Collection of Civil Decisions. It stated that such lack always leads to the termination of the proceedings and cannot be remedied by means of an urgent action on behalf of the deceased. In such a case, the acts of the agent must already be done on behalf of the legal successors of the testator.

Causal link in case of injury or death of a person who has been arrested and placed in a police cell

The causal link in the case of injury or death of a person who has been detained and placed in a police cell was dealt with by the Supreme Court in its judgment of 10 November 2021, file No **30 Cdo 883/2021**, published under No 85/2022 in the Collection of Civil Decisions. The Supreme Court concluded that if there is a violation of the legal norms established to protect the life and health of a person who has been detained and placed in a police cell, there is usually a causal link between that violation and the injury or death of that person, unless it is proven that such injury or death would have occurred even if the violation had not occurred.

Laesio enormis

In its judgment of 25 January 2022, file No **33 Cdo 42/2021**, adopted for publication in the Collection of Decisions and Standpoints by the Civil and Commercial Division of the Supreme Court on 9 November 2022, the Supreme Court concluded that in the context of the current legal regulation (Section 1793 of the Civil Code), which does not set any specific limit for laesio enormis, the prohibition of reduction by more than half can be considered as a default rule. Therefore, the limit for a gross disproportion of the mutual performances will be set at approximately half of the mutual performances, and the court will deviate from such limit only if there are special reasons for doing so.

2. 3. 4. 4. Some Other Selected Decisions Issued by the Civil and Commercial Division of the Supreme Court in 2022

Motion to stay an execution in connection with the debtor's exemption from payment of claims

The fulfilment of the prerequisites for staying an execution in connection with the debtor's exemption within the meaning of Sections 414 and 415 of the Insolvency Act was addressed by the Supreme Court in its resolution of 16 February 2022, file No **20 Cdo 84/2022**. It expressed the opinion that the exemption in accordance with Sections 414 and 415 of the Insolvency Act within the meaning of Section 416(1) of the same does not apply to the debtor's conduct which resulted in the death of the victim, if such conduct has been assessed by a final and effec-

tive judgment of a criminal court as a concurrent crime of bodily harm through negligence resulting in the death of the victim in accordance with Section 224(1), (2) of the Criminal Code (old), with the intentional criminal offence of menace under influence of an addictive substance in accordance with Section 201(1), (2)(c) of the Criminal Code (old).

Monetary compensation in the event of withdrawal from a contract for pecuniary interest

In its judgment of 16 August 2022, file No **23 Cdo 1311/2022**, the Supreme Court dealt with the interpretation of Section 3002(2) of the Civil Code. It concluded that this norm also applies to cases of contracts cancelled by a statutory provision. However, this provision shall not apply in the case of approximately simultaneous performance of the parties.

Publication of a representative's communication in a regional journal

In its judgment of 29 June 2022, file No **25 Cdo 1041/2021**, the Supreme Court addressed the questions of whether the publisher of a regional journal is obliged to publish the full text of a representative's communication or if it is entitled to redact (shorten) it and whether the publisher fulfils the obligations in accordance with Sections 4a and 11a of Act No 46/2000 Sb., the Press Act, as amended by Act No 305/2013 Sb., if it publishes a redacted version of the communication or additional information in the press while publishing the full text on the internet, which have not been addressed in the decision-making practice of the Court of Appeal so far. It concluded that the last sentence of Section 11a(1) of the Press Act makes it clear that the publisher fulfils the obligation to publish the supplementary information by publishing it in the printed regional journal of the local government in which it has not published (or has published incompletely) the representative's communication. If a representative requests that a communication be published in the print version of a journal, the publisher is obliged to publish the communication and, where appropriate, additional information in the print version of the journal. Posting the supplementary information in full on the website of the relevant municipal district does not constitute publication of the supplementary information in a regional periodical published by the district, even if the publisher publishes a substantially redacted version of the supplementary information in the journal.

Representation of unit owners by an association of unit owners in claiming defects of the unit

Who and to what extent is entitled to claim defects in a house divided into units (in co-ownership flats), in which an association of unit owners has been established, is discussed in the resolution of the Supreme Court of 14 September 2022, panel No **26 ICdo 28/2022**. It solves in practice the controversial issue of representation of unit owners in claiming defects of the unit, both defects in the common parts of the building and the land, as well as in the apartment (or non-residential space) itself, and justifies why, in claiming the rights incurred by the unit owners due to the defect of the unit, the association acts as an indirect representative of the unit owners on its own behalf in accordance with Section 1196(2) of the Civil Code.

Excuse of default (failure to comply with a time limit) by analogous application of Section 2 of Lex COVID

The question of whether the court may waive a default in payment of the court fee by analogous application of Section 2 of Act No 191/2020 Sb., on Certain Measures to Mitigate the Effects of the SARS CoV-2 Coronavirus Epidemic on Persons Involved in Court Proceedings, Aggrieved Parties, Cictims of Crime and Legal Persons and Amending the Insolvency Act and the Code of Civil Procedure (hereinafter the "Lex COVID"), was resolved by the Supreme Court in its resolution of 24 August 2022, file No **27 Cdo 2076/2021**. In this decision, the Supreme Court explains that the purpose of the Lex COVID was to allow for the excuse of delays even for those deadlines for which this is not possible under the general rules (in a "normal" situation), if the delay was caused by an extraordinary measure during an epidemic which prevented or made it substantially more difficult for the party or its representative to perform the act in time (within the time limit).

Subordination of public claims in insolvency

The Supreme Court dealt with the subordination of public claims in the case of insolvency in the judgment of 28 April 2022, panel No **29 ICdo 73/2020**. It concluded that the interest, late payment interest and late payment fee from the claims of registered creditors and the contractual penalty agreed in case of delay in the fulfilment of the registered claim, if such contractual penalty is not a business debt, are subordinated claims, within the meaning of the second sentence of Section 172(2), of the Insolvency Act, in an amount in which they exceed the amount of the principal of the registered claim at the time of its origination, even if they constitute related civil fruits or a contractual penalty arising from a delay in the payment of a public debt, including a debt due to public health insurance premiums insurance. It further added that the regulation in question applies only to the types of related civil fruits (and contractual penalties) named therein, so that the statutory late payment interest for failure to pay public health insurance premiums is not a subordinated claim within the meaning of the second sentence of Section 172(2) of the Insolvency Act.

Party to the proceedings within the meaning of Section 7(1) of Act No 82/1998 Sb. in the case of administrative proceedings under review

The question of who can be considered a party to the proceedings within the meaning of Section 7(1) of Act No 82/1998 Sb. was addressed by the Supreme Court in its judgment of 10 August 2022, file No **30 Cdo 1339/2022**. It concluded that a party to the proceedings should also be considered to be a person who, although he could not have been a party to the administrative proceedings in which an unlawful decision was issued, since the legal regulation does not grant him the status of a party to the proceedings, was an applicant in proceedings before an administrative court on an action in accordance with Section 65(1) of Act No 150/2002 Sb., in which the administrative decision in question was annulled as unlawful.

2. 4. The Criminal Division of the Supreme Court in 2022

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 the 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 law.

An extraordinary appeal is an extraordinary remedial measure which can be used to dispute a final and effective decision of a Court of Second Instance on the merits (Section 265a of the Code of Criminal Procedure), but only with reference to one of the grounds for extraordinary appeal listed exhaustively in Section 265b(1) and (2) of the Code of Criminal Procedure. The subject of the extraordinary appeal proceedings is not a review of the facts in general, but only an examination of certain substantive legal and procedural issues in the contested decision or in the proceedings preceding it, including certain fundamental issues relating to producing evidence. An extraordinary appeal may be lodged by the Supreme Public Prosecutor and the competent authority of the European Public Prosecutor's Office – for the incorrectness of any operative part of a court's decision, both in favour of or against the defendant, and also by the defendant for the incorrectness of the operative part of a court's decision that directly affects him. An extraordinary appeal against the defendant cannot be filed solely on the grounds that the court acted in accordance with Sections 259(4), 264(2), 273 or 289(b) of the Code of Criminal Procedure. The defendant may file an extraordinary appeal only through a lawyer; a submission made by the defendant otherwise than through a lawyer shall not be deemed to be an extraordinary appeal – if applicable, it will be treated differently based on its content. An extraordinary appeal must be lodged with the court which decided the case at first instance within two months of receipt of a copy of the decision against which the extraordinary appeal is directed. The president of the panel of the Court of First Instance shall deliver a copy of an extraordinary appeal of the defendant to the Supreme Public Prosecutor and a copy of an extraordinary appeal of the Supreme Public Prosecutor to the lawyer of the defendant and to the defendant with a notice that they may comment on the extraordinary appeal in writing and agree to hear the appeal in closed session of the Court of Extraordinary Appeal. Once the time limit for filing an extraordinary appeal has expired for all persons entitled to file such appeal, the Court of First Instance shall submit the file to the Supreme Court. The Supreme Court shall reject an appeal on the grounds set out exhaustively in Section 265i(1) of the Code of Criminal Procedure, in particular if certain formal conditions are not met, if the extraordinary appeal is brought on grounds other than those set out in the grounds for extraordinary appeal, or if the petitioner repeats in the extraordinary appeal objections which have already been fully and substantively correctly dealt with by the courts of lower instances; the Supreme Court shall, in the justification of the rejecting resolution, only briefly state the reason for the rejection of the extraordinary appeal by referring to the circumstances relating to the statutory ground for rejection. The Supreme Court shall, after a review, dismiss the extraordinary appeal if it finds that it is unsubstantiated (Section 265j of the Code of Criminal Procedure). If the Supreme Court does not reject or dismiss the extraordinary appeal, it shall review the contested decision and the proceedings preceding it only to the extent and on the grounds stated in the extraordinary appeal. Upon review, the Supreme Court shall quash the contested decision or part thereof, or, where appropriate, the defective proceedings preceding it, if it finds that the extraordinary appeal is substantiated. If, after quashing the contested decision or part thereof, it is necessary to make a new decision in the case, the Supreme Court shall, as

a rule, order the court whose decision is at hand to reconsider and decide the case to the extent necessary (Section 265k of the Code of Criminal Procedure). The court or other body responsible for criminal proceedings to which the case has been referred for a new hearing and decision is bound by the legal opinion of the Supreme Court (Section 265s(1) of the Code of Criminal Procedure). If the contested decision has been quashed only as a result of an extraordinary appeal brought in favour of the defendant, the decision cannot be changed to his disadvantage in the new proceedings (Section 265s(2) of the Code of Criminal Procedure). However, the Supreme Court may also immediately decide on the case by judgment if it quashes the contested decision, unless there are obstacles to doing so (Section 265m of the Code of Criminal Procedure).

The other extraordinary remedy admissible before the Supreme Court is a complaint on the violation of 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 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 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 complaints on the violation of 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 the 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 Criminal Records [Section 4(2), (3), (4) and Section 4a(3) of Act No 269/1994 Sb., on Criminal Records, as amended];
– decisions 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 decisions on the exclusion of the extradited person from the jurisdiction of bodies in charge of criminal proceedings in accordance with Section 89(2) of the above Act; on motions for a decision on whether the extradited person is exempted from the jurisdiction of the bodies in charge of criminal proceedings in accordance with Sections 92(6) and 95(2) of the above Act; on motions of the Minister of Justice to review a decision on the admissibility of extradition of a person for prosecution to a foreign State in accordance with Section 95(5), (6) of the above Act; on motions for a decision on whether the person against whom a recognised foreign decision is directed is exempted from the jurisdiction of the bodies in charge of criminal proceedings in accordance with Section 120(5) of the above Act; on motions of the Minister of Justice to review a court decision on the recognition and enforcement of a foreign decision imposing an unconditional sentence of imprisonment or a protective measure involving deprivation of liberty in accordance with Section 128(1) of the above Act; on motions to take a surrendered person into transit detention for the period of transit through the territory of the Czech Republic in accordance with Section 143(4) of the above Act; on refusals to hand over information classified under the Classified Information Protection Act to an international court in accordance with Section 158(1), (2) of the above Act, etc.);
– decisions on motions for decision whether a certain person is excluded from the jurisdiction and competence of the bodies in charge of criminal proceedings, if there is any doubt about it (Section 10(2) of the Code of Criminal Procedure);

Tz
– Decisions on complaints on the violation of law, filed by the Minister of Justice against public prosecutors' and courts' decisions in proceedings 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 complaints on the violation of law in three-member Panels composed of the President of the 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.

No cases were submitted to the Grand Panel of the Criminal Division for decision in 2022, but one order of the Grand Panel of the Criminal Division of the Supreme Court made in 2021 was approved for publication in the Collection of Decisions and Standpoints (see below).

All decisions of the Grand Panel of the Criminal Division of the Supreme Court, as well as all decisions of the three-member Panels, are published in anonymised form on the Supreme Court's website at www.nsoud.cz, which also contributes to the unification of decision-making practice in criminal cases.

The Criminal Division of the Supreme Court also has a Records Panel, which is composed of its President and eight other judges of the Criminal Division. The Records Panel meets to discuss the draft decisions of panels of the Criminal Division of the Supreme Court and decisions of lower courts in criminal cases that have been recommended to be generalised and to be discussed by the Criminal Division regarding the approval of their publication in the Collection of Decisions and Standpoints. Publication of a decision in the Collection of Decisions and Standpoints requires the consent of an absolute majority of all the judges of the Criminal Division. In 2022, a total of six sessions of the Criminal Division of the Supreme Court were held, at which a total of 64 decisions were discussed (some of them repeatedly), of which the Criminal Division approved a total of 43 decisions for publication in the Collection of Decisions and Standpoints of the Supreme Court. Two motions for an opinion of the Criminal Division were also discussed and one of them has been approved so far. The Records Panel decides which of the decisions it discusses will be referred to the next approval process, i.e. sent to the relevant authorities and institutions for comments and then submitted to a session of the Criminal Division. The Records Panel of the Criminal Division also considers other materials on the proposal of the President of the Criminal Division or the President of the Records Panel, in particular motions for the Criminal Division to adopt an opinion on the decision-making activities of courts and drafts of such opinions. In 2022, a total of seven sessions of the Records Panel

of the Criminal Division were held, at which about 90 decisions of the Supreme Court and lower courts, 2 draft opinions and some other materials and motions were discussed (sometimes repeatedly).

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 a 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

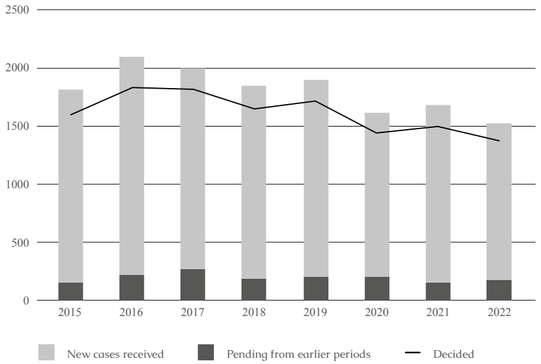
The first table represents an overview of the decision-making activity of the Criminal Division of the Supreme Court in 2022 in its overall agenda. The first column points out the amount of cases in each particular agenda allocated for adjudicating from the previous year (2021).

	Pending from 2021	Newly contested	Decided	Pending
Tdo	147	1,207	1,214	140
Tcu	33	254	279	8
Tz	25	136	150	11
Td	1	84	81	4
Tvo	2	20	22	0
Tul	1	0	1	0
Zp	0	0	0	0
Pzo	0	19	18	1

(Summary of the number of cases assigned to the Criminal Division in 2022)

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
2022	172	1,343	1,364	151

(Sum of the Tdo and Tz agendas 2015 – 2022)



The graph illustrates the statistical development of cases received in all the agendas of the Criminal Division of the Supreme Court over a relatively long period of time, 2015 – 2022. 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. From 2020 to 2022, there is a certain decrease in the total number of cases submitted and dealt with. It should be not-

ed 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 2022

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 issued the following opinion published in the Collection of Decisions and Standpoints of the Supreme Court.

The interpretation of the "precursor" characteristic of the criminal act of unauthorised production and other disposal with narcotic and psychotropic substances and poisons in accordance with Section 283 of the Penal Code and production and possession of items for illegal production of narcotic and psychotropic substances and poisons in accordance with Section 286 of the Penal Code; and the assessment of the criminality of possession and disposal of medicinal preparations containing ephedrine and pseudoephedrine.

Opinion of the Criminal Division of the Supreme Court of 21 September 2022, file No **Tpjn 301/2018**, published under No 3/2022 in the Collection of Decisions and Standpoints, in the first legal sentence, took the view that human and veterinary medicinal products intended for therapeutic purposes in humans or animals cannot be considered precursors within the meaning of Sections 283(1) and 286(1) of the Penal Code, even if they themselves contain a precursor (e.g. ephedrine and pseudoephedrine). It is irrelevant whether such medicinal products originate from a Member State of the European Union or from third countries. The second legal sentence of the opinion then states that the unauthorised handling of a medicinal preparation containing ephedrine or pseudoephedrine, in particular its use for the illicit production of narcotic drugs or psychotropic substances, may, under other conditions, fulfil the qualified facts of the completed act of the unauthorised production and other disposal with narcotic and psychotropic substances and poisons in accordance with Section 283 of the Penal Code, an attempt in accordance with Section 21 of the Penal Code to commit a criminal act under Section 283 of the Penal Code or preparation for this act in accordance with Section 20(1) of the penal Code to Section 283(2) to (4) of the Penal Code, or participation as an accessory in accordance with Section 24(1)(c) of the Penal Code to Section 283 of the Penal Code. These provisions shall also apply where there is an unauthorised import, export or transit of medicinal products containing ephedrine or pseudoephedrine for the purpose of their use in the specific illicit manufacture of narcotic drugs or psychotropic substances. The perpetrator's conduct here cannot be assessed as the criminal act of production and possession of items for illegal production of narcotic and psychotropic substances and poisons in accordance with Section 286 of the Penal Code, since in these cases the criminal act in accordance with Section 286 of the Penal Code is subsidiary to the criminal act in accordance with Section 283 of the Penal Code, and the concurrence of these criminal acts is thus excluded. In the third legal sentence of this comprehensive opinion, it is stated that "another item" intended for the illicit production of narcotic drugs or psychotropic substances other than precursors within the meaning of Section 286 of the Penal Code may also be considered to be medicinal preparations containing precursors (e.g. ephedrine and pseudoephedrine) which the perpetrator procured or possessed for this purpose for himself or another.

2. 4. 4. 2. Decision of the Grand Panel of the Supreme Court Published in the Collection of Decisions and Standpoints of the Supreme Court in 2022

Regarding the competence of the Grand Panel of the Criminal Division of the Supreme Court to decide 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 Penal 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 to authorise a discharge 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**, published under No 7/2022 in the Collection of Criminal Decisions, addresses two sets of issues. The first was an interesting procedural question: the Grand Panel of which Supreme Court 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 here that a panel of the Criminal Division of the Supreme Court, 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 of the Supreme Court, shall refer the case in accordance with Section 20(1) of Act No 6/2002 Sb., 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 addressed in an opinion of the Plenary Session 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 Penal 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 Sb., 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.

2. 4. 4. 3. Selected Decisions Approved by the Criminal Division of the Supreme Court in 2022 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 2022 for publication in the criminal part of the Collection of Decisions and Standpoints of the Supreme Court, the following can be mentioned:

Regarding the "thing of another" characteristic in the criminal act of damage to a thing of another in accordance with Section 228(1) of the Penal Code

The resolution of the Supreme Court of 27 January 2021, file No **7 Tdo 17/2021**, published under No 8/2022 in the Collection of Criminal Decisions, addresses the question of whether the object of the attack in the misdemeanour of damage to a thing of another in accordance with Section 228(1) of the Penal Code may also be the entrance door of a house not owned by the perpetrator of this criminal act, even if the perpetrator himself procured the door from his own funds and installed it in the house. In this regard, the Supreme Court concluded that the door can be the object of attack in the said criminal act. However, when quantifying the harm in accordance with Section 137 of the Penal Code, it cannot be expressed as the difference between the price of the undamaged door and the price of the damaged door, but it must be based on the costs reasonably incurred to restore the damaged house to its previous state.

Regarding certain questions of instigation to commit a criminal act within the meaning of Section 24(1)(b) of the Penal Code

The resolution of the Supreme Court of 13 October 2021, file No **5 Tdo 973/2021**, published under No 9/2022 in the Collection of Criminal Decisions, deals with the basic attributes of instigation as a form of participation in the narrower sense in accordance with Section 24(1)(b) of the Penal Code. As follows from the legal sentence of this decision, the essence of instigation is an act by which the instigator deliberately induces another person to commit a criminal act which the main perpetrator at least attempted to commit, and the instigation must be directed towards an individually determined person and an individually determined criminal act. The law does not define the specific forms of instigation, so these may include, for example, a command, persuasion, instruction, etc.; the criminal act towards which the instigation is directed must be expressed at least in rough outline, but it is not required that the instigator instruct the principal perpetrator in detail. The individual certainty of the criminal act does not consist in the absolute identity of the qualified facts of the criminal act as defined by the instigator and the circumstances in which the criminal act was subsequently committed by the principal perpetrator. There may be variations between the instigation to commit the criminal act and the act itself, as long as the principal perpetrator does not diverge excessively from the instigated conduct.

Regarding the consequences of the supervising public prosecutor's consent to the temporary adjournment of criminal prosecution in accordance with Section 159b(1) of the Code of Criminal Procedure for the subsequent decision on the complaint against the decision to initiate criminal prosecution

In the resolution of the Supreme Court of 30 November 2021, file No **3 Tz 17/2021**, published under No 11/2022 in the Collection of Criminal Decisions, the Supreme Court concludes that the consent of the supervising public prosecutor to the temporary adjournment of criminal prosecution in accordance with Section 159b(1) of the Code of Criminal Procedure, or to the extension of the period of such temporary adjournment in accordance with Section 159b(2) of the Code of Criminal Procedure, does not in itself constitute the public prosecutor's consent to a later decision of the police authority to initiate criminal prosecution (Article 160(1) of the Code of Criminal Procedure), the consequence of which, in view of the provisions of Article 146(2)(a) of the Code of Criminal Procedure, is otherwise a change in the functional competence to decide on the defendant's complaint against the decision of the police authority to initiate criminal prosecution.

Regarding the "thing of another" characteristic in the criminal act of damage to a thing of another in accordance with Section 228(1) of the Penal Code in the case of damage to property in an unsettled community property

Judgment of the Supreme Court of 27 October 2021, file No **8 Tz 77/2021**, published under No 12/2022 in the Collection of Criminal Decisions, addresses the question of whether a thing belonging to the community property that was damaged by one of the spouses after the marriage had already ended, but when at the time of the criminal act the community property had not yet been settled, may be considered a thing of another within the meaning of Section 228(1) of the Penal Code. Here, the Supreme Court concludes that there is no thing of another in relation to either of the (former) spouses.

Regarding the imputability of an act to a legal person based on the conduct of its employee or a person in a similar position

In the judgment of the Supreme Court of 11 May 2021, file No **7 Tz 9/2021**, published under No 17/2022 in the Collection of Criminal Decisions, the Supreme Court states that the imputability of an unlawful act to a legal person if such an act was committed by its employee or a person in a similar position in the performance of his work tasks in accordance with Section 8(1)(d) of the Act on Criminal Liability of Legal Persons, is conditional, inter alia, on the fact that one of the persons referred to in Section 8(1)(a) to (c) of the Act on Criminal Liability of Legal Persons has failed to take a measure (e.g. neglected to carry out mandatory checks on an employee, failed to take a measure to prevent or avert the consequence of the criminal act committed) which should have been taken in accordance with a legal provision or which may fairly be required of such person within the meaning of Section 8(2)(b) of the Act on Criminal Liability of Legal Persons. As it is further stated herein, the obligation to take such measures is imposed on legal persons by various legal regulations, e.g. laws governing occupational safety and health, public health and anti-epidemic care, environmental

protection, fire protection, etc. It may also be a measure under the Act on the Legitimisation of the Proceeds of Crime if, for example, a legal person has failed to comply with the identification obligation, regardless of the value of the transaction, when purchasing or receiving used goods or goods without documents of acquisition for the purpose of arranging their sale (see Article 7(2)(d) of Act No 253/2008 Sb., on Selected Measures Against the Legitimisation of the Proceeds of Crime and Financing of Terrorism, as amended).

Regarding the possibility of committing the criminal act of damnification of creditors in accordance with Section 222(1) of the Penal Code in connection with the return of a gift from the debtor's property

The resolution of the Supreme Court of 16 December 2021, file No **5 Tdo 1307/2021**, published under No 18/2022 in the Collection of Criminal Decisions, deals with whether the mere consent declaration on the return of the gift between the defendant as the donee (and the debtor in relation to other persons) and another person as the donor, made for the purpose of registering the ownership right to the immovable property which was the subject of the gift in the Cadastre of Real Estate, can be considered as alienating the (immovable) property of the debtor within the meaning of Section 222(1)(a) of the Penal Code on the criminal act of damnification of creditors. In this regard, the Supreme Court concludes that a mere affirmative declaration of return of the gift between the defendant as the donee and another person as the donor cannot be considered such alienation of property. However, at the same time, the Court concludes that it is not precluded that the donee (debtor) may commit the criminal act of damnification of creditors in another form if the factual findings of fact match the qualified facts of this act, e.g. in the alternative under Section 222(1)(d) of the Penal Code, if he recognises a non-existent right of the donor to return the gift (Section 630 of the Civil Code), or to revoke a gift (Section 2072 of the Civil Code), or even in accordance with Section 222(1)(a) of the Penal Code, if he intentionally creates conditions for the return of the gift or its revocation by the donor in order to curtail the satisfaction of his creditors' claims.

Regarding the interpretation of the "vulnerability" characteristic in the criminal act of rape in accordance with Section 185(1) alinea 2 of the Penal Code committed against a child of young age

The resolution of the Supreme Court of 31 August 2021, file No **7 Tdo 833/2021**, published under No 15/2022 in the Collection of Criminal Decisions, reads in its legal sentence that the feature of the victim's vulnerability in the crime of rape in accordance with Section 185(1) alinea 2 of the Penal Code may be fulfilled also as a result of her very young age (e.g. five years old), due to which she was unable to adequately express her will, understand the perpetrator's actions and defend herself against him, even though she did not suffer from a mental disorder, had a positive relationship with the perpetrator and did not perceive his actions as something that would hurt her.

Regarding the fact that when imposing a monetary penalty, the number of its daily rates is not limited within the meaning of Section 68(3) of the Penal Code by the lower boundary of the severity of the sentence of imprisonment for the committed criminal act

The resolution of the Supreme Court of 30 March 2022, file No **8 Tdo 138/2022**, published under No 21/2022 in the Collection of Criminal Decisions, expresses that when imposing a monetary penalty, the limitation on the number of daily rates set forth in Section 68(3) of the Penal Code applies only to the upper boundary of the severity of the sentence of imprisonment, but not to its lower boundary, which is not affected by this limitation. Therefore, it is not excluded that the number of daily rates, taking into account the nature and seriousness of the criminal act committed, is determined in such a way that their double does not reach the lower boundary of the sentence of imprisonment established for the criminal act committed.

Regarding the fulfilment of the feature of disposing of even a part of the debtor's property in the criminal act of damnification of creditors in accordance with Section 222(1)(a) of the Penal Code in the case of transferring the debtor's property to a trust fund

The resolution of the Supreme Court of 26 January 2022, file No **5 Tdo 1273/2021**, published under No 24/2022 in the Collection of Criminal Decisions, contains the legal opinion that disposing of even a part of the debtor's property within the meaning of Section 222(1)(a) of the Penal Code on the criminal act of damnification of creditors includes its concealment, which enables the debtor to continue to dispose of and use such property and possibly to recover such property later. At the same time, it is stated here that the allocation of assets from the property of the debtor as the founder to a trust fund (Section 1448 et seq. of the Civil Code), which has no legal personality, must also be assessed in this way (i.e. as concealment). The Supreme Court further concludes that in this case there is no alienation of property, which otherwise consists in the transfer of the debtor's property or a part thereof to another person, e.g. by donation or sale, if the debtor uses the funds obtained for a purpose other than to satisfy the claims of his creditors.

Regarding the virtual contact of accomplices, whose degree and nature of participation may vary, each of whom may be pursuing their own benefit, and that it is sufficient to fulfil the element of complicity within the meaning of Section 23 of the Penal Code

The resolution of the Supreme Court of 31 August 2021, file No **7 Tdo 795/2021**, published under No 25/2022 in the Collection of Criminal Decisions, expresses the opinion that when accomplices act together within the meaning of Section 23 of the Penal Code, the immediate temporal continuity of their individual activities is sufficient. It is also not necessary that all accomplices participate equally in the criminal activity. Furthermore, the Supreme Court concludes that for certain types of criminal activity (e.g., unauthorized obtaining, forgery and alteration of means of payment in accordance with Section 234 of the Penal Code) it is not even necessary for the accomplices to be in physical contact, but solely virtual contact is sufficient. In the case of the misuse of a payment instrument (e.g. by obtaining identification data for payment cards) for making payments on the Internet, it is not even relevant from the point

of view of complicity who physically carried out the relevant monetary transactions or attempts to do so. The fact that each of the accomplices pursued their own benefit in their joint conduct does not exclude their joint intent.

Regarding the impossibility of recognition and enforcement of a foreign decision of another Member State of the European Union, which was issued in the absence of the person concerned, if the person was not served with the decision in accordance with Section 267(3)(c) of the Act on the International Judicial Cooperation in Criminal Matters.

Judgment of the Supreme Court of 23 March 2022, file No **11 Tz 24/2022**, published under No 28/2022 in the Collection of Criminal Decisions, expresses the opinion that, even if, under the national legislation of another Member State of the European Union, a decision of the latter imposing a pecuniary penalty or other pecuniary performance made in the absence of the person concerned may become final and effective, regardless of whether it has been served on him at all, the court cannot recognise such a decision in proceedings for the recognition and enforcement of that foreign decision, in view of Article 267(1)(e) of the Act on the International Judicial Cooperation in Criminal Matters in conjunction with Article 267(3)(c) of the same. These provisions of the Czech legal system require that the foreign decision be delivered to the person concerned in person.

Regarding the possibility of concluding a gross disproportion of mutual benefits in the criminal act of usury in accordance with Section 218(1) of the Penal Code in the case of multiple contractual performances between the perpetrator and the victim

The resolution of the Supreme Court of 8 December 2021, file No **7 Tdo 1176/2021**, published under No 29/2022 in the Collection of Criminal Decisions, deals with the issue of defining a gross disproportion of mutual benefits in the criminal act of usury in accordance with Section 218(1) of the Penal Code. It states that such a disproportion must be inferred on the basis of an overall assessment of all the benefits negotiated between the perpetrator and the victim and therefore cannot be assessed in isolation in relation to individual partial performances. The resulting value of these partial performances may reflect several separate contractual relationships between the perpetrator and the victim, the subject-matter of which is a loan or credit, including contractual penalties, securities, etc.

Regarding the fact that preventing the use of the easement to walk and drive on the land adjacent to a house may constitute an unjustified obstruction of the use of the house within the meaning of Section 208(2) of the Penal Code on the criminal act of unauthorised interfering with a right to a house, apartment or non-residential premises.

The resolution of the Supreme Court of 28 July 2021, file No **4 Tdo 609/2021**, published under No 22/2022 in the Collection of Criminal Decisions, states that the unjustified obstruction of the use of a house within the meaning of the qualified facts of the misdemeanour of unauthorised interfering with a right to a house, apartment or non-residential premises in accordance with Section 208(2) of the Penal Code may also include the obstruction of the use of the easement of walking and driving on the land of the defendant (servient land of the defendant), which is vested in the owner of other land (dominant land of the victim) and his house, flat or non-residential premises located there.

Regarding the violation of an important duty within the meaning of Section 143(2) of the Penal Code by a driver of a motor vehicle in connection with the disregard of certain traffic signs; regarding the meaning of the "No entry for all motor vehicles except for resident and service traffic" traffic sign

The resolution of the Supreme Court of 30 March 2022, file No **5 Tdo 118/2022**, published under No 30/2022 in the Collection of Criminal Decisions, contains two legal sentences concerning the misdemeanour of killing by negligence in accordance with Section 143 of the Penal Code. The first of them contains the legal opinion that the violation of an important duty within the meaning of Section 143(2) of the Penal Code by the driver of a motor vehicle is not merely a failure to respect traffic signs that do not primarily serve to protect human life and health. At the same time, there must be a causal link between the purpose of the violated norm and the consequence. The second legal sentence states that a ban on the entry of all motor vehicles, except for resident and service traffic, is usually imposed in a particular location if there is an interest in reducing the amount of motor vehicles that pass through that area (e.g. to reduce noise pollution, partly for the safety of pedestrians). However, the existence and subsequent violation of an important duty imposed on the driver of a motor vehicle under the Road Traffic Act cannot be inferred from the mere violation of the above-mentioned prohibition without further consideration, even if the defendant, as the driver of that vehicle, was not covered by the exception under the supplementary sign allowing the entry of resident and service traffic.

Regarding the inadmissibility of forcing the defendant to use the consensual methods of settling criminal cases; regarding the importance of preserving the material truth in relation to the institute of identification of undisputed facts in accordance with Section 206d of the Code of Criminal Procedure; regarding the necessity of unambiguous identification of undisputed facts in the parties' statements and in the resolution waiving the need to prove them; regarding the justification of a judgment on damages in adhesion proceedings

The resolution of the Supreme Court of 25 August 2021, file No **5 Tdo 888/2021**, published under No 31/2022 in the Collection of Criminal Decisions, deals with several issues. In connection with the identification of undisputed facts and the establishment of the facts of the case, it was concluded that the defendant must not be impermissibly forced to use the consensual methods of settling criminal cases (plea bargaining, guilty plea or identification of undisputed facts), even by promising a significantly more favourable decision than he would have obtained had he not used such a procedure. In impermissibly forcing the defendant to use such methods of settling criminal cases, the prohibition of self-incrimination (nemo tenetur se ipsum accusare) would be violated. The resolution further states that before using the consensual methods

of settling criminal cases, the courts are obliged to carefully ascertain the conditions for them and, above all, they must ensure that the principle of substantive truth is fulfilled (Section 2(2) of the Code of Criminal Procedure). In the case of the indication of undisputed facts (Section 206d of the Code of Criminal Procedure), this is reflected in the fact that the court may not use it and refrain from proving the facts indicated by the parties in their statements if, in view of the other established facts, there is a serious reason to doubt such statements. In relation to the adhesion proceedings, the Supreme Court states that the judgment on compensation for damage or other than proprietary harm or on returning unjust enrichment must be justified in a similar way as a judgment in civil cases, in particular, it must be based on the relevant provision of the substantive law from which the obligation to compensate for damage, other than proprietary harm or unjust enrichment, arises.

Regarding a situation where the conditions for proceedings against a fugitive in accordance with Section 302 of the Code of Criminal Procedure are not met in the defendant's return to his home state

In the resolution of the Supreme Court of 24 March 2022, file No **4 Tdo 73/2022**, published under No .../2022 in the Collection of Criminal Decisions, it was concluded that the return of the defendant to the state of which he is a citizen cannot be considered without further consideration an act by which the defendant avoids criminal proceedings within the meaning of Section 302 of the Code of Criminal Procedure, especially when the address of his residence in his home state is known. The Supreme Court also stated that if the courts served the defendant directly (i.e., through a postal service provider) at his address abroad, for example, the indictment, summons to the main trial, and notice of the public session for the hearing of the appeal, even though such a method of service was contrary to Section 43(1), (3) of the Act on the International Judicial Cooperation in Criminal Matters, they could not, even from the failure to serve those documents, conclude that the conditions for holding proceedings against the fugitive were met.

Regarding the inadmissibility of a complaint against an order by which the Court of First Instance did not approve a plea bargain in the main trial

In its resolution of 27 April 2022, file No **5 Tz 32/2022**, published under No 44/2022 in the Collection of Criminal Decisions, the Supreme Court stated that a complaint against an order by which the Court of First Instance did not approve the plea bargain in the main trial in accordance with Section 206b(3) of the Code of Criminal Procedure (applying Section 314r(2) of the Code of Criminal Procedure) is not admissible. The limitation resulting from the second sentence of Section 141(2) of the Code of Criminal Procedure applies here, according to which a court order may be challenged by complaint only in cases where the law expressly allows it and if the court decides at first instance. Section 206b of the Code of Criminal Procedure, which can be considered a separate and partly special regulation in relation to Section 314r of the Code of Criminal Procedure, does not provide for a complaint against the order by which the Court of First Instance did not approve the plea bargain. Second and third sentences of Section 314r(2) of the Code of Criminal Procedure do not apply in this case.

Regarding the absence of excusable motive within the meaning of Section 146a of the Penal Code

The resolution of the Supreme Court of 22 February 2022, file No **11 Tdo 123/2022**, published under No .../2022 in the Collection of Criminal Decisions, was made in the case of a defendant who, as the driver of a motor vehicle, assaulted the victim, the driver of another motor vehicle, for the manner of his driving and caused him injury. According to the legal opinion expressed here, the excusable motive within the meaning of Section 146a of the Penal Code cannot, as a rule, be triggered by the victim's previous dangerous conduct as a road user, which was in violation of traffic regulations and which the defendant may have been outraged by.

Regarding the possibility of imposing the penalty of a driving ban for the criminal act of grievous bodily harm under Section 145(1) of the Penal Code committed by a driver of a motor vehicle by physically assaulting another road user

In the resolution of the Supreme Court of 3 August 2022, file No **8 Tdo 593/2022**, published under No 36/2022 in the Collection of Criminal Decisions, the Supreme Court states that the criminal act of grievous bodily harm (Section 145(1) of the Penal Code), which the perpetrator committed by physically assaulting another road user as a driver of a motor vehicle after forcibly stopping his vehicle due to dissatisfaction with the speed or manner of his driving, may be considered an offence committed in connection with driving a motor vehicle. Therefore, the Supreme Court concluded that the perpetrator could be sentenced to a ban on driving motor vehicles in accordance with Section 73(1) of the Penal Code.

Regarding the fulfilment of the condition of another necessary measure to compensate for damage within the meaning of Section 307(1)(b) of the Code of Criminal Procedure in the event of a conditional staying of criminal prosecution in the event of insufficient cooperation of the victim

In the resolution of the Supreme Court of 21 December 2021, file No **3 Tdo 1120/2021**, published under No 35/2022 in the Collection of Criminal Decisions, it is concluded that the condition of other necessary measures to compensate for damage within the meaning of Section 307(1)(b) of the Code of Criminal Procedure may be fulfilled even if the injured party has not properly notified the relevant insurance company of the insured event and provided other necessary cooperation (see Decision No 19/1995 in the Collection of Criminal Decisions), even if the injured party has not properly specified the amount of his claim or provided other cooperation.

Regarding a bribe within the meaning of Section 334(1) of the Penal Code in the form of remuneration for administrative and other services in subsidy proceedings

The resolution of the Supreme Court of 30 June 2021, file No **5 Tdo 467/2021**, published under No 38/2022 in the Collection of Criminal

Decisions, deals with the issue of accepting a bribe; the Supreme Court took the legal opinion that a bribe within the meaning of Section 331(1) alinea 1 and Section 334(1) of the Penal Code may also include remuneration provided by an applicant for a subsidy to an employee of a public authority involved in subsidy proceedings for administrative and other services (e.g., for checking whether the conditions for payment of the subsidy have been met). The resolution further states that the subsequent termination of the labour-law relationship by a public authority with such an employee will not normally be sufficient to invoke liability under another legal regulation within the meaning of Section 12(2) of the Penal Code.

Regarding the duties of an established European lawyer, the fulfilment of which is necessary for his acting as a defence counsel in criminal proceedings in accordance with Section 35(1) of the Code of Criminal Procedure.

Judgment of the Supreme Court of 13 July 2022, file No **8 Tz 60/2022**, published under No 34/2022 in the Collection of Criminal Decisions, addresses the issue of the status of the defence counsel in criminal proceedings in accordance with Section 35(1) of the Code of Criminal Procedure, if the defence counsel is to be an established European lawyer. According to this judgment, an established European lawyer may not act as a defence counsel in criminal proceedings until he has appointed a lawyer as his consultant on procedural law matters in accordance with Section 35p(1) of the Act on Advocacy and until he has notified the court or other body in charge of criminal proceedings of the address of the consultant's registered office in accordance with Section 35p(2) of the Act on Advocacy.

Regarding the criminal act of unauthorised production and other disposal with narcotic and psychotropic substances and poisons committed in connection to an organised group in accordance with Section 283(4)(c) of the Penal Code

In the resolution of the Supreme Court of 13 October 2021, file No **11 Tdo 1044/2021**, published under No 42/2022 in the Collection of Criminal Decisions, the Supreme Court concludes that the wording of the law "in connection to an organised group" operating in several states, contained in Section 283(4)(c) of the Penal Code, also applies to looser forms of the perpetrator's relationship to such a group than his membership therein. This element of the qualified facts may also be fulfilled by significant cooperation with an organised group operating in several states, one of which may be the Czech Republic, which is in principle comparable to his membership in such a group.

Regarding the criminal act of unauthorised interfering with a right to a house, apartment or non-residential premises in accordance with Section 208(2) of the Penal Code in connection with the lessor's failure to fulfil his obligations towards the suppliers of water and heat to flats

In the resolution of the Supreme Court of 18 February 2020, file No **4 Tdo 27/2020**, published under No 43/2022 in the Collection of Criminal Decisions, the legal opinion was taken that if the tenants of the flats had valid lease contracts with the lessor, according to which they duly paid the advance payments for services (for water and heat supply) to the lessor, the defendant, as the said lessor, was obliged to pay the advance payments for these services to their respective providers under the contract for the supply of water and heat. If the lessor deliberately failed to fulfil this obligation and as a result the supply of heat and water to the tenants of the flats was interrupted, then, provided that other legal conditions are met, this conduct may constitute the criminal act of unauthorised interfering with a right to a house, apartment or non-residential premises in accordance with Section 208(2) of the Penal Code. Furthermore, the decision states that even a possible dispute between the lessor and the service provider (i.e., supplier of heat and water) concerning the issue of set-off of claims could not release the defendant, as the lessor, from this obligation.

Regarding the committing of the criminal act of evasion of taxes, fees and similar compulsory payments in accordance with Section 240(1) of the Penal Code in the case of filing a VAT control statement in accordance with Section 101c of Act No 235/2004 Sb., on Value Added Tax, as amended

In the resolution of the Supreme Court of 20 July 2022, file No **8 Tdo 630/2022**, published under No 40/2022 in the Collection of Criminal Decisions, it was concluded that a taxpayer registered for value added tax, who carried out taxable supplies subject to this tax in a specific period, but failed to file a value added tax return and therefore did not properly declare and pay this tax, may commit the criminal act of evasion of taxes, fees and similar compulsory payments in accordance with Section 240(1) of the Penal Code, despite the fact that he filed a VAT control statement within the meaning of Section 101c of Act No 235/2004 Sb., on Value Added Tax, as amended. The VAT control statement, even though it is a tax statement, is a recording tool for the proper determination of the taxpayer's tax liability, but it does not relieve the taxpayer of the obligation to file a tax return in accordance with Section 21 of the Value Added Tax Act.

Regarding the question of whether the Court of Appeal is bound by the assessment of the evidence made by the Court of First Instance

In its resolution of 12 October 2022, file No **7 Tdo 850/2022**, published under No .../2022 in the Collection of Criminal Decisions, the Supreme Court addressed the question of whether the Court of Appeal is always bound by the assessment of the evidence conducted by the Court of First Instance. In its view, the Court of Appeal's reasoning that the assessment of the evidence is the domain or prerogative of the Court of First Instance, which the Court of Appeal is not entitled to interfere with and is bound by, or that the Court of Appeal did not find an extreme discrepancy between the evidence produced and the findings of fact, so that it could not interfere with the findings of fact of the Court of First Instance, is contrary to the concept of appeal proceeding, the rules of which, on the contrary, expressly provide that both the assessment of the evidence and the findings of fact of the Court of First Instance are subject to review by the Court of Appeal (see e.g., Section 258(1)(b), (c) of the Code of Criminal Procedure). The binding nature of the

assessment of evidence by the Court of First Instance in accordance with Section 263(7) of the Code of Criminal Procedure only plays a role when the Court of Appeal amends or supplements the findings of fact and it applies to a limited range of cases in which the Court of Appeal itself decides on the case by judgment (Section 259(3) of the Code of Criminal Procedure). Section 263(7) of the Code of Criminal Procedure applies when the judgment of the Court of First Instance is set aside on the grounds referred to in Section 258(1)(b), (c) of the Code of Criminal Procedure, i.e. if the Court of Appeal reviews the assessment of the evidence by the Court of First Instance and finds it defective and decides the case itself.

2. 4. 4. 4. Other Selected Decisions of the Criminal Division Panels of the Supreme Court Issued in 2022

In 2022, 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 legal institute of declaration of guilt in accordance with Section 206c of the Code of Criminal Procedure, the use of which the defendant purposely sought only in appeal proceedings

Resolution of the Supreme Court of 25 May 2022, file No **7 Tdo 356/2022**, rejecting the extraordinary appeal of the defendant, is rather interesting and relevant. The lower courts found the defendant guilty of the criminal act of embezzlement in accordance with Section 206(1), (5)(a) of the Penal Code and the criminal act of abuse of competence of a public official in accordance with Section 329(1)(c), (3)(a), (b) of the Penal Code, for which she was sentenced to imprisonment (a cumulative sentence) of 8 years and 6 months, for the execution of which she was placed in a secure prison, and the defendant was further sentenced in accordance with Section 73(1), (3) of the Penal Code to a sentence of prohibition of activity consisting in a prohibition to perform the function of a court bailiff and a prohibition to perform an occupation, profession, function or activity in which she could dispose of any funds entrusted to her, in both cases for a period of 10 years. The case is exceptional in particular because of the duration of the criminal activity and the extent of the damage caused by the defendant as a bailiff (in the amount of CZK 26,000,136.82) by her actions when performing enforcement activities between 2002 and 2013; she herself or through the employees of the bailiff's office recovered and accepted payments from the obliged persons, both cashless and in cash, in breach of her legal obligations, where she did not pay the recovered funds to the entitled persons, but treated them as her own, used them for her own private purposes and also to fund the bailiff's office, to cover the repayments of the loan for the acquisition and reconstruction of the building of her office, or transferred them to the bank account of a friend. The defendant's plea in extraordinary appeal was an alleged error of substantive law assessment on the part of the Court of Appeal, which did not accept her plea of guilty in accordance with Section 206c of the Code of Criminal Procedure, although there was no reason to do so, and subsequently allegedly did not take this effort into account when imposing the sentence. In the reasoning of its decision, the Supreme Court stated, among other things, that the court's decision whether or not to accept a guilty plea in accordance with Section 206c of the Code of Criminal Procedure depends solely on the court's will, which is limited by Section 206c(5) of the Code of Criminal Procedure. The Court of Appeal assessed the defendant's procedure as purely purpose-driven, made in an attempt to obtain a lighter punishment, which is evident from the timing of her plea of guilty and the content of her statement, as it was a complete reversal of the defendant's previous defence, who had previously consistently denied committing the act with which she was charged and denied her criminal responsibility for the unlawful actions. The Supreme Court then agreed with this conclusion of the Court of Appeal.

Regarding the wording of recital of facts of a judgment of conviction and on the legal institute of complicity within the meaning of Section 23 of the Penal Code

The resolution of the same Panel of 25 May 2022, file No **7 Tdo 337/2022**, also seems interesting, given the relatively atypical facts of the case. The extraordinary appeal of the defendant, who was found guilty by the courts of lower instances of the criminal act of extortion in accordance with Section 175(1), (2)(b) of the Penal Code and sentenced in accordance with Section 175(2) of the Penal Code to a two-year sentence of imprisonment, the execution of which was suspended for a probationary period of four years in accordance with Section 81(1) and Section 82(1) of the Penal Code, was also rejected. In accordance with Sections 67(1) and 68(1) of the Penal Code, the defendant was further fined a total of CZK 500,000. The defendant's conduct consisted in the fact that, as the director of a public health authority, he and two other employees of the authority repeatedly demanded that the victim (the head of one of the departments of said authority) release various sums of money as a reward for him being accepted to that position, making it known to him if he did not comply, he would be terminated from his employment or would not receive the non-merit components of his salary. The defendants also encouraged the victim to obtain the funds for the payments they demanded in the form of bribes from businessmen in the course of his work. In his appeal, the defendant (i.e. the petitioner for extraordinary appeal) argued, among other things, that the Court of First Instance formulated the recital of facts in such a way as to blame him for the actions of third parties, namely the independently prosecuted accomplices, without taking into account the fact that the judgment only decided on his guilt as the only party to the criminal proceedings. In the defendant's opinion, the act described in the judgment in relation to him does not fulfil the qualified facts of the criminal act in question in terms of its objective and subjective aspects, because it does not describe his conduct by which he specifically forced the victim to hand over funds from his salary to anyone, nor does it describe the fact that he did so with the threat of "firing" the victim from his job. The defendant stressed that he had never committed such an act and, moreover, it does not appear from the judgment that he was convicted as an accomplice or as a participant. In the defendant's view, the recital of facts is formulated only as a description of the conduct of third parties and mentions his own conduct only sparsely. Criminal law is based on the principle of individual responsibility and the defendant cannot be tried

for the actions of third parties. Referring to case law, the defendant then stated that such a procedure of the courts constitutes a violation of the right to a fair trial and the right to defence. The defendant also found further errors on the part of the courts in the contradictions between the sentencing judgment's recital of facts and legal sentence, since, in his opinion, the legal sentence implies that he was to have committed the act as an independent perpetrator, whereas the recital of facts suggests that his case should have been one of participation, which, of course, should have been stated in the legal sentence. In the reasoning of its decision, the Supreme Court stated, among other things, that it can be admitted that the recital of facts in the judgment of the Court of First Instance could have been formulated more precisely, in such a way as to highlight more clearly the role of the defendant in the whole of the conduct in question and to better describe the fulfilment of the subjective aspect of the criminal act in question. However, it can be concluded from the wording of the recital of facts without any significant doubt that the defendant was one of the three perpetrators who were to participate jointly in the criminal activity under consideration, since each of them participated in the entirety of the conduct in question by their partial actions, by which they jointly fulfilled all the elements of the qualified facts of the criminal act of extortion in accordance with Section 175(1), (2)(b) of the Penal Code. The defendant's argumentation that it should follow from the recital of facts that he was merely an organiser within the meaning of Section 24(1)(a) of the Penal Code cannot be accepted, since it can be clearly deduced from the decision of the Court of First Instance that the defendant was the perpetrator of the offence or an accomplice within the meaning of Section 23 of the Penal Code. As an accomplice, he does not have to fulfil all the elements of the criminal act alone, since it is also considered joint conduct if the conduct of each of the accomplices is at least a link in a chain, whereby the individual activities – the links in the chain – act simultaneously or sequentially in mutual continuity and are aimed at the direct execution of the criminal act and only in their entirety constitute its qualified facts (see e.g. decisions Nos 15/1967 and No 36/1973 in the Collection of Criminal Decisions), which was fulfilled in this case, as is evident from the findings of fact of the Court of First Instance. Thus, the defendant's argumentation that the recital of facts would have to show his specific actions by which he himself would force the victim to do something, or by which he would specifically force the victim to hand over funds from his salary to anyone, cannot be found to be justified, since in view of the above, it is sufficient if the other accomplices performed the given actions. It should also be added that complicity is not a special form of a criminal act (such as preparation for, attempt to commit, or participation in, a criminal act) because it does not extend criminal liability beyond the scope of the qualified facts defined in the special part of the Penal Code. In view of this, unlike in the case of special forms of participation in a criminal act, it is not necessary to cite the provisions of Section 23 of the Penal Code in the guilty verdict of the accomplices (see resolution of the Supreme Court of 18 July 2002, file No 7 Tdo 368/2002). Finally, with regard to the expression of the subjective aspect of the criminal act committed, it can be stated that, although this could have been expressed in a more precise manner in the recital of facts, the description of the facts contained therein leads to a sufficiently specific conclusion of the intentional culpability of the defendant, who,

through other defendants, demanded for his own enrichment that the victim hand over the sums of money specified in the recital of facts under threat of dismissal from employment. Therefore, the defendant (the petitioner for extraordinary review) acted with the intention of influencing the victim with this threat in order to wrongfully obtain funds. The Court of First Instance correctly assessed the defendant's conduct as a criminal offence committed intentionally within the meaning of Section 15(1)(a) of the Penal Code.

Regarding the assessment of the defendant's conduct as a criminal act of abuse of competence of a public official in accordance with Section 329(1)(a), (3)(a), (b) of the Penal Code committed by an unlawful decision on a restitution claim and on whether the Court of Appeal failed to respect the binding legal opinion of the Supreme Court

This is another interesting decision of the Supreme Court, where the extraordinary appeal of the defendant was rejected, but the appeal of the Supreme Public Prosecutor filed against the defendant was upheld. This is the resolution of 26 October 2022, file No **4 Tdo 915/2022**. The defendant was found guilty by the Court of First Instance of the criminal act of abuse of competence of a public official in accordance with Section 329(1)(a), (3)(a), (b) of the Penal Code (by committing one act) and the criminal act of abuse of competence of a public official in accordance with Section 329(1)(a), (2)(d), (3)(a), (b) of the Penal Code (by committing another act) and was sentenced to a total term of imprisonment of 6 years, to be served in a secure prison, and to a fine of CZK 4,500,000. The facts of the case concerned a case of incorrect restitution decisions that the defendant was to have issued as the director of the land authority. The Court of Appeal upheld the appeal of the defendant, partially reversed the judgment of the Court of First Instance and decided to find the defendant guilty of the misdemeanour of negligent obstruction of duty of a public official in accordance with Section 330(1), (3)(a) of the Penal Code and sentenced her to imprisonment for a term of 3 years with a suspended suspension of its execution for a probationary period of 3 years. However, the Supreme Public Prosecutor disagreed with this legal assessment and filed an extraordinary appeal against the decision of the Court of Appeal. On the basis of this petition, the Supreme Court annulled the contested decision of the Court of Appeal and ordered it to rehear and decide the case to the extent necessary. The peculiarity of this case is that the Court of Appeal did not respect the earlier binding legal opinion of the Supreme Court, which had already ruled on this case once (by resolution of 18 October 2021, file No 4 Tdo 1081/2021), in which it upheld the extraordinary appeal of the Supreme Public Prosecutor and quashed the first decision of the Court of Appeal and ordered it to rehear and decide the case to the extent necessary.

Regarding the application of an extraordinary appeal objection concerning the decisive findings of fact which are decisive for the fulfilment of the elements of a criminal act and are manifestly contradicted by the content of the evidence and at the same time are based on evidence inapplicable to the procedure in question

This is another decision that upheld the defendant's extraordinary appeal, namely the Supreme Court's resolution of 12 October 2022, file No

3 Tdo 729/2022, which annulled the resolution of the Court of Appeal dismissing the defendant's appeal and also quashed the judgment of the Court of First Instance. In this judgment, the defendant was found guilty of the misdemeanour of unlicensed arming in accordance with Section 279(1) of the Penal Code for the act of having unlawfully purchased a long firearm for hunting (a rifle) from another person (now convicted) in 2018, although he must have been aware that in order to legally possess this weapon, classified as category "C", in accordance with Section 6(b) and Section 8 of Act No 119/2002 Sb., on Firearms and Ammunition, as amended, a firearms permit or licence is required which he did not possess. For this, a financial penalty was imposed on the defendant. The Supreme Court, after quashing the contested decisions, ordered the Court of First Instance to rehear and decide the case to the extent necessary. The defendant raised several objections in the extraordinary appeal, one of which the Supreme Court found to be substantiated, namely, that the decisive findings of fact, which determine whether the elements of the criminal act were fulfilled, were manifestly contradicted by the content of the evidence and at the same time based on evidence inapplicable to the procedure in question. The verdict on the defendant's guilt was based on the finding that the hunting weapon in question was capable of firing and thus classified as category "C". The Court of First Instance made this conclusion on the basis of a single photograph of the weapon in question (which was not physically available) and a written statement by the victim, an Austrian citizen from whom such a weapon had been stolen earlier. The weapon was stolen by a person, who was identified, and who subsequently sold it to other persons until the weapon came into the possession of the defendant. The Court of First Instance held that the weapon was thus clearly identified and therefore demonstrably capable of firing, i.e. classified as category "C". During the main trial, the defence submitted an expert opinion (the expert was subsequently questioned), the conclusion of which was that the manufacturer, year of manufacture, calibre and whether or not the weapon was capable of firing could not be determined from the photographs taken. When asked by the court, the Czech Proof House for Arms and Ammunition made the same statement. The Court of First Instance did not hear the victim in person or in any other available form, e.g. by videoconference (it did not make use of the possibility of legal aid from the Republic of Austria), due to the significant restrictions caused by the pandemic situation associated with the disease known as Covid-19 both in the Czech Republic and in the Republic of Austria, and contented itself with the victim's e-mail statement sent to the address of the court translator, who translated it and forwarded it to the court. Among other things, the victim provided the registration number of the weapon and stated that the weapon was in good condition, regularly used, and that no technical interventions had been made on his part. However, the Supreme Court considers that the victim should have testified about the facts central to the conclusions about the guilt of the defendant, and thus should have been heard as a witness, which would have allowed the defendant to ask questions while preserving his defence rights. Moreover, it was not even verified in any way that the person communicating with the court translator was actually the victim. As such, the e-mail information in question should have been considered only as documentary evidence with significantly weaker testimonial value than that of a witness statement. However,

the Court of First Instance erred in making a critical finding of fact from this evidence that the gun was identified and that it was capable of firing. The victim was not even questioned in the pre-trial. The Supreme Court stated that the questioning of the witness could not be replaced by his written statement, moreover, without verification of the identity of the writer, and concluded that the case was a case of failure of evidence, where there was no evidentiary basis for the conclusion that the weapon was most certainly the victim's, that it was capable of firing and not deactivated, and thus that it was reasonably classified as category "C".

Regarding necessary defence within the meaning of Section 29(1) of the Penal Code

Judgment of the Supreme Court of 23 November 2022, file No **6 Tdo 979/2022**, quashed the resolution of the Court of Appeal dismissing the defendant's appeal, and it also quashed the judgment of the Court of First Instance finding the defendant guilty of the criminal act of bodily harm in accordance with Section 146(1), (3) of the Penal Code and imposing a suspended sentence of imprisonment. The Supreme Court further ruled that the defendant was acquitted of the charge in accordance with Section 226(b) of the Code of Criminal Procedure for the act of intentionally causing serious bodily harm to another person, thereby committing the criminal act of bodily harm in accordance with Section 146(1), (3) of the Penal Code, as the act referred to in the statement of claim was not a criminal act. The Supreme Court, unlike the lower courts, agreed with the defendant's defence that the act of which he was accused must be assessed as an act of necessary defence within the meaning of Section 29(1) of the Penal Code. After a short argument with the defendant, the victim unexpectedly attacked the defendant with a metal bar, where the defendant avoided this attack by the victim at the last moment and in turn struck the victim in the face with his fist, who fell to the ground and sustained injuries. The lower courts assessed the case in such a way that it was not a necessary defence because the defendant, by his action, averted the immediate danger posed by being hit by the victim with the rod and his further action, i.e. the punch to the victim's face, continued after the end of the attack by the victim, therefore the defendant did not actually only avert the attack but retaliated at a time when there was no longer any danger from the victim, therefore he was criminally liable for the consequence. The Supreme Court, as already stated, did not share this view, as the entire incident happened in quick succession, the defendant immediately reacted to the unexpected attack by the victim, and only ended the attack by hitting the victim in the face with his fist, as a result of which the victim fell to the ground and the threat was eliminated. It is quite clear that at the moment when the defendant struck the victim, the physical attack of the victim on the physical integrity and health of the defendant, i.e. on the interest protected by the criminal law, continued. The defendant, by a single reaction in the form of a punch to the face, averted the danger created by the attack against an interest protected by the criminal law.

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
2021	32	30	94%	22
2022	19	29	153%	12
2003 to 2022	1,324			

In 2022, the members of the Special Panel established in accordance with Act No 131/2002 Sb. were Supreme Court Judges Mgr. Vít Bičák, JUDr. Roman Fiala and JUDr. Pavel Simon, who has been presiding over the Special Panel since 1 July 2022. The alternates appointed for the Supreme Court were JUDr. Radek Doležel, Mgr. David Havlík and JUDr. Petr Škvain.

Mgr. Ing. Bc. Radovan Havelec, JUDr. Tomáš Rychlý and Mgr. Jitka Zavřelová were appointed for the Supreme Administrative Court. The alternates appointed for the Supreme Administrative Court 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

At a gala dinner in Prague on 27 May 2022, the Vice-President of the Supreme Court, JUDr. Petr Šuk, was awarded the title of Lawyer of the Year 2020/21 in the Civil Law category. The organisers of this award, the Czech Bar Association and Epravo.cz magazine, have combined the two years together this time, as the coronavirus pandemic made it impossible to announce the winners for 2020. Petr Šuk was the only Supreme Court Judge to be awarded this time, although several of his colleagues have been awarded in the past, both in the civil and criminal area.

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.

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 regulates the activities of the Supreme Court or which concerns 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 the 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 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. The 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. The Supervising Clerks are involved in the implementation of new applications at the Supreme Court that should make the work of court clerks easier and more efficient.

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, 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 2022, the staff of the Evidence processed 18,607 data messages delivered to the Supreme Court's electronic registry and registered 10,251 new submissions and files in the relevant registers.

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 2022, 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 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 2022, the staff of the Registry processed and entered into the Supreme Court Information System (ISNS) 9,027 documentary submissions delivered to the Supreme Court and delivered (sent from the Supreme Court) approximately 9,920 documentary consignments and files weighing up to 2 kg and 5,942 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 the Registry Archives keep records of the files and documents deposited in the Supreme Court's Registry Archives, and in 2022 they took over and registered approximately 8,000 files and documents of the court administration, which are stored in 89 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.

3. 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 2022, a total of three complaints were filed with the Supreme Court concerning delays in proceedings before the Supreme Court, one of which was found to be substantiated, one partially substantiated and the third complaint was found to be unsubstantiated.

In 2022, 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	1	1
Misconduct of court personnel	0	0	0
Impairment of the decorum of proceedings	0	0	0

(Handling of complaints under Act No 6/2002 Sb. in 2022)

4. 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 2022, 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 2022, 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 1,549 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.

In January 2020, 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 continues to monitor the Supreme Court's decision-making activity as it relates to family law regulation to fulfil the intended purpose articulated in the request.

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 2022, within the framework of the ECLI (European Case Law Identifier) project, the Department continuously identified 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 Department approached the Documentation and Analytics Department of the Supreme Administrative Court with a proposal for technical support in the implementation of ECLI at the Supreme Administrative Court; cooperation between the analytical departments of the individual courts continued to develop during 2022. 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.

4. 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 and 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 Rights 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 successful implementation of the project is evident from the increasing number of experts and professionals interested in obtaining information through electronic communication, but also from the number of regular visitors to the site, which already numbers in the thousands. Representatives of the department also conducted several initial training sessions focused on the use of the newly created system and presenting the ways of working with the published data.

The department's aim was to create the easiest and most comfortable environment for visitors to work with the collection. The reasoning of each decision is thus hyperlinked, the decisions are available for download in several formats (including editable PDF), etc. The database of decisions published in the Collection of Decisions and Standpoints is gradually being expanded to include both new and older decisions that have not yet been published in this way. The reason for this is the growing demand from the professional public for their availability in digital form.

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

5. NATIONAL AND FOREIGN RELATIONS

5. 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 2022, 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 it not only managed to keep at current levels, but also actively developed. 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.

5. 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 focus areas of the analytical activity in the past year included, for example, issues related to the commencement of the limitation period for contracts and torts; the limitation of claims for compensation for delayed flight; competence in a dispute over a contractual penalty under a contract on a future contract; or the applicability of the Brussels I bis Regulation to the determination of the competence of a court based on a prorogation clause in a contract between parties who are domiciled in the same Member State of the European Union and who have chosen the courts of another Member State as the courts competent to resolve their disputes.

The analytical activity also focused on international comparisons of the level of compensation of a commercial agent in accordance with Directive 86/653/EC; issues related to criminal sanctions in the context of the Return Directive; the substitution of a will in the release of an asset from judicial custody; or the competence of courts under the Lugano Convention.

Other analyses included, for example, the propriety of contractual penalties and contractual late payment interest in selected EU Member States; filtering mechanisms in the supreme courts; redemption of blank bills of exchange in the laws of Germany, Austria, Poland and Slovakia; the transfer of the right to compensation for other than proprietary harm by inheritance in Austria and Germany; or the liability of the State for damage caused by the violation of EU law and the granting of rights to an individual.

5. 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 the 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.

5. 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.

Of the many individual issues that have been addressed through this network in the civil law area, we can mention the issues of moderation of contractual fines, access to and protection of personal data in the context of health care, adoption of adults, release of items from judicial custody or the enforcement of intellectual property rights.

In the area of criminal law, examples include issues related to grounds for detention, reasonable length of proceedings, possession of addictive substances for personal use or recognition of decisions of courts of non-EU Member States.

Last but not least, there were some more general issues of judicial administration, such as the legal regulation of the publication of open data on the activities of the judiciary, selected aspects of the application of Directive 2009/138/EC or the possibilities of cooperation between the supreme courts and lower courts, lawyers, prosecutors and academics.

5. 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.

5. 1. 5. Colloquium of the Network of Presidents of the Supreme Judicial Courts of the Member States of the European Union

Colloquium of the Network of Presidents of the Supreme Judicial Courts of the Member States of the European Union was held in Brno from 13 to 15 October 2022. It welcomed more than fifty personalities of the European judiciary, mainly the Presidents and Vice-Presidents of the Supreme Judicial Courts, but also other high officials of international judicial bodies.

This important international event, organised by the Supreme Court with the support of the Ministry of Justice, focused on two main themes. The first was the question of how the highest courts can contribute to increasing public confidence in the judiciary, and the second was the disciplinary responsibility of judges and the code of ethics for judges.

5. 2. Significant Conference Visits and Other Major International Events

After an undeniable decline in international cooperation with the physical participation of the parties caused by the pandemic, there has been a gradual resumption of such activities in 2022, especially for the President of the Supreme Court. There were also visits of foreign delegations to Brno which should not be left out either.

5. 2. 1. President of the Supreme Court

On 18 January 2022, the President of the Supreme Court, JUDr. Petr Angyalossy, Ph.D., visited the headquarters of Eurojust in The Hague. The President was welcomed by the President of Eurojust Ladislav Hamran and the National Member for the Czech Republic Lukáš Starý. The main objective of the visit was to discuss current trends in cross-border judicial cooperation and the latest developments within Eurojust, including the increasing number of requests for cooperation with and from the Czech authorities.

On 21 February 2022, the President attended together with the Head of the Department of Analytics and Comparative Law Petr Barták, the Conference of the Network of Presidents of the Supreme Judicial Courts of the Member States of the European Union in Paris. The conference was held on the occasion of the French Presidency of the Council of the EU and the 70th anniversary of the Court of Justice of the EU.

On 14 and 15 March 2022, a delegation of the Supreme Court headed by its President was received by Koen Lenaerts, the President of the Court of Justice of the European Union. President Angyalossy was accompanied by the Vice-President of the Supreme Court, JUDr. Petr Šuk, the President of the Criminal Division, František Púry, Judge JUDr. Pavel Simon and the Head of the Office of the President, Mgr. Aleš Pavel. The working meeting focused in particular on the issue of international jurisdiction of courts, the current case law of the Court of Justice and the case-law practice of Czech courts in this respect.

On 31 March and 1 April 2022, the President, accompanied by the Head of his office, Mgr. Aleš Pavel, attended the meeting of the Committee of the Network of Presidents of the Supreme Judicial Courts of the Member States of the European Union in Ljubljana. At this meeting, the President informed his foreign colleagues about the Network's colloquium in Brno in October and the Committee also included in its agenda a discussion on possible forms of support for independent justice in Ukraine and the coordination of such initiatives coming from various judicial networks across Europe.

On 5 and 6 May 2022, the President attended the Colloquium of the Network of Presidents of the Supreme Judicial Courts of the Member States of the European Union in Stockholm. The main topic of this working meeting was making court decisions accessible to the public, especially via modern digital tools. The related topic of anonymisation also came up.

From 13 to 14 June 2022, the President visited the Supreme Court of Austria, accompanied by the Head of his office, Mgr. Aleš Pavel and Supreme Court Judge JUDr. Petr Tůma; on the second day, the delegation was joined by Supreme Court Judges JUDr. Pavel Horák and JUDr. Pavel Horňák. The visit was a follow-up to the previous year when the President, Ms Elisabeth Lovrek, and the Vice-President, Mr Matthias Neumayer, visited the Supreme Court in Brno. The topics discussed by the participants included the digitisation of justice, the publication of court decisions and anonymisation and, last but not least, current issues related to consumer protection.

5. 2. 2. Significant Visits of Judges of the Supreme Court Abroad

From 8 to 11 September 2022, the President of the Panel of the Civil and Commercial Division, JUDr. Lubomír Ptáček, Ph.D., and the trainee judge, Mgr. Miroslav Hromada, Ph.D., attended the annual conference of the European Association of Labour Court Judges (EALCJ) on the Greek island of Hydra. The topic of this working meeting was entitled "Labour courts and proceedings with a foreign element in the post-covid era". The meeting was chaired by JUDr. Lubomír Ptáček, Ph.D., as the president of the EALCJ; individual subtopics were moderated by members of the association and attention was paid to both procedural and substantive aspects of resolving labour-law cases before the courts.

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.

5. 2. 3. Significant Foreign Visitors to the Supreme Court

On 11 May 2022, a meeting of the judges of the civil division of the Supreme Courts of the Czech and Slovak Republic took place in Třebíč. These meetings take place regularly, hosted alternatively in the Czech Republic and Slovakia. The programme included a discussion of the decision-making practice of both courts, especially the judgments proposed for publication in the Collection of Decisions and Standpoints of the Supreme Court, as well as expert contributions by the judges. The working meeting was, among other things, an opportunity for the leadership of both courts to meet.

From 12 to 14 September 2022, the President of the Israeli Supreme Court, Ms Esther Hayut, visited the Supreme Court, together with Judges Yael Willner and Noam Sohlberg, and the Head of the Office of the President of the Supreme Court, Ms Natalia Kimhi. The Israeli delegation had a working meeting with the President of the Supreme Court, JUDr. Peter Angyalossy, the Presidents of the two Supreme Court Divisions and the Heads of some of the Supreme Court's departments or sections. The Israeli and the Czech sides got to know each other's judicial systems, statistics on decision-making and informed each other about the impact of the coronavirus pandemic on the length of proceedings and the work of the courts in general. The delegation also visited the Constitutional Court.

6. ECONOMIC MANAGEMENT (COURT ADMINISTRATION)

The purpose and objective of court administration is to ensure the proper functioning of the judiciary, i.e. to create conditions for the proper administration of justice. This includes, in particular, ensuring the functioning of the judiciary in terms of material, personnel, economic, financial and organisational aspects.

The Supreme Court's budgetary expenditures consist mainly of the salaries of judges and court staff. Salaries account 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. Same as the previous year, the Supreme Court spent funds in 2022 mainly on restoring the condition and equipment of judges' or employees' offices and other areas in the original historic building. This is a continuous long-term activity given the number of premises that are not yet in satisfactory condition.

In 2022, the Supreme Court carried out a major investment project consisting in the reconstruction of the large conference hall, which was added to the historic Supreme Court building in 1986. The hall, originally built for meetings of the former Regional Committee of the Communist Party of Czechoslovakia, was still in its original condition, which was not fit for the needs of the judiciary, nor for any lecturing activities. Since the hall and the forehall form a separate building built into the courtyard of the Supreme Court, it was necessary to work on its outer shell as well. Unfortunately, after the original structures were uncovered, hidden deficiencies were discovered, such as the absolute lack of insulation of the hall's floors. At the same time, an unprecedented increase in the price of construction materials played a significant role, bringing the total cost of the renovation to CZK 31 million.

The reconstruction of the hall, which now bears the name of František Vážný, after the First Republic's Vice-President of the Supreme Court and the founder of the collections of judicial decisions, will provide the Supreme Court with high-quality and dignified premises not only for the administration of justice itself, but also for the representation of the Czech Republic in the judicial sphere, where the Supreme Court plays an irreplaceable role. The Supreme Court plans to use the renovated 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.

Significant funds of the Supreme Court budget are spent on the purchase and renewal of IT technology in the area of improving the technical level of hardware, software, user support, as well as keeping up to date with developments in data security.

Where the goal is to implement rules and procedures, there is a need and necessity to upgrade the technologies used, develop applications and platforms, and raise and expand the level of cyber security. Not only in the context of the recent global coronavirus situation, the Supreme Court's IT Department responded to the significantly increased demand for ensuring the smooth operation of remote forms of working, with all necessary security measures. Therefore, the continued trend in 2022 was to expand and increase the services enabling communication via videoconferencing, primarily through the acquisition of the necessary IT equipment. The current times call for not only speed, but also reliability and security of all communication services, so attention is paid not only to the technical level of newly purchased IT equipment, but also to the credibility of all suppliers and contractual partners.

Ensuring the professional qualification of judges and staff is another quite important area, which is why one of the leading items is the expenditure on the acquisition of professional and expert publications for the Supreme Court library, which is being expanded and specialises in professional legal publications.

The Supreme Court's activities in the economic, IT and operational management areas are always guided by the basic principles of economy, efficiency and effectiveness in the use of funds from the State budget. Internal management control is implemented in the financial operations process of the Supreme Court, ensuring control and approval from the preparation of transactions until their full approval and settlement, including the evaluation of the results and the economic management as a whole.

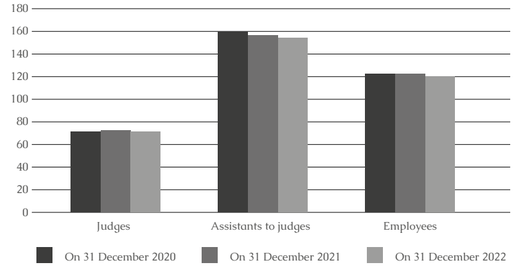
	Approved budget	Adjusted budget	Actual drawdown
2019	357,782	404,023	403,709
2020	430,871	478,441	443,168
2021	416,069	478,415	435,712
2022	430,236	496,713	472,009

(amount in 1,000s of CZK)

7. PERSONNEL DEPARTMENT

The Supreme Court reduced the number of its permanently assigned judges by one in 2022. The number of judicial assistants also decreased slightly compared to the previous year-end, as did the number of other court staff.

	On 31 December 2020	On 31 December 2021	On 31 December 2022
Judges	71	72	71
Assistants to judges	159	156	154
Employees	122	122	120



On January 2022, Mgr. Viktor Sedlák joined the Supreme Court as a Judge in the Civil and Commercial Division.

After 31 December 2022, the following Judges ceased to hold the position of a Judge of the Supreme Court:

JUDr. František Ištvánek, Civil and Commercial Division
JUDr. Zdeněk Des, Civil and Commercial Division

8. PUBLIC RELATIONS DEPARTMENT, PROVISION OF INFORMATION

8. 1. Information Office

In 2022, 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 the 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 2022, 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 extraordinary 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.

8. 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.

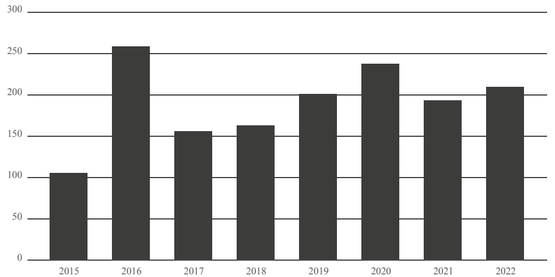
In 2022, the spokesperson of the Supreme Court issued a total of 66 press releases. In connection with the Colloquium of the Presidents of the EU Supreme Courts, the Supreme Court held a press conference on 14 October 2022 at the Passage Hotel in Brno.

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.

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

In the period from 1 January to 31 December 2022, the Supreme Court received a total of 210 written requests for information in accordance with Act No 106/1999 Sb., on Free Access to Information, as amended (hereinafter the "Information Act"). Compared to 2021, the "Zin" agenda has seen an increase by 17 requests (8.81%).

Looking further back, it is clear that the agenda has gradually increased to around 200 requests for information per year: 2015 – 105 requests, 2016 – 259 requests, 2017 – 156 requests, 2018 – 164 requests, 2019 – 202 requests, 2020 – 237 requests, 2021 – 193 requests and 2022 – 205 requests. Not taking into account the above-average years of 2016 and 2020, this shows a gradual increase in the agenda – for 2016, the statistical data are "spoiled" by about 60 "Christmas" requests, which had a querulous nature, while in the case of 2020, it was the "last year before the crisis", after which the agenda recorded a certain decline, which is significant when compared year-on-year (by 44 requests between 2020 and 2021, i.e. by 19%). However, looking at a longer time series, this is not a significant downward deviation.



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

A total of 32 requests (15% of the total requests) were not processed on their merits. Of this number, 19 requests were withdrawn by their submitters, 13 requests were suspended in their entirety by the obliged entity for lack of competence. In addition to the 13 requests that were suspended in their entirety, partial suspension was made in 4 other proceedings. Thus, the most frequent reason for suspending a request was the fact that the request for the provision of information did not belong to the obligated entity's scope of competence in accordance with to Section 2(1) of the Information Act.

A total of 178 requests were dealt with on the merits (85%). This was always done within the statutory time limits for the proper handling of the request. In 2022, there was no assessment of a fee for an exceptionally extensive search in accordance with Section 17(1) of the Information Act in any proceedings.

90 requests were granted in full, and another 33 cases were granted at least partially. In the case of 15 requests, the submitters were fully referred to published information; in another 5 cases, they were partially referred to published information.

The obliged entity rejected 35 (17%) requests in full and 35 in part. The most common reason for rejecting a request in full was that the submitters 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 submitters 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 two appeals were lodged by the submitters against the decision to fully or partially reject a request. Both appeals were submitted

to the appellate body for a decision. In both 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 2022, one in five submitters complained about the processing of the request for information, i.e. about the form, content or scope of the information provided. All complaints were referred to the appellate body for a decision. With the exception of one case, the appellate body has so far always upheld the procedure of the obliged entity and the way the request was handled; one complaint has remained pending. The subject of all the complaints was the response of the obliged entity, which the submitters, for various reasons, considered insufficient, or the information provided did not seem to correspond to their expectations.

Complaints in proceedings file No Zin 46/2022 and file No Zin 142/2022, filed by the same person, objected in particular to the form of the information provided – extracts of all the submitter's proceedings before the Supreme Court together with additional information. In the case of the first complaint, the appellate body concluded, in its decision of 28 April 2022, ref. No UOOU-01594/22-2, that "In the case of the procedure of the obliged entity concerning the handling of the part of the submitter's following request: 'I demand a true and full transcript of the proceedings of your court upon me!' the Office states that it dealt with this part of the request in accordance with its wording, providing the submitter with all the information she requested to the maximum extent possible."; in the case of the second complaint, on the contrary, the appellate body concluded that the submitter's request had not been dealt with in its entirety. In this respect, it stated in its decision of 11 November 2022, ref. No UOOU-03614/22-2, the following: "It is clear from the submitter's request that she is addressing the obliged entity as an authority under Section 122d(1) and (2) of the Courts and Judges Act. It is not clear whether the submitter is inquiring about the above-mentioned motions under Section 122d(4) of the Act in relation to herself or in general. /.../ The obliged entity completely failed to answer this part of the submitter's request in its reply and the Office concluded that the requested information (for the sole reason that it is not entirely clear what the submitter is requesting) cannot be deduced from the provided statement. Therefore, it must be concluded that this part of the submitter's request remains unanswered." Thus, on the basis of the appellate body's instruction, the obliged entity informed the submitter anew that it had no such suggestion in respect of her person, which was already apparent from the previously provided list of all her proceedings, and added general information on the number of suggestions received in the agenda in question overall.

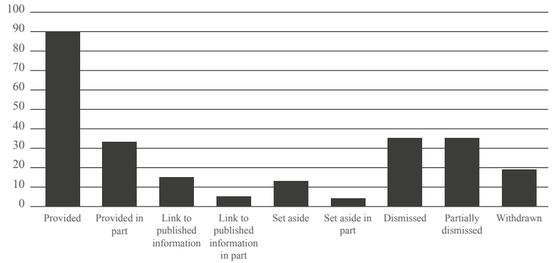
In the case of the proceedings under file No Zin 59/2022, the appellate body concluded in its decision of 25 May 2022, ref. No UOOU-01645/22-5, that while it would have been possible to reject the request as an impermissible request for an opinion, it was also possible to provide a general but comprehensive response. The appellate body further stated that "the obliged entity chose a procedure more advantageous for the submitter in terms of the realisation of the right to information enshrined in Article 17(5) of the Charter of Fundamental Rights and Freedoms and provided her with the information in a modified form. In this particular situation, after evaluating the content of the submitter's

request, the reply provided by the obliged entity and the accompanying information included in the referred file, the Office agreed with the procedure of the obliged entity."

The last two complaints – file No Zin 166/2022 and file No Zin 177/2022 – were again submitted by the same person. The first complaint, which, instead of stating the specific deficiencies of the information provided, merely "urged" the handling of the request, and it was rejected as unfounded by the decision of the appellate body of 16 November 2022, ref. No UOOU-04021/22-2. The appellate body concluded its review by stating that "the response of the obliged entity completely exhausted the subject-matter of the submitter's request and its supplements, and the Office decided, in accordance with the provisions of Section 16a(6)(a) of the Information Act, to confirm the procedure of the obliged entity." The submitter's second complaint has not yet been dealt with by the appellate body.

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 2022, 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. In 2022, 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 2022

9. THE CONFLICT OF INTEREST DEPARTMENT

9. 1. Departmental Activities

In accordance with Act No 159/2006 Sb., on Conflict of Interest, as amended, the Supreme Court is responsible for receiving and recording notifications of activities, assets, income, and liabilities of judges of the Czech Republic, as well as for storing the data in these notifications and supervising the completeness thereof.

The Conflict of Interest Department of the Supreme Court, which consists of three employees, performs all statutory activities in relation to public officials – judges.

All judges registered in the Central Register of Notifications compiled by the Ministry of Justice are obliged to file notifications when commencing and terminating their duties and also periodically at the times prescribed by the Conflict of Interest Act. Notifications are sent to the Supreme Court in writing on a specific form, the structure and format of which are set by the Ministry of Justice in an implementing decree. These notifications are then kept for a period of five years from the date of termination of a judge's duties. The register of judges' notifications is an autonomous and separate register that is not available for perusal. The information contained in it is not even disclosed under Act No 106/1999 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 2022 filed "interim notifications" for the period they were in office in the 2021 calendar year, and were required to do this by 30 June 2022.

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 2022, the department also received and recorded entry and exit notifications for judges who were freshly appointed or retiring.

In 2023, 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 2023, the department is expected to submit interim notifications for the period judges were in office in the 2022 calendar year. In addition, entry and exit notifications will be received and recorded.

9. 2. Statistical Data

As of 1 January 2022, the Central Notification Register maintained by the Ministry of Justice listed 2,988 serving judges who were subject to the statutory obligation to submit an interim notification for 2021.

As of 31 December 2022, an interim notification for 2021 was filed for 2,987 judges. One judge did not file a notification for serious health reasons.

In accordance with the Conflict of Interest Act, 138 judges took office in 2022. Those who had a deadline for submitting entry notifications in 2022 filed their notifications.

The notification obligation in connection with the termination of office in 2022 arose for 71 judges. Judges who had a deadline for submitting exit notifications in 2022 filed their notifications.

In 2022, 122 judges were checked for the completeness of the notifications submitted, with a total of 211 notifications checked.

10. DATA PROTECTION OFFICER

There was a change in the Data Protection Officer position in 2022. At the beginning of the year, the current Officer focused on wrapping up her work. She subsequently left for another job opportunity and the position was temporarily taken over by the Adviser to the President. As of 1 September 2022, Mgr. Simona Češková, who returned to the Supreme Court after her parental leave, became the new Data Protection Officer.

The new Officer began her work mainly in the area of records on the processing of personal data, which had to be updated due to organisational changes in some departments. It was also necessary to complete the records of the activities of the court agendas, on which the Officer worked with the Adviser to the President, who in turn worked with the Supervising Clerks of the individual Divisions.

Based on employee complaints, the Officer initiated a change in the setup of the Supreme Court's intranet, which was implemented in cooperation with the system supplier. This change has led to greater protection of employees' personal data.

The Commissioner also participated in a number of working meetings aimed at changing the pseudonymisation of Supreme Court decisions and the related amendment of the relevant directive. These working meetings will continue in 2023 in cooperation with the highest judicial authorities, the Ministry of Justice and the Ombudsman. The aim is to unify the rules of pseudonymisation at the departmental level.

The need to amend certain internal regulations of the Supreme Court arose under the new Data Protection Officer. These changes have been and will continue to be discussed at the level of senior staff of the Supreme Court.

At the same time, the new Officer continued the audits of the High Courts that were started by her predecessor. According to the Courts and Judges Act, the Data Protection Officer of the Supreme Court is the inspection body in the area of personal data protection.

11. 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 31,500 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 2022, the stock was expanded to include nearly 260 new titles. The library's services are used by approximately 1,000 people. Library staff answered more than 500 internal and external enquiries.

CLOSING REMARKS BY THE VICE-PRESIDENT OF THE SUPREME COURT

I cannot but recall the memorable prefaces to the individual editions of the Commercial Code Commentary from the pen of our former colleague JUDr. František Faldyna, in which he pointed out, using various phrases, the frequency of their publication; "a year has passed and here we have another edition of the Commentary....". The annual characteristic is a rather random feature for commentaries, but for the present publication, it is its very nature (it is a yearbook after all).

If 2021 was – from a societal perspective – a year of uncertainty, change and long-unrecognised challenges, this is doubly true for 2022. The more turbulent the waters of society become, the more important it is that the Supreme Court and the entire judiciary reliably fulfil their core mission of providing protection for the rights and freedoms of the people of our country. However incomplete and incapable of covering everything by its very design this present yearbook may be, I believe it proves that the Supreme Court succeeded. And I hope it will continue to succeed in the coming year.

Yours,
Petr Šuk

Petr Šuk
Vice-President of the Supreme Court

The Supreme Court Yearbook 2022

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