

The Supreme Court Yearbook

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2023





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## FOREWORD BY THE PRESIDENT OF THE SUPREME COURT

Dear Readers,

The year 2023 was above all a jubilee year, in which the Supreme Court commemorated thirty years of its modern existence. On that occasion, on 14-15 September, the Supreme Court hosted an international conference entitled “The Role of The Supreme Courts in Providing Effective Legal Protection”, in which renowned representatives of the European judiciary took part, notably the President of the Court of Justice of the European Union, Koen Lenaerts, the President of the Supreme Court of the Netherlands, Dineke de Groot, and the President of the Supreme Court of Finland, Tatu Leppänen. Thanks to this conference, we have started a professional dialogue with the legal and judicial community on the topic of redefining the regulation of extraordinary appeals in civil matters. We evaluated the existing regulation, both the admissibility criteria and the requirements for reasoning of resolutions that reject the extraordinary appeal. This year, we will continue the discussion we have started with the judicial and political representation to ensure that the desired changes will be reflected in the new legal regulation.

The beginning of the year traditionally provides statistics. Last year, they were very favourable. In 2023, Supreme Court judges were able to

significantly reduce the average length of civil proceedings on extraordinary appeal. Specifically, in the Cdo agenda, where judges decided 4,085 cases in 2023, the length dropped from 160 to 140 days. In criminal extraordinary appeals, specifically in the Tdo agenda, where judges decided 1,188 cases in 2023, the average time taken by each Panel to decide cases ranged from 40 to 50 days. Thus, the average length of proceedings has been very favourable in the long term. The quality of the work of our Panels is also reflected in the lower number of constitutional complaints. In 2023, the Constitutional Court decided on 1,319 constitutional complaints by applicants challenging the decisions of the Supreme Court. In only 3,6 % of the proceedings, namely in 48 cases, the Constitutional Court upheld the complaints and annulled the Supreme Court’s decision.

Significant Supreme Court decisions for 2023 are presented in the various sections of the Yearbook. In addition to the decisions of the three-judge Panels, the Supreme Court also seeks to unify case law by issuing Opinions or through decisions of the Grand Panel of a given Division. In the past year, the Criminal Division adopted 1 Opinion and the Grand Panel of the Criminal Division decided a total of 3 cases. The Civil and Commercial Division did not adopt any Opinions, and the Grand Panel of the Civil and Commercial Division decided a total number of 6 cases in 2023.



Another tool for unifying case law is the publication of a particular decision in the Collection of Decisions and Opinions of the Supreme Court. In accordance with established tradition, the Supreme Court Yearbook once again presents a selection of most important decisions from the past year.

The Czech judiciary continued to perform very well even in comparison with other European countries. According to the European Commission's EU Justice Scoreboard, published last June, the length of proceedings at all levels of the judicial system, from district courts to the Supreme Court, in contentious civil and commercial cases represents the best result in the time the European Commission has been monitoring this statistic. The Czech Republic has achieved the second-best result in the entire European Union and is the fastest judiciary in the Union after Sweden. These results are due to the exceptionally high quality of the work of judges, which also contributes to strengthening the trust of the public in the judiciary.

In conclusion, let me thank those colleagues whose judicial terms ended last year for their long-standing contribution to the Supreme Court and the judiciary as a whole. Last year, the term of office of Jiří Spáčil, who had been a judge of the Supreme Court since the very beginning of its modern existence, i.e., since 1993, came to an end. Kateřina Horňáčková who joined the Supreme Court one year later (in 1994) left the Supreme Court at the end of 2023 too, together with Pavel Šilhavec and Pavel Příhoda. The term of office of Pavel Šámal, who became a Constitutional Court judge in 2020, ended last year as well. At the end

of June, judge Miroslav Ferák resigned from the Supreme Court after 28 years of service and retired. I would like to thank them all for the exceptionally high-quality work they have done for the Supreme Court and wish them every success in the years to come.

Petr Angyalossy



# 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, except for matters that fall within the competence of the Constitutional Court and the Supreme Administrative Court.

Extraordinary remedies are extraordinary appeals against decisions of courts of second instance and complaints on the violation of the law which can be filed in criminal cases by the Minister of Justice. The Supreme Court decides in cases prescribed by law, on the determination of the local and subject-matter 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 the 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 Session of the Supreme Court are

published in the Collection of Decisions and Opinions of the Supreme Court (hereinafter referred to as the "Collection").

Since 1 September 2017, under Act No 159/2006 Coll., on Conflict of Interest, as amended, (hereinafter referred to as the "Conflict of Interest Act") the Supreme Court has also been entrusted with receiving and recording notifications concerning the activities, assets, income, gifts and obligations of more than 3,000 judges in the Czech Republic. These records are not made public.

## 1. 1. Composition of the Supreme Court

The Supreme Court is headed by a President and a Vice-President. On 20 May 2020, the President of the Czech Republic Miloš Zeman appointed **Petr Angyalossy** 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 **Petr Šuk**, who was also appointed by the President of the Czech Republic Miloš Zeman for a 10-year term.

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

The President of the Supreme Court has a managerial and administrative role. In addition, the President also participates in decision-making, appoints Presidents of Divisions, Presidents of Panels, judicial assistants and court employees to managerial positions. The President issues the Organisational Rules and Office Rules and, following discussions at the Plenary Session, the Rules of Procedure. Upon consultation with the Council of Judges, the President issues a Work Schedule for every calendar year. The President of the Supreme Court determines the agenda for the Plenary Session and 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 by the President. The Vice-Presi-

dent 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, takes care of the training courses for assistants, advisers and employees of the Supreme Court.

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 2023 was **Jan Eliáš** who was appointed for a term of 5 years as of 1 January 2019 and whose term of office expired on 31 December 2023; the President of the Criminal Division from 1 January 2016 until now has been **František Púry**, who has been entrusted with the management of this Division since 1 September 2015 and who is now serving his second five-year term. 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. 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.

All Opinions of the Plenary Session, Civil and Commercial Division, Criminal Division, selected decisions of the individual Panels and selected decisions of lower courts are published in the Collection.

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 decides a case when any Panel of the Supreme Court refers the case to it on the ground that it reached a legal opinion which differs from a legal opinion 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 violation of the law. Each Panel of the Supreme Court is headed by a President who organises the work of the Panel, including assigning cases to Panel members.

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 November 2022. The Council of Judges consists of the President and four other members. Since 1 May 2019, the President has been **Lubomír Ptáček**.

## 1. 2. Seat of the Supreme Court, Contacts

<b>Address:</b>	Burešova 570/20, 657 37 Brno
<b>Telephone:</b>	+ 420 541 593 111
<b>Email address:</b>	podatelna@nsoud.cz
<b>Data mailbox ID:</b>	kccaa9t
<b>Website:</b>	www.nsoud.cz
<b>X:</b>	@Nejvyšsisoud
<b>LinkedIn:</b>	<a href="https://cz.linkedin.com/company/nejvyšší-soud">https://cz.linkedin.com/company/nejvyšší-soud</a>
<b>Instagram:</b>	<a href="https://instagram.com/nejvyšsisoud">https://instagram.com/nejvyšsisoud</a>

Since 1993, the Supreme Court has been located in a listed building of the former General Pension Institute, which was built based on 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 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 used by the Technical University and the Janáček Academy of Music and Performing Arts, up to 1996.

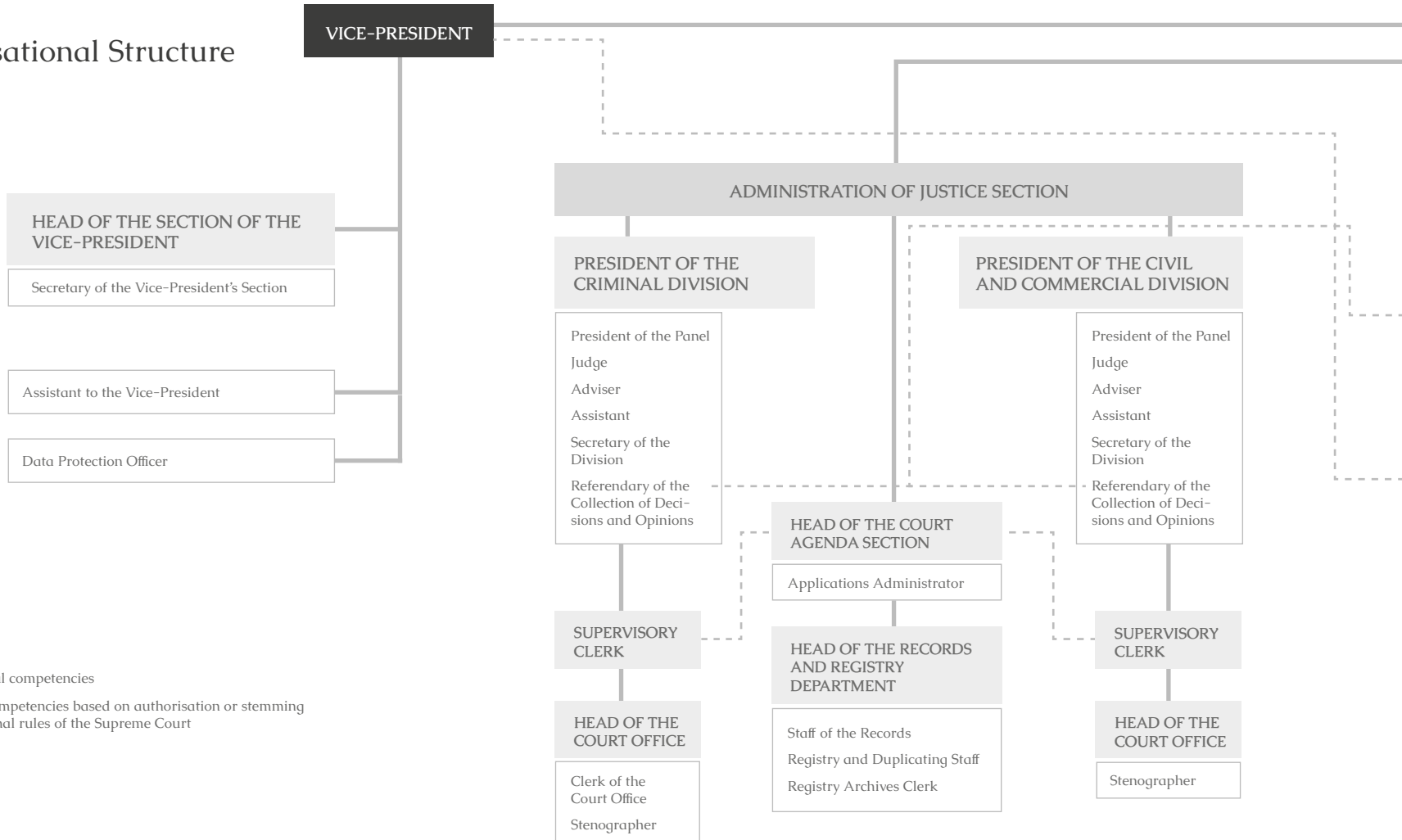
On 1 October 2019, after many years of waiting, the Supreme Court's new wing was opened – adjacent to the original historical functionalist building in Bayerova Street. The new office building has seven floors above ground and three floors below ground. The lowest level of the new building holds technological facilities, as well as the new archive of the Supreme Court. Above the new archive, there is an underground garage consisting of two floors with 20 parking spaces. Offices accommodate 143 employees, mainly judicial assistants. Finally, 26 years after its establishment, the Supreme Court acquired decent premises for its vast 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. The extension of the new wing of the Supreme Court building won second place in the Building of the Year 2019 competition of the South Moravian Region, namely in the category of Public Amenities.

On 13 October 2022, the Supreme Court opened the renovated hall named after František Vážný, the Vice-President of the Supreme Court in First Czechoslovak Republic and founder of the collections of court decisions. The original hall dates back to 1986 and its reconstruction was already necessary. After the library, which was previously located there, was moved to a new annex, the Supreme Court was able to renovate the hall and expand its capacity to more than 130 people.

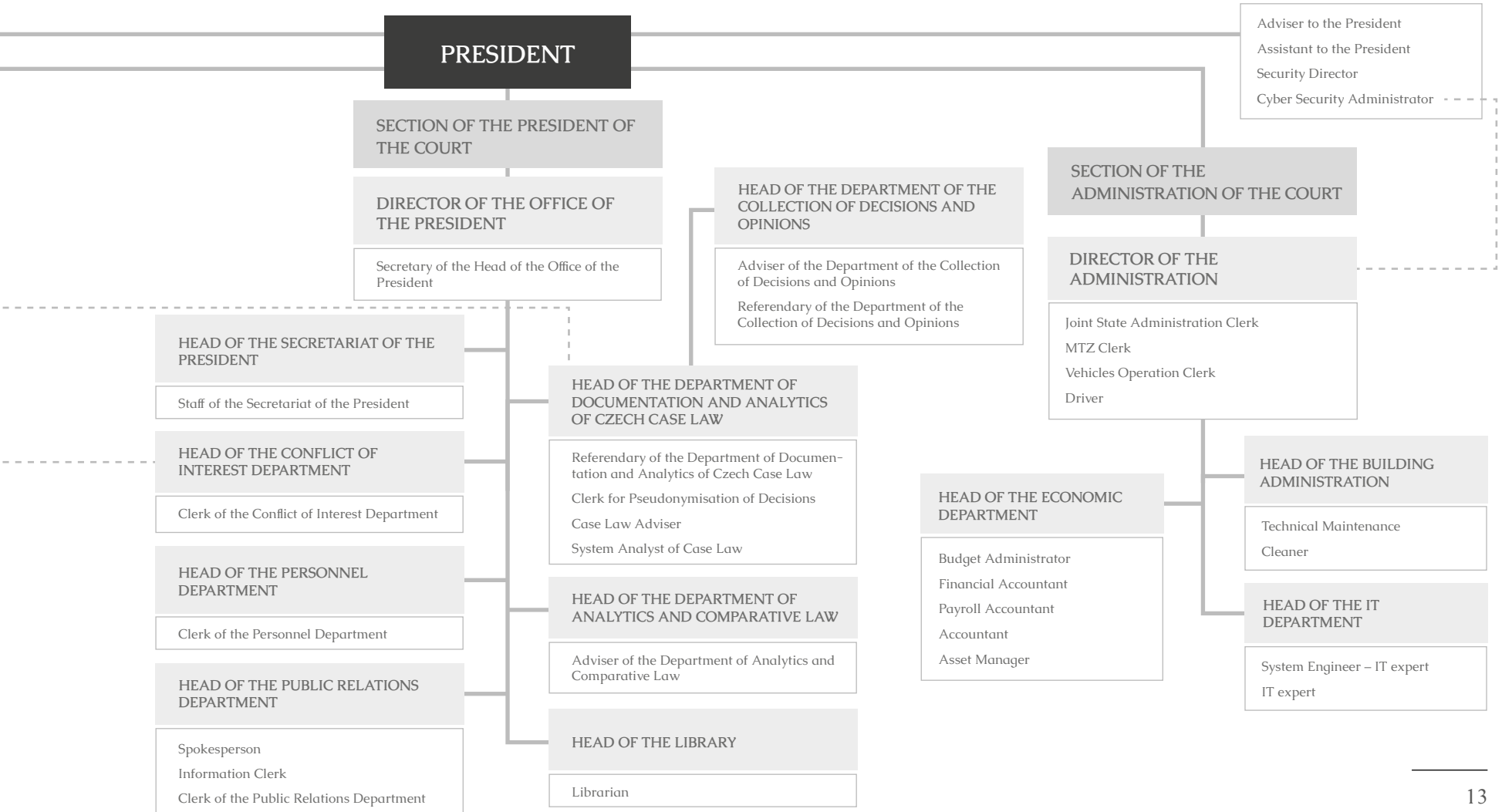
The František Vážný Hall is used for meetings of Divisions, Plenary Session, colloquia or conferences, trainings and lectures; if necessary, it can also be used as a large courtroom.

On 14 September 2023, on the occasion of an international conference, a photo gallery of former Supreme Court judges since its establishment in 1993 was presented in the foyer of the František Vážný Hall. The photo gallery matches the renovated space and creates an inspiring space for conducting debates and conversations at various professional and social events. The combination of newly opened photo gallery and the renovated František Vážný Hall creates a unique *genius loci* of the Supreme Court.

### 1. 3. Organisational Structure



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



## 1. 4. Supreme Court Judges in 2023

### Criminal Division

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

### Civil and Commercial Division

*Vít Bičák*  
*Pavλίna Brzobohatá*  
*Marek Cigánek*  
*Filip Cileček*  
*Marek Doležal*  
*Jiří Doležilek*  
*Václav Duda*  
*Bohumil Dvořák*  
*Jitka Dýšková*  
*Jan Eliáš*  
*Miroslav Ferák*  
*Roman Fiala*  
*Petr Gemmel*  
*David Havlík*  
*Pavel Horák*  
*Kateřina Hornochová*  
*Pavel Horňák*  
*Miroslav Hromada*  
*Lucie Jackwerthová*  
*Miroslava Jirmanová*  
*Michal Králík*  
*Petr Kraus*  
*Pavel Krbek*  
*Zdeněk Krčmář*  
*Pavel Malý*



*Helena Myšková*  
*Jiří Němec*  
*Michael Pažitný*  
*Milan Polášek*  
*Zbyněk Poledna*  
*Pavel Příhoda*  
*Lubomír Ptáček*  
*Zdeněk Sajdl*  
*Viktor Sedlák*  
*Pavel Simon*  
*Jiří Spáčil*  
*Karel Svoboda*  
*Petr Šuk*  
*Hana Tichá*  
*Pavel Tůma*  
*David Vláčil*  
*Petr Vojtek*  
*Martina Vršanská*  
*Robert Waltr*  
*Jiří Zavázal*  
*Aleš Zezula*  
*Ivana Zlatohlávková*  
*Hynek Zoubek*

#### 1. 4. 1. Trainee Judges

Criminal Division

*Ondřej Círek*  
*Zuzana Ursová*

Civil and Commercial Division

*Vladimír Beran*  
*David Bokr*  
*Bořivoj Hájek*  
*Miroslav Hromada*  
*Jan Kolba*  
*Iva Krejčířová*  
*Petra Kubáčová*  
*Jana Misiáčková*  
*Hana Polášková Wincorová*

## 1. 4. 2. Curricula Vitae of Newly Assigned Judges

### *Miroslav Hromada (\*1977)*

Judge of the Civil and Commercial Division

- graduated from the Faculty of Law of Charles University
- completed his doctoral studies at the Faculty of Law of the University of West Bohemia in Pilsen, where he is a lecturer now
- from 2001 to 2004 he served as a judicial trainee at the Regional Court in Prague
- in 2004 he became a judge of the District Court in Kladno
- in 2007 he became a judge of the District Court in Rokycany
- in 2012 he became a judge and later the President of the Panel of the Regional Court in Pilsen
- from 1 September 2015 to 31 August 2016 and from 1 January 2021 to 30 June 2023 he was temporarily assigned to the Supreme Court
- on 1 July 2023 he became a judge of the Supreme Court

### *Lucie Jackwerthová (\*1972)*

Judge of the Civil and Commercial Division

- graduated from the Faculty of Law of Charles University
- in 1999 she started working as a judicial trainee at the Municipal Court in Prague
- in 2002 she became a judge of the Circuit Court for Prague 8
- in 2012 she became a judge at the Municipal Court in Prague
- from 2018 to 2021 she was temporarily assigned to the Supreme Court
- on 1 June 2023 she became a judge of the Supreme Court

## 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 interest of the uniform decision-making of the courts, 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 Coll., on Courts and Judges, as amended, hereinafter referred to as "Act on Courts and Judges"). In 2023, the Plenary Session of the Supreme Court did not convene.

### 2. 2. Collection of Decisions and Opinions of the Supreme Court

In terms of providing information about the Supreme Court's unifying activity and also promoting legal awareness of both the legal experts and the general public, an important activity of the Supreme Court is the publication of the Collection (Section 24(1) of Act 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 matters. 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 civil and criminal sections.

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 sent for comments to the relevant authorities, i.e. regional and high courts, law faculties of universities, 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 constitutes a quorum of a simple majority of its members who are present. 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 also 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 are created and new volumes published only in electronic form, at <https://sbirka.nsoud.cz/>; <https://eslp.nsoud.cz>.

Individual judgments from the Collection can also be found, along with legal sentence (e. g., sentence containing a brief summary of the most important part of the decision; in German “*Rechtssatz*”), on the Supreme Court website <https://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 2023

### 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 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 against 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 the Supreme Court.

At the end of 2023, the Civil and Commercial Division consisted of a President and fifty-two judges (five of whom were assigned temporarily) assigned to twelve judicial departments (the 32 Cdo Department 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 the Work Schedule during the year. In principle, the 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 – 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 compensation for damages and protection of personality rights – Department 25; in tenancy matters – Department 26; in matters of legal persons and capital market – Department 27; in restitution and unjust enrichment matters – Department 28; in insolvency matters and matters regarding promissory notes – 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 seven years, including for 2023. 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-member 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, returned the matter of composition of the individual Panels called to hear and decide a specific case to the hands of the managing President of the relevant judicial department (as determined by the Work Schedule); the managing Presidents compose the Panels primarily according to the criteria of internal specialisations, expertise of individual judges and their specific work position.

### 2. 3. 1. 1. Deciding on Extraordinary Remedies

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 according to the 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.

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, if they or the person acting on their behalf lack legal training, must be represented by a lawyer (a person who has been admitted to the Bar having their name recorded in the Register of Lawyers maintained by the Czech Bar Association) when applying for extraordinary appeal (in some cases, they 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 and Section 238a of the Code of Civil Procedure). If the extraordinary appeal is not legally admissible, it does not become admissible 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 Coll. has also significantly affected the rules on the admissibility of extraordinary appeals. Extraordinary appeal is henceforth admissible against all decisions of the courts of appeal terminating the appeal proceedings, regardless of the wording of the contested operative part of the 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 must be directed against decisions on the merits, as was previously the case (the admissibility of extraordinary appeal against annulling decisions of the courts of appeal was removed by Act No 296/2017 Coll.).

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 Supreme Court;
- b) this question has not yet been resolved in the decision-making of the Supreme Court;
- c) this question is decided differently by the Supreme Court; or
- d) such a question is to be assessed differently by the Supreme Court.

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 (relevant here is the property census – 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 50,000 CZK, including proceedings for enforcement of a decision, 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) on 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 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 to challenge the contested decision by means of extraordinary appeals while 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 made the conditions for the formal and substantive requirements of an extraordinary appeal stricter; 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 seeks, it must also contain a statement of the grounds for an extraordinary appeal and an indication of what the applicant sees as fulfilling the prerequisites for the admissibility of the extraordinary appeal, as set out in Section 237 of the Code of Civil Procedure. The lack of these requirements then constitutes an error 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 Supreme Court, the procedure specified in Section 43 of the Code of Civil Procedure does not apply, which means that the applicant is not called upon to correct or supplement the application for extraordinary appeal. If the error in the application for extraordinary appeal is not remedied, the Supreme Court will reject the extraordinary appeal without being able to deal with the merits of the case.

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, and it is possible for the Supreme Court 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 argues that the court of appeal deviated from the decision-making practice of the Su-

preme Court, it must specify in the extraordinary appeal which judicial conclusions the court of appeal failed to respect, which clearly places considerable demands on the applicant.

However, these demands are not disproportionate with regard to the statutory mandatory (expert) representation (in particular by a lawyer – e.g. a person who has been admitted to the Bar having their name recorded in the Register of Lawyers maintained by the Czech Bar Association). 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 indicated the extent to which they challenge the decision of the court of appeal or in which they have 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 has contested it and from the point of view of the grounds of extraordinary appeal which the applicant has defined in the 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 discontinues the extraordinary appeal proceedings if the applicant 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 errors which make it impossible to continue the extraordinary appeal proceedings, or if it is manifestly unfounded, the Supreme Court rejects it (Section 243c(1) of the Code of Civil Procedure). If the application for extraordinary appeal is rejected 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 as unfounded (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) change 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 court 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 on Courts and Judges), which the procedural Panel addresses if it reaches a legal opinion, 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, in 2022 in 6 cases (in one of which the case was referred to a three-judge Panel of the Supreme Court), and in 2023 in 6 cases.

The extraordinary appeal proceedings can be monitored 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 <https://justice.cz/>; all final and enforceable decisions are then published in an anonymised form on the website [www.nsoud.cz](http://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 Acts. It is worth noting here that it decides disputes about local and subject-matter jurisdiction between courts, determines the court with local jurisdiction if the matter falls within the competence of the Czech courts but the conditions for local jurisdiction are lacking or cannot be ascertained (Section 11(3) of the Code of Civil Procedure), decides on applications 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 challenging impartiality of high courts judges (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 applications 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 Coll., on Private International Law, as amended, the Supreme Court is called upon to decide on the recognition of final and enforceable foreign judgments in matters of divorce, legal separation, declaration of nullity of marriage and determination of the existence of 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 parenthood, if at least one of the parties to the proceedings was a citizen of the Czech Republic.

The Division also performs its unifying role by adopting Opinions. It also strengthens the uniform decision-making of the courts by publishing the Collection with important decisions of the Supreme Court and other courts (see Chapter 2.3.2. and 2.3.4.).

### 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, applications to set a time limit for the performance of a procedural act in accordance with Section 174a of Act on Courts and Judges;

#### **ICdo**

– incidental disputes arising from insolvency proceedings;

#### **Ncu**

– applications for recognition of foreign judgments in matrimonial matters and in matters concerning determination and denial of parenthood;

#### **Nd**

- conflicts of jurisdiction between courts;
- application to refer 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;
- applications to exclude Supreme Court judges from hearing and deciding a case;
- applications 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 local jurisdiction are lacking or cannot be ascertained (Section 11(3) of the Code of Civil Procedure);
- other 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 on Courts and Judges), on the basis of an evaluation of final decisions that are mutually contradictory in terms of the legal opinions thereby expressed. In 2023, the Civil and Commercial Division did not issue any unifying Opinion. The Supreme Court also

pursues the same interest, i.e., to strengthen unified decision-making, by publishing in its Collection the relevant or otherwise important decisions (not only its own), based on the decisions of a majority of all the judges of the relevant Division. The Civil and Commercial Division met a total of 10 times in 2023, among other matters to select key 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 and is also posted in electronic form on the website of the Supreme Court <https://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 the past 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 Supreme 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 2023, the number of pending cases older than two years was reduced significantly – while there were 82 such cases in

2015, by the end of 2022 only 7 were registered. At the end of 2023, there were only 16 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.

Year 2023	Pending from earlier periods	Newly received cases	Decided	Pending
Cdo	1,583	3,973	4,085	1,471
Cul	0	1	1	0
ICdo (ICm)	158	205	209	154
Ncu	37	206	205	38
Nd	86	784	811	59
NSČR (INS)	72	103	110	65

Summary of the development of the Civil and Commercial Division's agenda in 2023

A significant increase in incidence was observed in connection with the amendment to the Code of Civil Procedure introduced by Act No 404/2012 Coll., which expanded the decision-making competences of the Supreme Court 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 court of highest instance. Act No 296/2017 Coll., with effect from 30 September 2017, was supposed to bring 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 admissibility exclusions in Section 238 of the Code of Civil Procedure. Namely, decisions on a party's request for exemption from court fees, decisions dismissing a party's request for the appointment of a representative, or decisions by which the court of appeal annulled the decision of the court of first instance and referred the case back for further proceedings were excluded from extraordinary appeal proceedings. It should be added that usually in neither of these cases are legally relevant questions raised for the purposes of developing the case law. The 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 led to increased efforts to deal with inadmissible extraordinary appeals, but it has complicated the timely resolution of cases which were open to substantive review and, as a rule, more important in terms of case law, if non-compliance with the six month period could result in the activation of the liability regime of the State in accordance with Section 13(1) of Act No 82/1998 Coll., on Liability for Damage Caused in the Exercise of Public Authority by Decision or Maladministration, 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 Procedure Code (Act No 286/2021 Coll.).

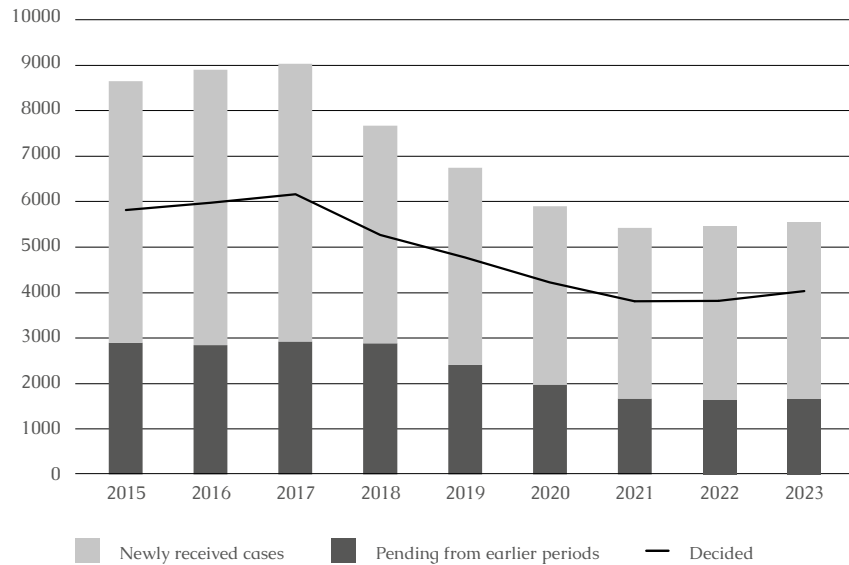
From the Supreme Court's point of view, the application of the amendment to the Code of Civil Procedure and the Act No 549/1991 Coll., on Court Fees, as amended, brought in 2018 the desired reversal of the earlier (not always justified) tendency to increase the decision-making burden. The resulting reduction 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 in the Cdo register for the period from 2015 to 2023 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 2023:

Year	Pending from earlier periods	Newly received cases	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
2023	1,583	3,973	4,085	1,471

Cdo and former Odo agenda, 2015 – 2023

\*Due to a case contested in 2020 being ruled a mistake in the Cdo agenda in May 2021, an additional adjustment has been made to the 2020 statement in the number of pending cases – the correct number is 1,662. Similarly, there is also a “disparity” in the statistic of pending from previous years for 2021 and those pending from earlier periods as of 1 January 2022.



The obvious reason for the earlier negative trend was that the number of extraordinary appeals received by the Supreme Court 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 decided the highest number of cases (5,812), the number of pending cases was still 2,838. Similarly, in 2016, the number of new received cases rose to 6,065, and although even more cases were decided than in 2015 (5,971), the number of pending cases rose by 92 cases to 2,930.

As for 2017, even though 40 more cases were received by the Supreme Court than in the previous year, an even higher number of cases were decided, and the number 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 Coll., was there a substantial reduction in newly received cases (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. The year 2019 then brought a continuation of the mentioned decreasing tendency of newly received cases (4,340) as well as the number of pending cases (an 18% decrease compared to 2018). In 2020, there was once again a decrease in newly received cases (3,927), 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 cases and ended with 1,569 pending cases. Years 2020 and 2021 also saw a decline in newly received cases caused by the coronavirus pandemic, but this has also been reflected in the pending 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 number of received cases increased slightly; there were about 3,5% more new cases than in 2021 (3,893), and 3,875 cases were decided, so there was a slight increase in the number of pending cases, taking the number to 1,586. In 2023, the Supreme Court received 3,973 new cases, whereas 4,085 cases were decided.

The expected sharp increase in the agenda related to the end of the coronavirus pandemic and the resumption of activity of the courts

of appeal without restrictions in 2022 has not occurred, and the effects of the coronavirus pandemic and its end are likely to be more pronounced in the coming years. From the point of view of the Civil and Commercial 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 waiver of the time limit for the performance of a procedural act in accordance with Act No 191/2020 Coll., the so called “Lex Covid” (e.g. resolution of the Supreme Court of 24 August 2022, Case No 27 Cdo 2076/2021).

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

#### 2. 3. 4. 1. Opinion of the Civil and Commercial Division of the Supreme Court

In 2023, the Civil and Commercial Division of the Supreme Court did not adopt any Opinions. To strengthen the uniformity of court decisions, the Supreme Court mainly published important decisions in the Collection.

#### 2.3.4.2 Decisions of the Grand Panel of the Civil and Commercial Division of the Supreme Court Published in the Collection

##### *Assessment of the Proportionality of the Contractual Penalty*

In its judgment of 11 January 2023, Case No 31 Cdo 2273/2022, published under No 76/2023 of the Collection, the Grand Panel of the Civil and Commercial Division of the Supreme Court held that the proportionality of the contractual penalty within the meaning of Section 2051 of the Civil Code is to be assessed with regard to the manner and circumstances in which the breach of the contractual obligation secured by the contractual penalty occurred and the extent to which it affected the interests of the creditor which should have been protected by the contractual penalty. Courts do not examine the disproportionality of the contractual penalty clause, but the disproportionality of the specific claim for contractual penalty. In doing so, they shall take into account not only the circumstances already known at the time when the contractual penalty was agreed on, but also the circumstances which existed at the time of the breach of the contractual obligation, as well as the circumstances which occurred after the breach of the contractual obligation, if they undoubtedly originated in the breach of the contractual obligation and were foreseeable at the time of the breach.

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

### *Bailiff's Share of Remuneration*

The interpretation of Section 15(6) of the Enforcement Procedure Code, which deals with the share of the bailiff, who has ceased to hold the office of bailiff, in the remuneration of the newly appointed bailiff, was dealt with by the Supreme Court in its judgment of 23 February 2023, Case No **20 Cdo 3578/2022**, which was approved for publication in the Collection on 8 November 2023. In it, the Supreme Court expressed the opinion that a share in the remuneration within the meaning of Section 15(6) of the Enforcement Procedure Code includes a share in the reimbursement of cash expenses as well as other reimbursements pursuant to Section 90(1) of the Enforcement Procedure Code.

### *Right to Compensation for Damages*

In the judgment of 26 July 2022, Case No **21 Cdo 1316/2021**, published under No 46/2023 of the Collection, the Supreme Court dealt with the possibility of extinction of the right to compensation for damages caused to an entrepreneur by a breach of the non-competition clause by their representative. It concluded that the mere fact that the entrepreneur's right to demand that the representative's actions should be declared to have been taken on their account or (if the representative acted on account of another) that the right to remuneration should be assigned to them or that the already provided remuneration should be given to

them (Section 432(2) of the Civil Code) has lapsed, does not extinguish the right to compensation for damages caused to the entrepreneur by the breach of the non-competition clause by their representative. This right to compensation for damages does not have to be exercised within the time limits laid down in Section 432(2) of the Civil Code.

### *Abuse of Public Auction*

In the judgment of 21 October 2022, Case No **21 Cdo 822/2022**, published under No 66/2023 of the Collection, the Supreme Court expressed the legal opinion that against a person who acquired ownership right by winning in an involuntary public auction conducted pursuant to Act No 26/2000 Coll., on Public Auctions, as amended, a third party may assert its alleged right of ownership acquired by virtue of another legal title not defined in the provisions of Sections 1109 and 1110 of the Civil Code, only if they prove that the institute of public auction has been abused (and thus the Public Auctions Act has been abused) and that the auction was not actually held in accordance with this Act, and also that the winner of the auction was not in good faith regarding the auctioneer's authority to propose a public auction.

### *Violation of the Prohibition of Encumbrance on Immovable Property*

The Supreme Court addressed the violation of the prohibition of encumbering immovable property by concluding a pledge contract in the judgment of 26 October 2022, Case No **21 Cdo 1813/2021**, published under No 68/2023 of the Collection. The Supreme Court concluded that



a violation of the prohibition of encumbering immovable property registered in the Cadastre of Real Estate, which was established as a right *in rem*, does not in itself render the pledge contract invalid, the conclusion of which violated this prohibition, but is a ground for dismissing the application for the entry of the pledge in the Cadastre of Real Estate.

### *Extraordinary Usucapion*

The Supreme Court dealt with the question of the prerequisites for extraordinary usucapion in its judgment of 19 April 2022, Case No **22 Cdo 3387/2021**, published under No 15/2023 of the Collection. It held that the condition for extraordinary usucapion (Section 1095 of the Civil Code) is neither possession in good faith (Section 992(1) of the Civil Code), nor (for the period of possession before 1 January 2014) rightful possession (Section 130(1) of the Civil Code), but the lack of bad-faith intent on the part of the possessor. Intent in bad faith exists if the possessor's conduct in acquiring and exercising possession was intentionally not in good faith (moral) in the general sense. The burden of proof as to the bad-faith intent of the possessor is on the person who denies usucapion. The Supreme Court further held that in case of a possessor who claims extraordinary usucapion, the usucapion period of their predecessor who possessed the object "not in bad faith" is to be included; it is not necessary for the predecessor to be a possessor in good faith (Section 992(1) of the Civil Code), or a rightful possessor (Section 130(1) of the former Civil Code). The period of possession of the predecessor is to be included in the period of possession in favour of the possessor only if the predecessor did not fulfil the conditions

of possession themselves and thus did not become the owner of the object.

### *Valorisation of Contributions*

The Supreme Court dealt with the issue of the valorisation of contributions in the settlement of the community property of spouses in its judgment of 27 September 2022, Case No **22 Cdo 1172/2022**, published under No 64/2023 of the Collection. It explained that the value of what has been spent from the community property on the sole property of the spouse is to be taken into account in the division of the community property, increased according to the increase in the value of the part of the property on which the expense was incurred from the date of the expenditure to the date on which the community property was reduced, dissolved or terminated, only if the parties so agreed.

### *Statute of Limitations of Damage Consisting in the Creation of a Debt*

The Supreme Court ruled on the issue of the statute of limitations of damage consisting in the creation of a debt. In the judgment of 15 February 2023, Case No **23 Cdo 1594/2021**, published under No 87/2023 of the Collection, the Supreme Court held that if the actual damage depends on the creation of a debt pursuant to Section 2952 second sentence of the Civil Code, and if the injured party asserts against the wrongdoer the right to be compensated by the wrongdoer, it is the knowledge of the injured party about the person who is the wrongdoer and about the creation of the debt, and not the eventual fulfilment of

the debt or its due date (maturity), that determines the start of the subjective limitation period of such right.

### *Substitution of a Party's Will When Concluding a Contract for the Transfer of Immovable Property*

In the judgment of 28 February 2023, Case No **24 Cdo 3459/2022**, which was approved for publication in the Collection on 13 December 2023, the Supreme Court concluded that a contract for the transfer of immovable property, in respect of which a court decision has replaced the expression of the will of a party to conclude it, or which was concluded in connection with such a decision (Section 161 of the Code of Civil Procedure), the Cadastral Office shall examine as a private deed in the proceedings on the application for registration of the ownership right pursuant to Section 17(1) of the Act No. 256/2013 Coll., the Cadastral Act, as amended, and not to a limited extent pursuant to Section 17(2) to (4) of the Cadastral Act. In case of a judgment imposing a declaration of will based on an obligation arising from restitution legislation, the aforementioned does not apply.

### *Compensation for Painful Conditions*

In its judgment of 23 March 2023, Case No **25 Cdo 455/2022**, which was approved for publication in the Collection in November 2023, the Supreme Court opened the way to fairer compensation for painful conditions or temporary inconveniences associated with the treatment of injuries to health (compensation for pain pursuant to Section 2958 of

the Civil Code). The Supreme Court admitted that, using the interpretative aid contained in the Methodology on Compensation of Non-Pecuniary Injuries to Health (Rc 7/2023), it is possible, in particular for any further operations or other similar invasive procedures following the incident, to also assess certain procedures that are burdensome to the patient (e.g. anaesthesia, cannulation, intubation, catheterisation), even though they are not listed separately in the list of items in Part B of the Methodology. It will, however, be primarily a task for judicial practice to find an appropriate way to do this, for example by analogous use of the existing items (taking into account the difference between the traumatic nature of the intervention and the controlled medical performance) or by increasing the score on the basis of the expert's recommendation or the court's discretion.

### *Association of Unit Owners and Restrictions on the Unit Owner's Disposal of the Unit (Short-Term Leases)*

Many unit owners use their units by renting them out for short-term accommodation (lease), typically e.g. through Airbnb. In the resolution of 15 March 2023, Case No **26 Cdo 854/2022**, which was approved for publication in the Collection at the meeting of the Civil and Commercial Division on 8 November 2023, the Supreme Court concluded that the association of unit owners cannot prohibit or restrict the owner from such use of the unit, as it can (is entitled to) act only within the scope of its competence when amending its statutes (changing them). If the assembly of the owners' association decides, by means of the statutes, to restrict the right of ownership of the unit owners with regard to the

use of the apartment, it is a decision taken on a matter which that body does not have the competence to decide and is regarded as if it had not been taken (Section 245 of the Civil Code).

### *Invalidity of a Member Meeting of a Cooperative*

In the resolution of 24 January 2023, Case No **27 Cdo 2007/2022**, published under No 88/2023 of the Collection, the Supreme Court held that only the persons listed in Section 663(1) of the Business Corporation Act are entitled to file an application for invalidation of a resolution of a member meeting of a cooperative. The legal regulation of Section 258 of the Civil Code, regarding the persons entitled to file an application for invalidation of a decision of an association body, does not apply to cooperatives.

### *Arbitration Committee*

An exhaustive interpretation of the invalidity of an arbitration award is provided by the Supreme Court's resolution of 29 March 2023, Case No **27 Cdo 3737/2021**, which was approved by the Civil and Commercial Division for publication in the Collection on 8 November 2023. It states that the provisions of the statutes of the association, which would establish an arbitration committee within the association on the one hand and, on the other hand, provide that the decisions of the arbitration committee are not subject to review in proceedings for the annulment of an arbitration award by a court and for the suspension of the enforcement of the award (within the meaning of Sections 31 to 35

of Act No. 216/1994 Coll., on Arbitration Proceedings, as amended), contravene the mandatory provisions of the law. The provision of Section 89 of the Act on Special Court Proceedings allowing the waiver of the order for a hearing applies only in proceedings before the court of first instance, not in appeal proceedings. Membership of the arbitration committee of an association is incompatible with the exercise of the function of a judge.

### *Surrender of Revenue*

The Supreme Court dealt with the entitled person's claim for the return of the revenue of the object in the form of rent in its judgment of 28 February 2023, Case No **28 Cdo 3873/2022**, which was approved for publication in the Collection on 13 December 2023. The Supreme Court concluded that the provision of Section 12(1) of the Act No. 428/2012 Coll. does not in itself constitute a claim of the entitled person for the return of the revenue of the object in the form of rent, which has been received by the obliged person since the delivery of the notice to surrender the object on the basis of the lease contract from the lessee of the tract of land.

### *Succession Right as a Title to Acquire the Estate*

The Supreme Court dealt with the succession right acquired by the insolvency debtor at the end of the insolvency proceedings in the resolution of 28 April 2022, Case No **29 Cdo 3782/2020**, published in Collection No 16/2023. In it, it explained that the succession right, which

is created to the heir upon the death of the testator, is only a title to the acquisition of the estate, since only the person in respect of whom a final decision of the (estate) court so provides, i.e. the person whose acquisition of the inheritance has been confirmed by the order establishing succession, becomes the testator's heir and acquires the inheritance. The Supreme Court also explained that the claims which were not taken into account in the insolvency proceedings, and which are therefore principally affected by the effects of the debtor's exemption from payment of the rest of the claims, are also the claims listed exhaustively in Section 170 of the Insolvency Act as claims excluded from satisfaction in the insolvency proceedings.

#### *Monetary Compensation for Non-pecuniary Damage for Interference with the Reputation of a Legal Person*

The Supreme Court dealt with the monetary compensation of non-pecuniary damage for interference with the reputation of a legal person in the judgment of 30 June 2022, Case No **29 Cdo 2654/2020**, published under No 60/2023 of the Collection. The Supreme Court concluded that in case of an unlawful interference with the reputation of a legal entity caused by the fact that an insolvency petitioner (creditor) filed an insolvency petition which was rejected or dismissed due to their fault or by the fact that they filed an insolvency petition on which the insolvency proceedings were discontinued due to their fault, compensation for non-pecuniary damage can be claimed (as opposed to the general legal regulation), since the regulation contained in the provision of Section 147 of the Insolvency Act is a special statutory provision which al-

lows it. The Supreme Court also explained how (in general) the amount of such monetary compensation should be determined.

#### *Pension Agreement Concluded for the Purpose of Securing the Insolvency Debtor's Income for the Duration of the Arrangement in Which the Bankruptcy Is to Be Resolved by Way of Discharge*

In the judgment of 22 November 2022, Case No **29 Cdo 407/2021**, published under No 72/2023 of the Collection, the Supreme Court dealt with the pension agreement concluded free of charge pursuant to the regulation contained in Act No 89/2012 Coll., the Civil Code, for the purpose of securing the insolvency debtor's income for the duration of the arrangement in which the bankruptcy is to be resolved by way of discharge (also called "debt relief"; in Czech "oddlužení"; hereinafter referred to as "Arrangement"). The Supreme Court explained that if the payer has undertaken in the pension agreement to pay the beneficiary regular (monthly) cash benefits (pension) for the duration of the beneficiary's Arrangement, the recurring (repeated) benefits (pension) to which the beneficiary is to become entitled in the future are registered in the insolvency proceedings conducted on the payer's property as claims linked to the fulfilment of the suspensive condition.

#### *Deficiency in a Procedural Condition*

The resolution of the Supreme Court of 27 March 2023, Case No **30 Cdo 3617/2022**, approved for publication in the Collection on 13 December 2023, is the latest contribution to the legal discourse on the issue of the

so-called divided legal personality of the state. It focuses on the procedural consequences of the newly adopted legislation in Act on the Property of the Czech Republic and its Representation in Legal Relations, which allowed the state to sue itself on behalf of various organisational units. It states that it is not a deficiency in the procedural conditions if, pursuant to the provisions of Section 6(6) of Act No 219/2000 Coll., on the Property of the Czech Republic and its Representation in Legal Relations, as amended, the Czech Republic, acting through two different organisational units of the State, acts as each party to the dispute in the same proceedings.

### ***Sanction for the Proposal for Approval of the Arrangement in Which the Bankruptcy Is to Be Resolved by Way of Discharge in a Situation When Such Proposal Was Made by Debtor in Bad Faith***

In the resolution of 26 January 2023, Case No **29 NSČR 43/2022**, published under No 92/2023 of the Collection, the Supreme Court dealt with the sanction for the proposal for approval of the arrangement in which the bankruptcy is to be resolved by way of discharge (also called “debt relief”; in Czech “oddlužení”; hereinafter referred to as “Arrangement”) in a situation where the proposal was made by the debtor in bad faith. The Supreme Court concluded that a debtor to whom the insolvency court in previous insolvency proceedings has finally revoked the Arrangement because of their bad faith can (therefore) be sanctioned under Section 395 (4) of the Insolvency Act (by dismissing an additional petition for authorisation of the Arrangement filed in a new insolvency proceeding) only if this reason for the revocation of the Arrangement

was (also) expressed in the resolution on revocation of the Arrangement. The Supreme Court also clarified some procedural aspects of the spouses’ position (in the case of joint Arrangement of spouses) and explained that the debtor’s bad faith is not further examined for the purposes of the annulment of the Arrangement if the debtor themselves has effectively proposed the annulment of the Arrangement.

### ***Party to the Proceedings***

The judgment of the Supreme Court of 10 August 2022, Case No **30 Cdo 1339/2022**, published under No 33/2023 of the Collection, expands the circle of persons who may claim compensation for the harm caused by an unlawful decision, in accordance with the constitutional requirement that the right to compensation for the harm in question should be granted to the widest possible circle of persons if they can be considered parties to the proceedings in which the unlawful decision was issued. The Supreme Court concludes that a party to proceedings within the meaning of Section 7(1) of Act No 82/1998 Coll. must also be considered to be a person who, although they could not have been a party to the administrative proceedings in which the unlawful decision was issued, since the statutory provisions do not confer on them the status of party to the proceedings, was a claimant in the proceedings before the administrative court on an action under Section 65(1) of Act No 150/2002 Coll., Code of Administrative Court Proceedings, as amended, in which the administrative decision in question was annulled for unlawfulness.

## 2. 3. 4. 4. Other Selected Decisions

### *The Right to Determine the Time of Fulfilment of the Debt*

The right to determine the time of fulfilment of a debt was addressed by the Grand Panel of the Civil and Commercial Division of the Supreme Court in its judgment of 31 May 2023, Case No **31 Cdo 3125/2022**.

It expressed the opinion that if the creditor has the right under the contract to demand payment of the agreed price of the performance, and the time when the debtor has to fulfil the debt is set in the contract only in such a way that the basis for the payment of the agreed price of the performance is the invoice issued by the creditor, the due date of which is agreed to be 14 days from its delivery to the debtor, then it constitutes a situation within the meaning of Section 1958(2) of the Civil Code where the parties have not agreed when the debtor is to fulfil the debt and where the determination of the time of performance is left to the creditor's will. The creditor may determine the time of fulfilment of the debt by requesting payment "immediately" after the right to demand payment of the agreed price of performance has arisen, and the debtor is obliged to fulfil the debt "without undue delay" from this request. On the expiry of this period, the monetary debt becomes due (matured). In such a case, the circumstances which are decisive for the commencement of the limitation period are, within the meaning of Section 619(2) of the Civil Code, the circumstances from which the creditor learned (or should have and could have learned) that they became entitled to the right to determine the time of the fulfilment of the debt. The three-

year subjective limitation period under Section 629(1) of the Civil Code starts to run from that date.

### *Admissibility of the Extraordinary Appeal*

In the judgment of 8 November 2023, Case No **31 Cdo 1178/2023**, the Grand Panel of the Civil Division of the Supreme Court held that if, at the time of the issuing of decision of the Court of appeal contested by extraordinary appeal, the subject-matter of the proceedings is a monetary payment exceeding CZK 50,000, consisting of claims which, although originating in the same event, are generally regarded as having a "separate factual basis", each of which individually does not exceed CZK 50,000, the limitation of the admissibility of the extraordinary appeal by means of the amount expressed in Section 238(1)(c) of the Code of Civil Procedure does not apply if the extraordinary appeal concerns legal issues the resolution of which is common to these claims (it is based on a factual basis common to these claims).

If, at the time of issuing the decision of the court of appeal contested by the extraordinary appeal, the subject-matter of the proceedings is a monetary payment exceeding CZK 50,000 consisting of claims which, although originating in the same event, are generally considered to have a "separate factual basis", each of which individually does not exceed CZK 50,000, the limitation of the admissibility of the extraordinary appeal by means of the amount expressed in Article 238(1)(c) of the Code of Civil Procedure shall be applied if the extraordinary appeal relates to questions of law the resolution of which is not common

to those claims (does not arise from a factual basis common to those claims).

If there is any doubt as to whether the legal issue raised by the extraordinary appeal is based on the common factual basis of the claims asserted, the Supreme Court cannot reject the extraordinary appeal pursuant to Section 238(1)(c) of the Code of Civil Procedure. The subject-matter of the proceedings is (in fact) a monetary payment which cumulatively exceeds CZK 50,000 and the exception to the rule going beyond the diction of Section 238(1)(c) of the Code of Civil Procedure by examining the separate factual basis of the individual claims must be interpreted restrictively, in borderline cases in favour of the admissibility of the extraordinary appeal as to the threshold amount.

Subjective elements which may be introduced into the examination of the admissibility of an extraordinary appeal through threshold amount by the way in which the applicant defines in the extraordinary appeal the legal issues which the Supreme Court is asked to resolve cannot logically be reflected in the form of the instruction on the admissibility of an extraordinary appeal (Section 157(1) of the Code of Civil Procedure and Section 169(1) in conjunction with Section 211 of the Code of Civil Procedure) in the written copy of the court of appeal's decision; it will contain an instruction on the admissibility of the extraordinary appeal depending on whether, at the time of issuing the court of appeal's decision, the subject-matter of the proceedings was a monetary payment exceeding CZK 50,000 in total.

### *Lawful Judge*

The binding nature of the legal opinion of the Constitutional Court was addressed by the Grand Panel of the Civil Division of the Supreme Court in its resolution of 8 November 2023, Case No **31 Cdo 1468/2023**, and it concluded that if a three-member Panel of the Supreme Court, to which a case has been assigned according to the Supreme Court's Work Schedule for considering and deciding, is bound by the legal opinion contained in the Constitutional Court's annulment ruling for the circumstances of the case, this is not a reason for referring the case to the Grand Panel of the relevant Division of the Supreme Court, without regard to the fact that compliance with the binding legal opinion of the Constitutional Court will cause a conflict in the decision-making practice of the three-member Panels of the Supreme Court. This applies irrespective of whether it is a binding legal opinion on substantive law or a binding legal opinion on procedural law.

### *Business Agency Contract*

The Grand Panel of the Civil Division of the Supreme Court addressed the commission of a business agent in its judgment of 13 September 2023, Case No **31 Cdo 1774/2023**. It stated that commissions to be lost by a business agent within the meaning of Section 669(1)(b) of the Commercial Code, are not the commissions from the transactions already carried out to which the agent is entitled to under the commercial agency contract, but the commissions which they would have received in the hypothetical case of the continuation of the contract for transac-

tions carried out after the termination of the contract with the customers they have acquired for the represented person, as well as with the existing customers with whom they have significantly developed business.

### *Agreement on Lesser Performance*

In the resolution of 28 February 2023, Case No **20 Cdo 3098/2022**, the Supreme Court addressed the position of the debtor in the case when the beneficiary and the insurer of the debtor conclude an agreement on a lesser performance than that resulting from the enforcement title. The Court held that the conclusion of an agreement between the beneficiary and the insurer of the debtor, on the basis of which the insurer of the debtor pays to the beneficiary a lower compensation for non-material damage than the one the debtor was obliged to pay under the enforcement title, does not exempt the debtor from the obligation to pay the beneficiary to the extent specified in the enforcement title.

### *Monetary Compensation of Damages Pursuant to Section 2951 of the Civil Code in a Situation in Which the Person Who Caused the Damage Repairs the Damaged Item against the Will of the Injured Party*

The Supreme Court dealt with the issue of monetary compensation under Section 2951 of the Civil Code in its judgment of 15 November 2023, Case No **23 Cdo 1820/2022**. In it, the Court expressed the view that the repair of the damaged item by the person who caused the damage against the will of the injured party, who demanded monetary compen-

sation and did not subsequently accept the performance of the repair by the person who caused the damage, does not cause (even partial) extinction of the obligation to compensate for the damage and does not reduce the amount of monetary compensation to which the person who caused the damage is obliged. Any benefit obtained by the injured party from such performance shall be assessed according to the principles of unjust enrichment.

### *Lost Profit from a Contract That Has Not Been Concluded*

The Supreme Court dealt with the lost profit resulting from the termination of negotiations on the conclusion of a contract in its judgment of 31 October 2023, Case No **23 Cdo 3191/2022**. It concluded that the lost profit from a contract not concluded (from its non-performance) is not causally linked to the termination of a party's negotiations on the conclusion of that contract without just reason within the meaning of Section 1729(1) of the Civil Code. Section 1729(2) of the Civil Code provides for a limitation of the amount of compensation for such damage, not a specific ground for the right to such compensation.

### *Legal Consequence of Usury*

In its judgment of 20 September 2023, Case No **23 Cdo 2885/2022**, the Supreme Court commented on the issue of the court's recognition, even without an application, of the invalidity of a usurious contract, in the conclusion of which someone takes advantage of the other party's distress, inexperience, intellectual weakness, agitation or recklessness and



this other party promises or provides to the first party or to another a performance whose property value is grossly disproportionate to the mutual performance.

### *Administration of the Estate*

The issue of the administration of the estate is addressed by the Supreme Court in its resolution of 23 March 2023, Case No **24 Cdo 111/2023**, in which it states that if there are disagreements between the heirs regarding the administration of the estate, the court may decide (Section 156 of the Act on Special Court Proceedings) that the administration of the estate is to be carried out by only one of the heirs, especially in a situation where that heir has a legal ground for inheritance which is not in dispute, has not refused the inheritance and is able and willing to administer the estate.

### *Suspension of the Exercise of Parental Responsibility*

In its judgment of 31 May 2023, Case No **24 Cdo 3883/2022**, the Supreme Court held that a permanent mental disorder of a (fully competent) parent may be a reason for suspension of the exercise of a parental responsibility by a court decision (Section 869 of the Civil Code), even if it does not require long-term hospitalization of the parent in a medical facility. In such a case – if the child’s best interests require it – the court may suspend the exercise of parental responsibility of the parent in its entirety or only to the extent of some of its components (or only some of the legal actions), depending on the extent to which the parent is

unable (unfit) to exercise parental responsibility due to the mental disorder. In justified cases, the court may, by court decision, determine the parent who has been suspended from exercising parental responsibility (no matter to what extent) the access to the child.

### *Informed Consent of the Patient*

Increasingly frequent disputes on compensation for non-material damage arising from the violation of patient’s rights require a unifying view of the Supreme Court on the question of the content and form of instructions prior to a medical procedure, which can in principle be performed only on the basis of the patient’s informed consent. With the exception of a few cases in which the law requires that both the instruction and the consent be recorded in writing, the form is not prescribed and a written record is not sufficient in itself if it is so opaque that it does not give the lay person sufficient opportunity to orient themselves. The Supreme Court’s judgment of 20 January 2023, Case No **25 Cdo 3100/2021**, also allows for a combination of an oral explanation and a clear written summary of the essential information for this purpose; however, the healthcare provider must present the information in such a clear manner that the patient, given their position and state of health, understands the substance of the information and is able to make an informed decision as to whether to undergo the procedure. In a dispute for compensation for damage arising from the performance of a procedure without informed consent, the court must always carefully assess all the specific circumstances in which the patient was informed and in what situation or in what time frame the patient consented to the

procedure. The unsuccessful constitutional complaint of the claimant was rejected by a resolution of the Constitutional Court of 21 November 2023, Case No IV. ÚS 1288/23.

### *Compensation for Damages for the Removal of Road Contamination*

The Supreme Court resolved the disputed issue of whether the road administrator is directly entitled to insurance claim payment or to performance from the guarantee fund pursuant to Section 9(1) of Act No 168/1999 Coll., corresponding to the compensation for the costs they had to incur to remove extensive contamination of the roadway by the fluids of a motor vehicle, in the judgment of 15 August 2023, Case No **25 Cdo 2961/2022**. Provided that such a disruption of the road surface reduces the usability of the road, endangers road safety and cannot be removed without the intervention of a professional entity, it constitutes damage to the road communication, i.e., a situation different from the cases dealt with in the judgments of 29 January 2009, Case No 25 Cdo 307/2007 (costs incurred for the removal, towing and parking of a vehicle that caused an obstacle to traffic on a motorway), and of 31 October 2019, Case No 25 Cdo 3662/2018, Rč 56/2020 (removal of the cargo of a crashed vehicle from the road).

### *Advance Payments on Services and Their Billing in the Case of Sub-leased Apartments*

In its judgment of 6 June 2023, Case No **26 Cdo 3841/2022**, the Supreme Court dealt with the question of what elements must be included in

the billing of the advances paid by the subtenant to the tenant under their agreement for services related to the use of the apartment, and concluded that where the parties have agreed in the sublease agreement that the subtenant is obliged to pay advances for services connected with the use of the flat and that the tenant is obliged to bill the costs of the services in a given period (at least once a year), without laying down rules on the requirements of the billing, the billing must be drawn up in accordance with Section 7 of Act No 67/2013 Coll., on Regulating Certain Issues Related to the Provision of Performance Related to the Use of Flats and Non-residential Premises in a Building with Flats, as amended.

### *Breach of the Tenant's Duty by Subleasing the Flat to Third Parties for Short-Term Accommodation*

In its judgment of 26 September 2023, Case No **26 Cdo 2128/2023**, the Supreme Court concluded that the breach of the tenant's obligation to properly use the apartment in accordance with the lease agreement includes the subleasing of the apartment to third parties via Internet platforms such as Airbnb for short-term accommodation and may be grounds for termination of the lease pursuant to Section 2288(1)(a) of the Civil Code. Since the tenant is also liable to the landlord for the actions of the person whom the tenant has allowed to use the rented apartment, they are in breach of their obligations to properly use the apartment even if they have subleased the rented apartment to third parties for purposes other than the subtenant's living.

### *Articles of Association of a Joint Stock Company*

The Supreme Court resolution of 17 May 2023, Case No **27 Cdo 1915/2022**, states that if the Articles of Association of a joint stock company are amended by a decision of the general meeting, the amendment of the Articles of Association, consisting in the extension of the term of office of the members of its elected bodies, is effective against the existing and future members of the elected bodies of the company, in principle, at the moment when the general meeting decides on it, unless otherwise stated in the decision of the general meeting, the law or the Articles of Association. If the Articles of Association of a joint stock company are amended by a decision of the sole shareholder, such amendment of the Articles of Association shall be effective in principle with respect to the existing and future members of the elected bodies of the company at the time when the decision of the sole shareholder is received by the company. The Articles of Association of a joint stock company may in principle provide for the term of office of members of elected bodies to be for an unlimited period of time.

### *Renegotiation of a Contract*

The condition of the existence of a substantial (unforeseeable and uncontrollable by the parties) change of circumstances, as the cause of the resulting disproportion in the rights and obligations of the parties, establishing the right to request the renegotiation of the contract, was addressed by the Supreme Court in its judgment of 1 February 2023, Case No **28 Cdo 2989/2022**. It concluded that the condition for

the right to seek renegotiation of a contract or to have a contractual obligation modified by a court decision (Sections 1765(1) and 1766(1) of the Civil Code) is, *inter alia*, that the disproportion in the rights and obligations of the contracting parties was caused by a substantial change in circumstances, that was unforeseeable and uncontrollable for the contracting parties and caused by external factors (independent to the contracting parties); e.g., due to natural forces, illness, health damage or death, technical failure or damage caused by a third party, or a change in legislation, social or political conditions or general economic conditions (significant increase in the inflation rate, disruption of supplier-customer relations, etc.).

### *Limitation of a Late Payment Interest*

The Supreme Court dealt with the question of the moment at which the right to late payment interest becomes statute-barred in its judgment of 1 June 2023, Case No **28 Cdo 297/2023**. It concluded that the limitation period under Sections 619 and 629(1) of the Civil Code regarding the right to late payment interest may begin to run at the earliest at the beginning of the debtor's delay in the performance of the monetary debt (the principal).

### *Debtor's Consent to the Performance of the Debt by a Third Party*

In its judgment of 17 October 2023, Case No **28 Cdo 1214/2023**, the Supreme Court expressed the opinion that the debtor's consent to the performance of their debt by a third party is not necessary for the creation

of unjust enrichment by performance for another within the meaning of Section 2991(2) of the Civil Code and regressive action against the debtor.

### *Real Estate Contract*

The issue of concluding a real estate contract in the regime of Act No 39/2020 Coll., on Real Estate Agency and on Amendments to Related Acts, as amended, is discussed in the judgment of the Supreme Court of 20 June 2023, Case No **33 Cdo 1507/2022**, which states that a prospective purchaser cannot be bound to enter into a real estate contract or an agreement to enter into a future real estate contract in a contract of agency concluded under the cited law.

### *Creditworthiness of a Consumer*

The validity of a consumer credit agreement was addressed in the Supreme Court's judgment of 27 September 2023, Case No **33 Cdo 1819/2023**. It states that a consumer credit agreement cannot be considered invalid simply because the consumer's creditworthiness has not been properly assessed; it must be established that the consumer was unable to repay the loan or more precisely that the loan should not have been granted.

### *Consumer Credit*

The Supreme Court addressed the definitional elements of consumer credit in its judgment of 28 March 2023, Case No **33 Cdo 3919/2022**.

It concluded that the basic definitional components of the consumer credit are (i) financing (active or passive), (ii) its provision or intermediation, and (iii) the consumer. The fulfilment of those definitional elements means assessing whether a financial service (credit, money loan, postponement of payment, etc.) is present and whether that (financial) service is "provided or facilitated" to the consumer. It is a consumer credit not only if the creditor of the contract in which the consumer credit is arranged is the provider (the one who, as an entrepreneur, provides the consumer credit), which is usually the person referred to in Section 7 of the Consumer Credit Act. Similarly, it is also a consumer credit if an intermediary (one who, as an entrepreneur, facilitates the consumer credit) acts as a facilitator in the process of lending to the consumer, even if the creditor of the contract under which the credit is arranged is not the provider in the above sense. The absence of a relevant business licence does not in itself affect the nature or validity of the private law act.

## 2. 4. The Criminal Division of the Supreme Court in 2023

### 2. 4. 1. Overview of Decision-Making Activities of the Criminal Division of the Supreme Court

In 2023, the Criminal Division of the Supreme Court (hereinafter referred to as “the Criminal Division”) was composed of the President of the Division and 22 other judges; in addition, two judges were temporarily assigned to the Supreme Court. The Criminal Division judges are divided into seven 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 Panels (hereinafter referred to as the “Panels”) under the rules contained in the Supreme Court’s Work Schedule. The managing President of the Panel assigns particular judges within the Panel to cases, also under the rules contained in 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 Coll., on Juvenile Justice, as amended (the “Juvenile Justice Act”), the second (No 5) specialises in economic and property crimes

and the third (No 11) specialises in drug-related criminal offences and cases concerning international judicial cooperation in criminal matters. However, each of these Panels also decides to some extent in criminal cases that do not fall within their specialisation. The Criminal Division’s Panels usually decide in closed hearings, i.e., the accused, the defence counsel and the prosecutor are not present; they decide in a public hearing, 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, with at least one member from each of the three-judge Panels.

The Supreme Court’s key task 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 task. To this end, the Act on Courts and Judges 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.

#### 2. 4. 1. 1. Deciding on Extraordinary Remedies

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

An extraordinary appeal is an extraordinary remedial measure which can be used to dispute a final and effective decision of a court of second instance on 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-matter 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 taking of evidence. An extraordinary appeal may be lodged by the Prosecutor General 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 accused, and also by the accused for the incorrectness of the operative part of a court's decision that directly affects them. An extraordinary appeal against the accused 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 accused may file an extraordinary appeal only through a lawyer; a submission made by the accused 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 in the 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 accused to the Prosecutor General or to the competent authority of the European Public

Prosecutor's Office and a copy of an extraordinary appeal of the Prosecutor General or of the competent authority of the European Public Prosecutor's Office to the lawyer of the accused and to the accused with a notice that they may comment on the extraordinary appeal in writing and agree to the extraordinary appeal being tried in a closed hearing at the Supreme Court. 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 extraordinary 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 applicant 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 reasoning of the resolution that rejected the extraordinary appeal, 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 annul the contested decision or part thereof, or, where appropriate, the erroneous proceedings preceding it, if it finds that the extraordinary appeal is substantiated. If, after annulling the contested

decision or part thereof, it is necessary to make a new decision in the case, the Supreme Court shall, in principal, 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 investigative and prosecuting authorities 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 annulled only as a result of an extraordinary appeal brought in favour of the accused, 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 annuls the contested decision, unless there are obstacles to do 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 the law. Only the Minister of Justice is entitled to file this extraordinary remedy, directed against a court's or a prosecutor's final decision which violated the law or which was made on the basis of an erroneous 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) of the Code of Criminal Procedure). A complaint on the violation of the law against a final court decision to the detriment of the accused may not be filed solely on the grounds that the court proceeded in line with Section 259(4), Section 264(2), Section

273 or Section 289(b) of the Code of Criminal Procedure. In the event of a complaint on the violation of the law being filed to the detriment of the accused and following the finding that the law was violated, but not in disfavour of the accused, only the so-called "academic ruling" can be issued, but the contested decision or the preceding proceedings which violated the law cannot be annulled. The Supreme Court dismisses the complaints on the violation of the law if they are inadmissible or unfounded (Section 268(1) Code of Criminal Procedure). If the Supreme Court finds that the law was violated, it holds so in its judgment (Section 268(2) of the Code of Criminal Procedure). If the law was violated in disfavour of the accused, the Supreme Court annuls, simultaneously with holding as above under Section 268(2) Code of Criminal Procedure, the challenged decision or a part thereof and potentially also the erroneous proceedings preceding the decision. If only one of the operative parts in the challenged decision is unlawful, and if such operative part can be separated from the other operative parts, the Supreme Court annuls only that operative part of the decision (Section 269 of the Code of Criminal Procedure). Where a new decision has to be issued following the challenged decision or any of its operative parts after their annulment, 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 referred back is bound by the Supreme Court's legal opinion (Section 270 of the Code of Criminal Procedure). When annulling 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 of the Code of Criminal Procedure). Where the Su-

preme 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 of the Code of Criminal Procedure).

#### 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 mentioned 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 of courts of second instance on the merits (Section 265a et seq. of the Code of Criminal Procedure);

##### **Tcu**

– decisions on applications 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 Coll., on the Criminal Records, as amended),

– decisions on applications in accordance with Act No 104/2013 Coll., on International Judicial Cooperation in Criminal Matters, as amended (e.g., on applications of the Ministry of Justice to review decisions on the exclusion of the extradited person from the competence of the investigative, prosecuting and adjudicating authorities in accordance with Sec-

tion 89(2) of the above Act; on applications for a decision on whether the extradited person is exempted from the competence of the investigative, prosecuting and adjudicating authorities in accordance with Sections 92(6) and 95(2) of the above Act; on applications 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 applications for a decision on whether the person against whom a recognised foreign decision is directed is exempted from the competence of the investigative, prosecuting and adjudicating authorities in accordance with Section 120(5) of the above Act; on applications 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 of the above Act; on applications 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 applications for decision whether a certain person is excluded from the competence of the investigative, prosecuting and adjudicating authorities, if there is any doubt about it (Section 10(2) of the Code of Criminal Procedure);

##### **Tz**

– decisions on complaints on the violation of the law, filed by the Minister of Justice against prosecutors' and courts' decisions in proceedings



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

**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 applications 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 applications to exclude Supreme Court judges from hearing and deciding on a case (Section 31(1) of the Code of Criminal Procedure);

**Tvo**

- decisions on complaints against high courts' decisions to extend custody pursuant to Section 74 of the Code of Criminal Procedure and against other decisions of high courts handing down rulings as 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 performance of a procedural act (Section 174a of the Act on Courts and Judges);

**Zp**

- decisions on appeals against decisions of the Disciplinary Chamber of the Supreme Audit Office (Section 43(2) of Act No 166/1993 Coll., 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 Activities of the Criminal Division of the Supreme Court

The lower courts' adjudicating practice is unified primarily through decisions on the above-mentioned extraordinary remedies in specific criminal cases, with the Supreme Court setting forth binding legal opinions in its decisions; lower courts and other investigating or prosecuting 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 the law in three-member Panels composed of the President of the Panel and another two professional judges, exceptionally, it is the Criminal Division's Grand Panel that decides the case.

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 deci-

sions; the Panel must justify such different legal opinion (Section 20 of Act on Courts and Judges).

The above procedure should 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 procedural 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. 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 Opinion of the Criminal Division or of the 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 refers back the case without deciding on the merits to the Panel that (groundlessly) referred the case to it. 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 legal question at hand and that any subsequent decisions on the merits should be made by the competent three-member Panel which had originally been assigned the case. Moreover, there is no explicit provision as to whether and how the Criminal Division's Grand Panel may change its existing legal opinion expressed in an earlier decision.

The Criminal Division's Grand Panel ruled twice in 2023 in the Tdo agenda and issued one decision in the Tz agenda. In the first case, the

Grand Panel decided in the Tz agenda by judgment of 21 June 2023, Case No 15 Tz 9/2023. In the second and third cases, the Grand Panel decided in the Tdo agenda by the resolution of 20 September 2023, Case No 15 Tdo 513/2023, and by the judgment of 6 December 2023, Case No 15 Tdo 677/2023. One of the above-mentioned decisions of the Criminal Division's Grand Panel has so far been approved for publication in the Collection, namely the judgment of 21 June 2023, Case No 15 Tz 9/2023, which was published under No 31/2023 of the Collection (see below under 2.4.4.2.). Additionally, in 2023, two other criminal cases filed under Case No 15 Tz 81/2023 and Case No 15 Tdo 960/2023 were submitted to the Criminal Division's Grand Panel for its decision.

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 an anonymised form on the Supreme Court's website [www.nsoud.cz](http://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 proposals for the 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. 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 Di-

vision. 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 applications for the Criminal Division to adopt an Opinion on the decision-making activities of courts and drafts of such Opinions. In 2023, a total of eight sessions of the Records Panel of the Criminal Division were held, at which about 169 decisions of the Supreme Court and lower courts, 1 draft Opinion and some other materials and applications were discussed (sometimes repeatedly).

Decisions of the Supreme Court and of other criminal courts, which have been considered and recommended for publication in the Collection by the Criminal Division's Records Panel, are submitted for consideration and approval at a meeting of the judges of the Criminal Division of the Supreme Court, which is convened and chaired by the President of the Criminal Division for that purpose. Prior to the meeting, comments are made on the proposals for the publication of the decision by commenting entities, which are the regional and high courts (the Municipal Court in Prague), the Prosecutor General's Office, the law faculties of universities, the Czech Bar Association, the Ministry of Justice, the Ministry of the Interior, the Institute of State and Law of the Academy of Sciences, the Institute for Criminology and Social Prevention, the Supreme Administrative Court and, depending on the nature of the decision, certain other institutions and bodies. Publication of a decision in the Collection requires the approval of a majority of all judges of the Criminal Division. In 2023, a total of six sessions of the Criminal Division of the Supreme Court were held, at which a total

of 61 decisions were discussed (some of them repeatedly), of which the judges of the Criminal Division approved a total of 45 decisions for publication in the Collection. In addition, one proposal for an Opinion of the Criminal Division was discussed, which was approved, and the adopted Opinion has already been published in the Collection (see below under 2.4.4.1.).

Another important tool for unifying the practice of lower courts and other investigating and prosecuting authorities is the adoption of the Supreme Court Criminal Division's Opinions on court decisions on matters of a certain nature (Section 14(3) of the Act on Courts and Judges). 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 are the same entities as those mentioned above in relation to the deciding on publication of the decisions in the Collection, or, depending on the nature and importance of the issues at stake, other bodies or 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 2023 in all of its agendas. The first column points out the amount of cases in each particular agenda allocated for adjudicating from the previous year 2022. Similarly, the last column shows the number of cases that were not resolved by 31 December 2023.

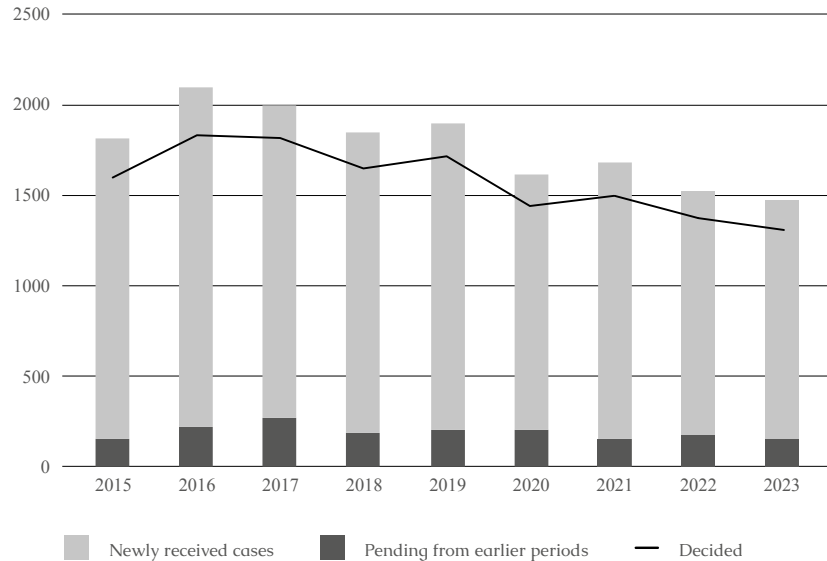
	Pending from earlier periods	Newly received cases	Decided	Pending
Tdo	140	1,203	1,188	155
Tcu	8	161	161	8
Tz	11	112	111	12
Td	4	72	72	4
Tvo	0	20	17	3
Tul	0	1	1	0
Zp	0	0	0	0
Pzo	1	14	14	1

Overview of the development of the agenda of the Criminal Division for the year 2023

The following table and the following graph trace the development of statistical data of the Criminal Division of the Supreme Court over a longer period of time.

Year	Pending from earlier periods	Newly received cases	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
2023	151	1,315	1,299	167

The sum of the Tdo and Tz agendas 2015–2023



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 of 2015 to 2023. It clearly indicates that the total number of cases pending from previous periods 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, the situation calmed down a little in 2018. From 2020 to 2022, there is a certain

decrease in the total number of cases submitted and dealt with and this tendency continued even in 2023. It should be noted that the graph simply adds all the agendas, although the complexity of the different agendas differs significantly.

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

##### 2. 4. 4. 1. Opinion of the Criminal Division of the Supreme Court Published in the Collection

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.

##### *On the Legal Assessment of the Extraction of the Compensation Bonus Paid under the Individual Compensation Bonus Laws Enacted in 2020 and 2021 in Connection with the Outbreak of the Sars Cov-2 Coronavirus Causing the Disease COVID-19*

Opinion of the Criminal Division of the Supreme Court of 22 February 2023, Case No Tpjn 300/2022, published under No 1/2023 of the Collection, in addressing the issue in question, took the view that the extraction of a compensation bonus paid on the basis of the individual laws on compensation bonuses adopted in 2020 and 2021 in connection with the occurrence of the SARS CoV-2 coronavirus causing the

COVID-19 disease, constitutes, subject to other conditions, a criminal offence of Evasion of Tax, Fee and Similar Compulsory Payment under Section 240 of the Criminal Code.

#### 2. 4. 4. 2. Decisions of the Criminal Division's Grand Panel

In 2023, the Grand Panel of the Criminal Division of the Supreme Court issued the following three decisions

##### *On the Possibility of Prosecuting a Dissolved Legal Entity and on the Interpretation of Certain Related Issues*

Judgment of the Grand Panel of the Criminal Division of the Supreme Court of 21 June 2023, Case No **15 Tz 9/2023**, published under No 31/2023 of the Collection, with eleven legal sentences, which deal with various issues related to the possibility of prosecuting a legal entity which, although it has been dissolved, has done so without complying with the restrictive provisions of the Act on Criminal Liability of Legal Entities and Proceedings Against Them (hereinafter the "Act on Criminal Liability of Legal Entities"). The case was referred to the Grand Panel by a Panel of the Supreme Court by a resolution of 21 December 2022, Case No 6 Tz 80/2022, that took a different legal view from the one expressed by another Panel of the Supreme Court in an earlier resolution of 26 October 2022, Case No 4 Tz 112/2022, in which a complaint on the violation of the law filed against a dissolved legal entity was found inadmissible. The Grand Panel of the Criminal Division of the Supreme Court adopted the following legal opinions:

Only an existing legal entity (even such undergoing a winding-up) can be prosecuted, but not a legal entity that has already dissolved. The provisions of Section 11(1)(e) of the Code of Criminal Procedure may be applied, pursuant to Section 1(2) of the Act on Criminal Liability of Legal Entities, to a dissolved legal entity *mutatis mutandis*. The provisions on extraordinary remedies relating to an accused natural person who has died or been declared dead (Sections 265p(3), 275(1) and 280(3) of the Code of Criminal Procedure) may also be applied, pursuant to Section 1(2) of the Act on Criminal Liability of Legal Entities, to a dissolved legal entity *mutatis mutandis*. If a legal entity is to be prosecuted, the investigating, prosecuting and adjudicating authorities must proceed in accordance with Sections 30 and 32 of the Act on Criminal Liability of Legal Entities in order to prevent its winding-up or dissolution. In the case of a prosecution of a wound-up company (e.g., a limited liability company), the competent regional court that keeps the Commercial Register in which the company is registered (hereinafter the "Court of Registration") must be notified that its prosecution has been initiated (Section 30(1) of the Act on Criminal Liability of Legal Entities). It is also necessary to take other active steps to prevent the dissolution of the accused legal entity – a commercial company, in particular, to negotiate with its liquidator and to inform them of the obligations arising from Section 32(1) and (3) of the Act on Criminal Liability of Legal Entities that they should notify the prosecutor and, in the proceedings before the court, the President of the Panel in writing that they intend to file an application for the removal of the commercial company from the Commercial Register, or to file an application for a decision of the judge in the pre-trial proceedings or, in the proceedings before the court, the

President of the Panel, to consent to the dissolution of the accused legal entity. The liquidator of the commercial company is the one who may, in principle, perform acts on its behalf pursuant to Section 34(1) of the Act on Criminal Liability of Legal Entities. Therefore, the liquidator should have access to the data mailbox of the accused commercial company to which documents addressed to it are delivered (Section 62(1) of the Code of Criminal Procedure). If the liquidator does not accept the documents delivered in this way, they may be delivered to them in another way (e.g., to their mailbox, home address, etc.). If the prosecuted accused legal entity has been dissolved (despite the measures, in particular pursuant to Sections 30 and 32 of the Act on Criminal Liability of Legal Entities) and the prosecutor sees a public interest worthy of legal protection in declaring it guilty, the prosecutor may file an application with the Court of Registration pursuant to Section 209(1) of the Civil Code for a decision to cancel the removal of the dissolved accused legal entity from the Register, together with a decision to liquidate it and to appoint a liquidator. Otherwise, the prosecution of the dissolved accused legal entity must be discontinued pursuant to Section 172(1)(d) of the Code of Criminal Procedure on the ground of Section 11(1)(e) of the Code of Criminal Procedure (with appropriate application of Section 1(2) of the Act on Criminal Liability of Legal Entities). The appointment of a guardian for the accused legal entity pursuant to Section 34(5) of the Act on Criminal Liability of Legal Entities is only a subsidiary measure if it cannot be represented by another authorised person, e.g., in the case of a wound-up company, its liquidator. The existence or non-existence of a legal entity (i.e., whether or not the legal entity has been dissolved) is a so-called status issue and therefore cannot be

assessed by the investigating, prosecuting and adjudicating authorities themselves pursuant to Section 9(2) of the Code of Criminal Procedure. Similarly, they cannot assess this issue if there is an unrevoked court decision on the removal of a legal entity from the public register (Section 9(1) of the Code of Criminal Procedure). Pursuant to Section 90(2) of the Act No 304/2013 Coll., on the Public Registers of Legal Entities and Natural Persons and on the Registration of Trusts, as amended, the Court of Registration shall examine, *inter alia*, whether the entry of the removal of a legal entity is not prohibited because of a criminal prosecution brought against it or the execution of a sentence imposed on it pursuant to an act regulating the criminal liability of legal entities and proceedings against them. The Court of Registration may only remove a prosecuted legal entity from the Register if the applicant, pursuant to Section 16(1) of the Act on the Public Registers of Legal Entities and Natural Persons and on the Registration of Trusts, proves the consent of the criminal court to its dissolution pursuant to Section 32(3) of the Act on Criminal Liability of Legal Entities. The President of the Panel of the court before which the indictment has been filed against a dissolved accused legal entity may not order a main hearing in the case, but will normally order a preliminary hearing of the indictment pursuant to Section 186(e) of the Code of Criminal Procedure, in which it is appropriate to refer the case back to the prosecutor for further investigation pursuant to Section 188(1)(e) of the Code of Criminal Procedure. In the case of the imposition of the sentence of publication of a judgment imposed under Section 23(1) of the Act on Criminal Liability of Legal Entities on a legal entity, the court shall determine the specific type of public media in which the convicting judgment is to be published; such

media is not the Commercial Register, even if the convicted legal entity is a commercial company. The extent of the publication of the judgment shall be determined by the nature of the case and the overall length of the text of the judgment. It is not excluded that the convicted legal entity must publish the entire operative part of the decision on guilt and punishment, or also on the protective measure, on the compensation for material or non-material damage or on the payment of unjust enrichment.

***The Criminal Offence of Denying, Questioning, Approving or Justifying Genocide under Section 405 of the Criminal Code, Committed by the Perpetrator by Publishing a Translation of a Foreign-Language Work Which Denies, Questions, Approves or Attempts to Justify Genocide or Other Criminal Offences***

The Grand Panel of the Criminal Division of the Supreme Court dealt in its resolution of 20 September 2023, Case No **15 Tdo 513/2023**, with a differing opinion on the matter of publishing of a translation of a foreign-language book denying the Holocaust of a Panel of the Supreme Court, which referred the case to the Grand Panel by resolution of 24 May 2023, Case No 7 Tdo 384/2023, from the conclusions in the resolution of another Panel of the Supreme Court of 12 June 2019, Case No 8 Tdo 314/2019. The Criminal Division's Grand Panel adopted the following legal opinions. The criminal offence of Denying, Questioning, Approving or Justifying Genocide under Section 405 of the Criminal Code is also committed by a perpetrator who publishes, distributes or otherwise makes publicly available a foreign work which denies,

questions, approves or attempts to justify genocide or the crimes referred to in the said provision, even if they do not express themselves in such work, in the accompanying text or otherwise in a manner fulfilling the characteristics of the said criminal offence. However, a person who publishes, distributes or makes publicly available such a foreign work would not commit this criminal offence if it is accompanied by an integral part including an expression of their rejection of the specific content of the work with a commentary proportionate to the scope of the work and reflecting proven historical facts relating to the subject matter of the work and expert knowledge on the issue. No other so-called facultative feature is required to fulfil the *mens rea* of the offence under Section 405 of the Criminal Code. Therefore, the motive of the perpetrator, e.g., property motive, to publicly deny, question, approve or justify genocide or other crimes is not essential for the fulfilment of the elements of the criminal offence.

***On the Criminal Offence of Sexual Abuse Pursuant to Section 187(1), (2) of the Criminal Code Committed against a Minor Child of the Perpetrator, Which Was Originally Assessed as the Criminal Offence of Rape***

The judgment of the Grand Panel of the Criminal Division of the Supreme Court of 6 December 2023, Case No **15 Tdo 677/2023**, was initiated by the resolution of the Supreme Court Panel of 20 January 2023, Case No 8 Tdo 432/2023, which took a different view on the sub-issue of the criminal offence of Rape than that contained in the resolution of another Supreme Court Panel of 9 May 2012, Case No 3 Tdo 345/2012. Although the Criminal Division's Grand Panel agreed with the refer-



ring Panel on the disputed issue, it decided, on the basis of the extraordinary appeal of the accused, to change the legal qualification of the criminal offence and the sentence imposed on the accused, who repeatedly touched the crotch and external genitalia of his own minor five-year-old daughter, who was lying with him on several occasions under a common blanket. The lower courts found him guilty of the crime of Rape pursuant to Section 185(1) alinea (2), (3)(a) of the Criminal Code and imposed an unconditional prison sentence of five years, to be served in a prison. The Criminal Division's Grand Panel then concluded that the crime of Rape had not been committed in the criminal case at hand, as it had not been possible to substantiate all the relevant facts supporting this legal qualification. Since there was no intercourse, only another form of sexual abuse involving interference with the sexual sphere of the child victim could be considered. In view of the specific practices that the accused carried out in his physical contact with the victim, the Criminal Division's Grand Panel considered it more appropriate to classify the act as a criminal offence of Sexual Abuse under Section 187(1), (2) of the Criminal Code, which better corresponds to the nature and intensity of the accused's act and its impact on the interest protected by the Criminal Code, which in this case is primarily the interest in the proper moral, psychological and physical development of children and their protection from any attacks on their sexual integrity. Therefore, the accused was also given a less severe sentence of three years' imprisonment, suspended for five years, and supervision.

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

Among the significant decisions approved by the Criminal Division of the Supreme Court in 2023 for publication in the criminal part of the Collection, the following can be mentioned:

#### *On When Beneficium Cohesionis Does Not Apply in the Proceedings on Extraordinary Appeal*

The resolution of the Supreme Court of 24 August 2021, Case No **6 Tdo 794/2021**, published under No 1/2023 of the Collection, expresses the opinion that the institute of the so-called *beneficium cohesionis*, provided for in the last sentence of Section 265k(2) of the Code of Criminal Procedure, does not apply in proceedings on extraordinary appeal if the operative part of the decision regarding the guilt, which would have to be annulled on the basis of the material connection in respect of the co-accused in question, no longer exists *de iure* because it was finally annulled in connection with the imposition of a joint sentence for the continuation of the criminal offence pursuant to Section 45(1) of the Criminal Code. The same applies when deciding on other remedies.

#### *On the Prohibition of Double Counting of the Same Circumstance When Imposing a Cumulative or Multiple Punishment*

In the Supreme Court resolution of 27 September 2022, Case No **3 Tdo 824/2022**, published under No 9/2023 of the Collection, it was con-

cluded that if the court, when imposing a cumulative or multiple punishment pursuant to Section 43(1),(2) of the Criminal Code, takes into account an aggravating circumstance pursuant to Section 42(n) of the Criminal Code consisting in the commission of more than one criminal offence when determining the type and length of the punishment, there is no violation of the principle of the prohibition of double counting of the same circumstance pursuant to Section 39(5) of the Criminal Code.

***On the Institution of the Declaration of Guilt Pursuant to Section 206c of the Code of Criminal Procedure***

The resolution of the Supreme Court of 17 August 2022, Case No **8 Tdo 722/2022**, published under No 13/2023 of the Collection, deals with the basic attributes of the institute of the declaration of guilt. As follows from the legal sentence of this decision, a declaration of guilt pursuant to Section 206c of the Code of Criminal Procedure is a voluntary statement made by the accused, after being duly instructed by the court, on the basis of their will, about the act of which they are accused, by which they agree that they have committed it, as well as with the legal assessment of the act in the indictment. This is a free expression of will which is not bound by any other specific procedure or decision of the court (e.g., a decision to conditionally discontinue the prosecution pursuant to Section 307 of the Code of Criminal Procedure). The legal consequences associated with a declaration of guilt do not arise from the moment the accused makes the declaration, but only when the court decides whether or not to accept it (Section 206c(4) of the Code of Criminal Procedure). A declaration of guilt accepted by the court

pursuant to Section 206c(7) of the Code of Criminal Procedure cannot be annulled, even in further proceedings in the same case, regardless of whether the decision on merits which followed the declaration of guilt has been annulled.

***On Certain Issues Relating to the Filing of an Extraordinary Appeal by the Statutory Representative of a Minor***

In the Supreme Court's resolution of 14 December 2022, Case No **8 Tdo 1093/2022**, published under No 10/2023 of the Collection, the Supreme Court concluded that the statutory representative of a minor (Section 43(1) of the Juvenile Justice Act) does not have their own right to file extraordinary appeal, but may only file the extraordinary appeal on behalf of the minor until the time the minor has acquired full legal capacity. Once the minor has acquired full legal capacity, their statutory representative may no longer lodge an extraordinary appeal, and if they do so, it is an extraordinary appeal brought by an unauthorised person, which the Supreme Court shall reject pursuant to Section 265i(1)(c) of the Code of Criminal Procedure.

***On the Possibility of an Extraordinary Reduction of the Imprisonment below the Lower Limit of the Penalty for an Attempted Criminal Offence Pursuant to Section 58(6) of the Criminal Code***

In the judgment of the Supreme Court of 23 November 2022, Case No **8 Tdo 1033/2022**, published under No 12/2023 of the Collection, the Supreme Court took the legal view that the fact that the offence

was merely an attempted criminal offence (Section 21(1) of the Criminal Code) is not sufficient for an extraordinary reduction of the imprisonment sentence below the lower limit of the penalty rate under Section 58(6) of the Criminal Code. The court must consider all the circumstances relevant to determining the nature and gravity of the attempt, its proximity to the completion of the offence, the reasons why it was not completed and other specific circumstances of the case, as well as the perpetrator's person and their personal and other background. Only on the basis of a comprehensive assessment of these can the procedure under Section 58(6) of the Criminal Code be justified.

***Failure to Fulfil the Statutory Elements of the Criminal Offence of Insult among Soldiers under Section 378(1) of the Criminal Code***

In the Supreme Court resolution of 25 January 2023, Case No 7 Tdo 1189/2022, published under No 16/2023 of the Collection, it is concluded that criminal liability for the criminal offence of Insult among Soldiers pursuant to Section 378(1) of the Criminal Code cannot, in principle, be inferred in the case of a perpetrator in the position of a soldier who has submitted to his superiors or supervisory military authorities a complaint against the victim, also a soldier, alleging his unlawful disposal of entrusted property. This is not a statement which was in itself offensive, even if it may have been partially or even wholly untrue. It is not excluded that such conduct could be regarded as a criminal offence of Defamation under Section 184 of the Criminal Code or of False Accusation under Section 345 of the Criminal Code.

***On the Determination of the Local Jurisdiction of the Court to Decide on a Change in the Manner of Execution of Protective Treatment Pursuant to Section 351a(1) of the Code of Criminal Procedure***

The resolution of the Supreme Court of 28 February 2023, Case No 7 Td 11/2023, published under No 18/2023 of the Collection, points out in the legal sentence that the place of execution of the protective treatment established by the court is decisive for the determination of the local jurisdiction of the court to decide on the change of the manner of execution of protective treatment pursuant to Section 351a(1) of the Code of Criminal Procedure. What is relevant is the place of the premises where the protective treatment is actually carried out, not the place where the formal seat of the provider of that health service is located. In this sense, an accused's failure to comply with an individual treatment regime, for example, by failing to attend the place of treatment for a certain period of time, is also considered to be the execution of the protective treatment.

***On the Circumstance Conditioning the Use of Higher Penal Rate in Relation to the Criminal Offence of Bodily Harm under Section 146(1), (2)(d) of the Criminal Code Committed against a Health Care Worker***

In the Supreme Court's resolution of 29 March 2023, Case No 4 Tdo 261/2023, published under No 21/2023 of the Collection, the Supreme Court stated that the aggravated form of the criminal offence referred to in the provisions of Section 146(1), (2)(d) of the Criminal Code does not have a blanket disposition. In order to assess whether the perpetra-

tor's act was committed against a health care worker, it is not decisive, if the other conditions of this provision are fulfilled, what is the victim's specific medical qualification or speciality or what specific medical or non-medical classification they have under non-criminal legislation, nor whether such specific qualification or specific classification was known to the perpetrator.

***On the Fulfilment of the Element of "Gross Obstruction of the Performance of the Duties of an Insolvency Administrator" in the Criminal Offence of Breach of Duty in Insolvency Proceedings Pursuant to Section 225 of the Criminal Code***

The resolution of the Supreme Court of 18 January 2023, Case No **5 Tdo 1144/2022**, published under No 15/2023 of the Collection, concerns the constituent elements of the criminal offence of Breach of Duty in Insolvency Proceedings under Section 225 of the Criminal Code. According to the legal sentence of this decision, in order to conclude on the possible fulfilment of the constituent element of a gross obstruction of the performance of the duties of an insolvency administrator within the meaning of Section 225 of the Criminal Code, it is necessary to assess the intensity of the obstructive conduct of the perpetrator in the insolvency proceedings in the entirety, and not only separately in relation to individual acts. Therefore, the criminal offence of Breach of Duty in Insolvency Proceedings under Section 225 of the Criminal Code may be committed by several such individual acts, even if they are less serious by themselves, if the perpetrator, in the entirety, has consistently or over a long period of time obstructed the performance of the duties of the

insolvency administrator, who had to spend a greater degree of effort and amount of time in order to perform them properly, and the purpose of the insolvency proceedings has thus been jeopardised.

***As to When the Criminal Offence of Extortion Is Committed for the Political Beliefs of the Person Being Extorted within the Meaning of Section 175(1)(g) of the Criminal Code***

According to the legal opinion contained in the Supreme Court's resolution of 26 August 2023, Case No **4 Tdo 304/2023**, published under No 27/2023 of the Collection, it is not sufficient that the victim is politically active (e.g., holds a political office or is active in a political party) in order to conclude that a criminal offence of Extortion for the political beliefs of the victim pursuant to Section 175(1), (2)(g) of the Criminal Code has been committed. For such an assessment, it is necessary that the perpetrator has acted in the manner referred to in Section 175(1) of the Criminal Code in connection with the victim's political beliefs (or even only perceived ones), i.e., because of disagreement with the victim's political orientation, their political statement or position, etc.

***On the Possibility of Committing the Criminal Offence of Extortion by Abusing the Perpetrator's Subjective Rights to Illegally Coerce the Will of the Victim***

An interesting question was dealt with in the Supreme Court's resolution of 28 February 2023, Case No **7 Tdo 90/2023**, published under No 30/2023 of the Collection, according to which an act by which the

perpetrator exercises his subjective right, but obviously abuses it for a purpose it does not serve, may also be assessed as unlawful (Sections 2(3) and 8 of the Civil Code, Section 6 of the Code of Civil Procedure). If such an act of the perpetrator consists in filing civil lawsuits against the interests of the victims in seeking to force them to sell him their immovable property against their will at a price unfavourable to them, it may constitute a threat of other serious harm within the meaning of Section 175(1) of the Criminal Code.

### ***Unlawful Breach of a Lock in the Course of a Burglary within the Meaning of Section 121 of the Criminal Code Using Illegally Held and Used Keys***

Resolution of the Supreme Court of 9 March 2023, Case No 6 Tdo 85/2023, published under No 36/2023 of the Collection, states that Burglary within the meaning of Section 121 of the Criminal Code in the option consisting in the unlawful breach of a lock is also committed when the perpetrator enters a closed space to which he previously had the rental right after unlocking the lock using keys which he did not return to the landlord after the end of the rental period without having permission to use them.

### ***On the Determination of the Amount of Damages When Deciding on the Compensation for the Damage Caused by the Committed Criminal Offence***

The resolution of the Supreme Court of 1 March 2023, Case No 5 Tdo 3/2023, published under No 28/2023 of the Collection, states, follow-

ing earlier case law, that when determining the amount of damage to property pursuant to Section 137 of the Criminal Code, the price of the property, including value-added tax, is used, provided other conditions are met (decision published under No 25/2004 of the Collection). A similar procedure is generally followed when imposing the obligation to compensate for damage pursuant to Section 228(1) of the Code of Criminal Procedure. Possible tax deductions, double payments of the same tax and other institutes arising from tax regulations are not taken into account when determining the amount of damage or imposing the obligation to compensate for it in adhesion proceedings.

### ***On the Criminal Offence of Unauthorised Production and Other Handling of Narcotic and Psychotropic Substances and Poisons Committed by the Provision of a Medicine Containing a Psychotropic Substance for Other than Medical Purposes***

In its resolution of 20 October 2022, Case No 11 Tdo 931/2022, published under No 39/2023 of the Collection, the Supreme Court concluded that the chemical substance clonazepam contained, for example, in the medicine Rivotril is a psychotropic substance under the Convention on Psychotropic Substances. The provision of such a drug to another, if it is for a purpose other than medical treatment, may be considered unauthorised and may fulfil the elements of the criminal offence of Unauthorised Production and Other Handling of Narcotic and Psychotropic Substances and Poisons under Section 283(1) of the Criminal Code. Furthermore, the Supreme Court also stated that a prisoner who was previously prescribed the use of the said medicine by a doctor while still

out of prison, but the prison doctor did not approve its use, may commit the inducement of the Unauthorised Production and Other Handling of Narcotic and Psychotropic Substances and Poisons pursuant to Section 24(1)(b) and Section 283(1) of the Criminal Code if he persuades another person to procure such a medicine for him for a purpose other than medical treatment and illicitly delivers it to the prison.

*On the Interpretation of the Concept of “Another’s Property” in Respect of the Crime of Theft in Relation to Immovable Property or Its Separate Parts*

The resolution of the Supreme Court of 22 March 2023, Case No **6 Tdo 103/2023**, published under No 41/2023 of the Collection, deals with the theft of topsoil from a plot of land and concludes that in the case of the criminal offence of Theft under Section 205(1) of the Criminal Code, an another’s object is a movable object not belonging to the perpetrator and the object of theft cannot be an immovable object. When a part of an immovable object is separated, a separate movable object is created which can be the object of theft. Such an object may include topsoil separated by overburden from a plot of land.

*On the Nature of the Corridor of a Family House Shared by Several Apartments in Relation to the Offence Trespassing*

The Supreme Court’s resolution of 25 May 2023, Case No **11 Tdo 214/2023**, published under No 1/2014 of the Collection, established that the corridor of a family house shared by several flats, which is an

enclosed space providing the users of the house with similar privacy as the flats located therein, must be considered a dwelling within the meaning of Section 133 of the Criminal Code. If the perpetrator enters this corridor without the consent of the authorised occupants of the house, the perpetrator commits the offence of trespassing pursuant to Section 178(1) of the Criminal Code, provided that the other legal conditions are met.

*On the Possibility of Imposing a Sentence of Expulsion on a Perpetrator in Whose Home State There Is a War Conflict*

The Supreme Court resolution of 19 April 2023, Case No **4 Tdo 267/2023**, published under No 34/2023 of the Collection, dealt with the imposition of a sentence of expulsion on an accused whose home state is in the midst of a war conflict, and concluded that an obstacle to the imposition of a sentence of expulsion pursuant to Section 80(3)(d) of the Criminal Code is not in itself an ongoing war conflict in the perpetrator’s home country, but that the court must consider whether the perpetrator is at risk of persecution on the grounds set out in that provision or of being subjected to the treatment or punishment set out therein, precisely in view of the ongoing conflict.

*On the Application to Reinstate the Time-Limit for Completion of the Content of the Extraordinary Appeal*

The Supreme Court resolution of 19 April 2023, Case No **3 Tdo 294/2023**, published under No 40/2023 of the Collection, stated that it is possible

to allow the reinstatement of the time-limit for the removal of errors in the content of the extraordinary appeal pursuant to Section 265h(1) of the Code of Criminal Procedure for important reasons, in accordance with Section 61(1) of the Code of Criminal Procedure *per analogiam*, and it is not the Supreme Court, as the body competent to decide on the extraordinary appeal pursuant to Section 265c of the Code of Criminal Procedure, that decides on the application for the reinstatement of the time-limit for the completion of the content of the extraordinary appeal pursuant to Section 61(1) of the Code of Criminal Procedure, but it is the court of first instance in the context of the actions pursuant to Section 265h(1) of the Code of Criminal Procedure.

### *On the Characteristics of an Organised Group and Its Distinction from an Organised Criminal Group*

In its resolution of 26 July 2023, Case No 5 Tdo 655/2023, published under No 33/2023 of the Collection, the Supreme Court followed its earlier case law and made several conclusions related to the commission of a criminal offence by the perpetrator as a member of an organised group, and confirmed the existing definition of such a group and its distinction from an organised criminal group. According to the legal sentence of the decision, an organised group is an association of several (at least three) persons in which a certain division of tasks is made between the individual members of the association and whose activities are consequently characterised by a planned and coordinated nature, which increases the likelihood of the successful execution of the criminal offence and thus its harmfulness and severity (see Decisions

No 53/1976-II. and No 45/1986 of the Collection). It is not necessary to have an internal organisational and hierarchical structure with relations of superiority and subordination, nor is it necessary for the group to focus on the systematic commission of intentional criminal activity, which characterises a qualitatively more severe organised criminal group within the meaning of Section 129 of the Criminal Code, which must be distinguished from an organised group that is not directly defined by the Criminal Code.

### *On the Intention of the Perpetrator to Profit from the Illegal Activity Regarding the Criminal Offence of Unauthorized Business*

In the Supreme Court's resolution of 23 November 2022, Case No 5 Tdo 1012/2022, published under No 32/2023 of the Collection, it was stated that the committing of the criminal offence of Unauthorised Business pursuant to Section 251(1) of the Criminal Code is conditioned, *inter alia*, by the intention to make a profit from the illegally carried out activity. Such an intention of the perpetrator may also be inferred from objective circumstances, in particular, from the nature and frequency of the unauthorised activity, the duration of its performance, the range of persons to whom it was directed, the advertising of offers, the costs incurred, the payments received, etc.

### *As to When It Is Not an Extensive Excess in the Case of Self-Defence*

The Supreme Court resolution of 23 November 2022, Case No 6 Tdo 979/2022, published under No 38/2023 of the Collection, develops the

existing case law on the institute of self-defence and adopts the legal opinion that it is not an extensive excess of self-defence if the defender reacted to the attacker's attack with a metal bar by avoiding the attack and, without any time delay or relevant change in the attacker's behaviour, immediately struck him in the face with his fist in defence. At the time of the blow, the attack on the interest protected by the criminal law was ongoing and it could not be considered that the attack was completed and was followed by retaliation of the defender.

#### 2. 4. 4. 4. Other Selected Decisions of the Panels of the Criminal Division of the Supreme Court

In 2023, the Panels of the Criminal Division of the Supreme Court also rendered some other important decisions that have not yet been published in the Collection or whose publication has not yet been decided. Of these, the following may be highlighted:

***On the Relationship between the Criminal Offence of Conferring an Advantage in Public Procurement, Public Tender and Public Auction under Section 256(1) of the Criminal Code and the Criminal Offence of Damage to the Financial Interests of the European Union under Section 260(1) of the Criminal Code***

The resolution of the Supreme Court of 9 November 2022, Case No **5 Tdo 156/2022**, addressed the possible concurrence of criminal offences under Sections 256 and 260 of the Criminal Code in the case of a manipulated public procurement financed from the EU budget, with

respect to the criminal liability of the tenderer for such a public procurement. The decision has already been approved for publication in the Collection, and the Supreme Court held that if the contracting entity of the public procurement and the recipient of an EU budget subsidy entrusted the administration of the procurement and the organisation of the tender to an intermediary, who failed to ensure compliance with the rules of the tender procedure and selected a pre-arranged tenderer for the public procurement, that tenderer may, subject to other conditions, as an accomplice or participant, commit the criminal offence of Conferring an Advantage in Public Procurement, Public Tender and Public Auction under Section 256(1) of the Criminal Code. Furthermore, the Supreme Court stated that in such a case, criminal liability for the criminal offence of Damage to the Financial Interests of the European Union under Section 260(1) of the Criminal Code would not generally be incurred.

***On Committing the Criminal Offence of Breeding Animals in Inappropriate Conditions under Section 302a(1) of the Criminal Code***

The Supreme Court's resolution of 28 February 2023, Case No **4 Tdo 165/2023**, rejected the extraordinary appeals of two defendants whom the lower courts found guilty of the criminal offence of Breeding Animals in Inappropriate Conditions under Section 302a(1) of the Criminal Code, committed in complicity pursuant to Section 23 of the Criminal Code, and sentenced them to shorter imprisonment suspended for a medium-term probationary period. They were also sentenced, pursuant to Section 74a(1) of the Criminal Code, to the penalty of prohibition



of keeping and breeding animals, consisting in the prohibition of keeping and breeding horses, dogs, pigeons and cats for a period of 8 years, and also, pursuant to Section 70(2)(a) of the Criminal Code, to the penalty of forfeiture, namely the horses, dogs, pigeons and cats specified in the operative part of the sentence. This case is unique not only because of the number of species of animals that the defendants kept in inappropriate conditions, i.e., horses, dogs, cats, and pigeons, but also because of the considerable number of these animals – 26 horses and ponies, 15 dogs, 6 cats, and 112 pigeons. The specific facts of the case were that the defendants failed to provide the animals with the necessary nutrition, access to feed water, sufficient habitat, appropriate zoo-hygienic conditions or veterinary care, as a result of which the animals kept were subjected to prolonged starvation or malnutrition and dehydration, suffered from a lack of natural movement, and the premises intended for their keeping did not provide the animals with appropriate conditions for ensuring their biological needs and for maintaining their physiological functions.

***On the Criminal Offence of Causing Death by Negligence under Section 143(1) of the Criminal Code Committed by a Legal Person Owing to the Fall of a Damaged Tree on a Passing Motor Vehicle***

By its resolution of 26 September 2023, Case No 6 Tdo 472/2023, the Supreme Court rejected the extraordinary appeal of the defendant legal person which the lower courts found guilty of the criminal offence of Causing Death by Negligence under Section 143(1) of the Criminal Code, in application of Section 7 of the Act on Criminal Liability of Le-

gal Persons, which was committed (simply stated) by failing, as a legal person represented by an unidentified natural person in a managerial capacity who exercised management and control activities, and by an unidentified employee, in contravention of the relevant provisions of the Road Traffic Act, to comply with its duty to ensure proper maintenance of a deciduous tree (Canadian Poplar) at a specified location, whereby the necessary measures should have been taken to cut down the tree due to its severely compromised condition, which was not done, and subsequently the tree broke and fell at the moment a HGV was passing onto the vehicle. Consequently, the driver of the said vehicle crossed over to the left-hand side of the road where he collided with another HGV and further drove into the left-hand side ditch and hit other trees, sustaining a number of fatal injuries to which he succumbed on the spot. The defendant legal person was sentenced to a monetary penalty in the amount of 200 daily rates of CZK 50,000 each, i.e., a total of CZK 1,000,000, and pursuant to Section 23 of the Act on Criminal Liability of Legal Persons it was also sentenced to the penalty of publishing the judgment in two national daily newspapers within 2 months of the judgment becoming final, with the name of the legal person and its registered office, while the data enabling the identification of a natural person different from the defendant, mentioned in the operative part of the judgment and in its reasoning, must be pseudonymised before publication. This case is peculiar and interesting in that it was only the defendant legal person that was convicted and no natural person.

***On the Necessity of an Expert Examination of the Mental State of a Mentally Retarded Juvenile in Terms of Conclusions about His San-***

### *ity and His Intellectual and Moral Maturity as Prerequisites for His Criminal Liability*

By resolution of 8 November 2023, Case No **8 Tdo 977/2023**, the Supreme Court annulled the decisions of the lower courts based on an extraordinary appeal filed by the Prosecutor General to the detriment of the juvenile defendant and ordered the court of first instance to rehear the case to the necessary extent. The peculiarity of this decision is that the Supreme Court did not share all the objections of the Prosecutor General but found that there had been other serious errors in the proceedings, and that the decisions of the courts of both instances had to therefore be annulled. Quite atypical is also the error of the courts consisting in the fact that not all the relevant facts, in particular the mental state of the juvenile, were sufficiently established, since, in view of the facts established – the juvenile’s disability (moderate mental retardation) and the nature of the crime (sexually motivated offence) – it was clearly necessary to draw up an expert report in order to examine the extent and nature of the mental retardation diagnosed in the juvenile and its effect on preservation or lack of cognitive and control capacities (Sections 26 and 27 of the Criminal Code), as well as his intellectual and moral maturity within the meaning of Section 5(1) of the Juvenile Justice Act, which the lower courts failed to do. The court of first instance found the juvenile guilty of the criminal offence of Extortion under Section 175(1) of the Criminal Code, which he allegedly committed by preventing the victim, who was a minor, from leaving, by demanding that she orally sexually satisfy him, by kissing her on the lips against her will, then unzipping her jacket and touching her

through her clothes on her buttocks, breasts and between her legs, whereupon the minor victim managed to push the juvenile away and escape from the place. The defendant juvenile was sentenced to 6 months’ imprisonment, suspended for a probationary period of 18 months. Upon the juvenile’s appeal, the court of appeal then annulled the judgment in its entirety and, pursuant to Section 222(2) of the Code of Criminal Procedure, referred the juvenile’s case, as regards the act described in the prosecutor’s indictment, to the competent city municipality, holding that the act was not a criminal offence but could be classified as an administrative offence. The Prosecutor General disagreed with such an assessment of the case and filed an extraordinary appeal to the detriment of the juvenile on the grounds set out in Section 265b(1)(f) and (h) of the Code of Criminal Procedure, as the Court of appeal, unlike the court of first instance, while concluding that all the formal elements of the criminal offence of Extortion under Section 175(1) of the Criminal Code had been fulfilled, justified the referral of the case on the grounds of the insufficient level of social harmfulness required to establish criminal liability. He did not consider the court of appeal’s reasoning to be correct in view of the policies and principles defined in Sections 12(2) and 13(1) of the Criminal Code and further developed in the Opinion of the Criminal Division of the Supreme Court of 30 January 2013, Case No Tpjn 301/2012, published under No 26/2013 Coll., which allegedly did not apply to the juvenile’s case. The appellant did not concur that the degree of harmfulness was reduced by the absence of verbal or brachial violence, nor by the finding that the juvenile suffered from moderate mental retardation, which could have had an impact on the motivation of his actions. According to the Pros-

ecutor General, the lack of social harmfulness of a criminal offence can be inferred only in exceptional cases, which is not the case here, since the court of appeal did not take into account the importance of the protected interest affected by the offence and its consequence and failed to have due regard for the juvenile's previous conduct. The Supreme Court then found that the grounds for the extraordinary appeal were based on an erroneous legal assessment of the harmfulness of the juvenile's criminal conduct, which was reflected in the conclusion that the offence was not a criminal offence but could be classified as an administrative offence. The Prosecutor General considered that the procedural steps taken by the court of appeal in referring the case to the competent administrative authority were incorrect. The Supreme Court agreed with the fact that the decision could not stand, as it supported the appellant's argument that not all the statutory prerequisites for the referral of the case had yet been met and that the decision was therefore premature at the very least. Unlike the appellant, however, the Supreme Court did not consider the defective assessment of the social harmfulness of the offence to be the fundamental problem, but rather that all the relevant facts, in particular the mental state of the juvenile, had not yet been sufficiently established. The facts established show that the victim was 15 years and 8 months old at the time of the offence and was a classmate of the defendant juvenile, both of whom attended a class set up specifically for children suffering from moderate mental disability, which they had both been diagnosed with. However, the courts of both instances rendered their decisions without having the necessary grounds for assessing the control and cognitive abilities of the juvenile, who, according to the school's assessment, showed manifest mental de-

ficiencies. This fact in particular raises serious doubts as to how far the juvenile was able to understand the nature of his actions in terms of his knowledge of moral and social values and, therefore, what the harmfulness of the act of which he was found guilty consisted. The latter was motivated by a sexual impulse, that is to say, a sexual instinct which was developing in him at the time and which he was not allowed to satisfy unless the victim, his schoolmate, consented to it. The yet unresolved question is to what extent the defendant juvenile, given his mental deficiency, could have been aware of the harmfulness of such an act, or to what extent he could have controlled it, especially given that at the time of the act he was 15 years and 10 months old, i.e., the act was committed not long after he had reached the threshold for the assumption of criminal liability (Section 25 of the Criminal Code). The lower courts did not consider these facts whatsoever, nor does the content of the decisions under review show any consideration in this respect, even though, in general terms, mental retardation usually involves a permanent reduction in intellectual capacity as a result of organic brain damage, underdevelopment of the rational faculties, different development of certain psychological characteristics, disorders in the ability to adapt, etc. Based on general knowledge, it is apparent that the perception and behaviour of such disabled persons shows significant psychological changes, and therefore, also in the case of their criminal conduct, the significance and impact of the mental disorder on their criminal conduct must be established by a professional medical examination and expert assessment, which was not done in the present case. This shortcoming of the court of first instance was not remedied by the court of appeal, which – unlike the court of first instance – assessed in more

detail the defendant juvenile’s personality, his attitudes and the mental deficit from which he suffers, however, only on the basis of its own considerations of lower social harmfulness, stemming from its own notion that persons with established disabilities are “determined, their thinking is characterised by the inability for higher abstraction and generalisation, weak control function, lack of critical thinking, cumbersome idea formation, cognitive bias and the absence of sequential thinking, when a similar limitation can be traced in the area of their psyche, which is characterised by a markedly delayed development of understanding and a weak capacity for combination with reasoning”. The court of appeal also mentioned the nature of the prosecuted conduct and the motivation of the juvenile to engage in sexual contact with a classmate, which the court of appeal considered inappropriate rather than socially harmful but did not proceed to an expert assessment of these findings. It was not sufficient to take those facts into account, having regard to the specific features of the case, without, however, having the mental state of the juvenile assessed by experts responsible for answering those questions. It is apparent from the content of the two decisions under review that the courts did not focus on mental retardation in relation to the young age of the juvenile and therefore did not ascertain whether he was fully sane at the time of the offence (Section 26 of the Criminal Code) or whether he was of diminished capacity (Section 27 of the Criminal Code), and whether at the time of the offence he had attained such a level of mental and moral maturity as to be able to recognise the unlawfulness of the act of which he was accused or to control his actions, i.e., whether he was also of conditional (relative) sanity (Section 5(1) and (2) of the Juvenile Justice Act), and for this pur-

pose did not bring in experts from the field of psychiatry and psychology (Section 58(1) of the Juvenile Justice Act).

*On the Status of a Person Subject to Protective Treatment, on the Need to Establish That an Act Which Would Otherwise Constitute a Criminal Offence Has Been Committed as a Prerequisite for the Imposition of Protective Treatment, and on the Grounds of Extraordinary Appeal Relating Thereto*

The Supreme Court’s resolution of 29 November 2023, Case No 7 Tdo 1043/2023, as in the previously mentioned case, annulled the decisions of the lower courts and ordered the court of first instance to rehear the case to the extent necessary, only this time upon the extraordinary appeal of the defendant. By the resolution of the court of first instance, the defendant was placed, upon the prosecutor’s proposal, under protective psychiatric treatment in an institutional form pursuant to Section 99(1) of the Criminal Code. The defendant’s complaint was dismissed as unfounded by a resolution of the Court of appeal pursuant to Section 148(1)(c) of the Code of Criminal Procedure. In his extraordinary appeal, the defendant challenged the dismissal of the complaint, stressing that the imposition of protective treatment is conditional upon the commission of an act which would otherwise constitute a criminal offence, and argued that the courts had focused the evidence on the question of the danger of his remaining at liberty and not on the question of whether he had committed acts which would otherwise have the characteristics of a criminal offence. According to the defendant, the courts, in assessing the conditions for the imposition of protective treatment, relied only

on theoretical concerns from which they drew the conclusion that his remaining at liberty was dangerous, but failed to do so in the light of specific facts. The defendant pointed out that the mental disorder he suffered from did not in itself imply that he was a person dangerous to his surroundings. He also objected to the institutional form of protective treatment and argued that the principle of proportionality had not been observed. In its decision, the Supreme Court first pointed out that the defendant was referred to as “the examined” in the prosecutor’s proposal for the imposition of protective treatment, in the resolution of the court of first instance and in the contested resolution of the court of appeal. This designation does in no way express the procedural status of a person who is ordered or is to be ordered to undergo protective treatment as proposed by a prosecutor. Protective treatment is one of the types of protective measures (Section 98(1) of the Criminal Code) and as such is a penal sanction (Section 36 of the Criminal Code). Its imposition is determined in proceedings held under the Code of Criminal Procedure (Act No 141/1961 Coll., as amended) and these proceedings are of a penal nature (Section 12(10) of the Code of Criminal Procedure). The person on whom protective treatment is to be imposed is the person against whom the criminal proceedings are brought and who is a party to those proceedings (Section 12(6) of the Code of Criminal Procedure). The person against whom criminal proceedings are being conducted is referred to as “the defendant”, and thus should have been referred to as such. As a defendant, they are also the person entitled to file an extraordinary appeal. Furthermore, the Supreme Court upheld the arguments of the defendant when it stated that the court of first instance had assumed that the defendant had committed the

acts in respect of which the criminal proceedings had been instituted, but had failed to examine any evidence on the basis of which it was obliged to make its own findings of fact (see Decision No 24/1992 Coll. and similarly, e.g., the resolution of the Supreme Court of 14 September 2017, Case No 6 Tdo 1093/2017). The court essentially only stated that there had been criminal proceedings against the defendant, which had been discontinued pursuant to Section 172(1)(e) of the Code of Criminal Procedure due to his insanity and referred to the “file material” showing the course of the proceedings held before the discontinuation of the criminal proceedings, which was presented by the court of first instance as part of the documentary evidence. This, however, cannot be considered as properly conducted evidence. In relation to the facts, which were otherwise (i.e., apart from the defendant’s insanity) supposed to meet the elements of the above-mentioned criminal offences, the court should have conducted evidence in accordance with Chapter 5 of the Code of Criminal Procedure. In doing so, it should have ensured that its findings of fact were supported by evidence consisting in the use of the means of evidence closest to the facts proved, which should have been, in particular, the examination of the defendant, the examination of the victim and other witnesses. The court of first instance failed to hear the defendant and the witnesses, including the victims, at the public session on the acts by which the defendant was alleged to have committed acts which would otherwise constitute criminal acts, and also failed to take evidence from the witnesses’ statements by reading the records of their statements (Section 235(2) of the Code of Criminal Procedure), or by reading the official records of the explanations given (Section 211(6), Section 235(2) of the Code of Criminal Procedure), nor did it take any

other evidence, which led, *inter alia*, to the defendant not being allowed to comment on each of these pieces of evidence (Sections 214 and 235(2) of the Code of Criminal Procedure). This lack of evidence could not be compensated for by reference to the “file material” taken before the prosecution was discontinued. The evidence adduced by the court at the public session related essentially only to the defendant’s state of mind, the diagnosis of his illness, the manner of his treatment, etc., but it did not show whether the defendant had actually committed an act which would otherwise have constituted a criminal offence. In that situation, there is a clear contradiction between the relevant findings of fact, which are decisive for the fulfilment of the elements of the offence, and the content of the evidence taken within the meaning of Section 265b(1)(g) of the Code of Criminal Procedure. In the light of this provision, the defendant’s extraordinary appeal was justified. The defendant’s extraordinary appeal was also justified in so far as it concerned the ground under Section 265b(1)(h) of the Code of Criminal Procedure, since only a properly established act can be the subject of a legal assessment. The Supreme Court did not, however, have the necessary evidence to verify the correctness of the legal assessment of the acts attributed to the defendant, as the courts did not make any findings of fact of their own in this respect. In fact, the lower courts proceeded, without any evidence, on the basis of the acts attributed to the defendant in the police resolution initiating and the prosecutor’s resolution discontinuing the criminal prosecution. The Supreme Court also upheld that part of the extraordinary appeal which was brought with reference to the provision of Section 265b(1)(k) of the Code of Criminal Procedure. First, in a situation where, on the basis of the duly conducted evidence, it had

not been established whether the defendant had committed acts which would otherwise constitute a criminal offence, it was obvious that the statutory conditions for imposing protective treatment pursuant to Section 99(1) of the Criminal Code could not be met. This was compounded by the unconvincing reasoning of the lower courts’ conclusion that the defendant’s stay at liberty was dangerous, which the Supreme Court discussed in detail in the reasoning of its decision.

## 2. 5. Adjudication of the Special Panel on Conflicts of Jurisdiction

The Special Panel, established under Act No 131/2002 Coll., on Adjudicating Certain Conflicts of Jurisdiction, as amended, 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 substitutes for a three-year term. The President of the Special Panel changes in the middle of the three-year term. The first half of the term is presided by a judge of the Supreme Administrative Court and the second half by a judge of the Supreme Court. The first session of the Special Panel is convened and chaired by the most senior member of the Special Panel.

The Special Panel sits and decides at the seat of the Supreme Administrative Court in Brno.

The Special Panel rules on certain conflicts between courts and executive bodies, territorial, interest or professional self-governments, and on conflicts between civil courts and administrative courts, concerning competence or subject-matter jurisdiction to issue decisions. The Special Panel determines which party to the dispute has jurisdiction to deliver a decision.

Although the Special Panel is neither part of the Supreme Court nor the Supreme Administrative Court, it may annul the decisions of both courts if they are parties to a jurisdictional dispute.

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

	Newly received cases	Decided in a given year	Percentage of that year's newly received cases	Pending as of 31 December
2022	19	29	153 %	12
2023	18	21	117 %	9
2003 – 2023	1,342			

Statistics of the Special Panel in the years 2022 and 2023

In 2023, the members of the Special Panel, established in accordance with Act No 131/2002 Coll., were Supreme Court Judges Vít Bičák, Roman Fiala, and Pavel Simon, who have presided over the Special Panel since 1 July 2022. The substitutes appointed for the Supreme Court were judges Radek Doležel, David Havlík, and Petr Škvain.

Radovan Havelec, Tomáš Rychlý, and Jitka Zavřelová were appointed for the Supreme Administrative Court. The substitutes appointed for the Supreme Administrative Court were Filip Dienstbier, Ondřej Mrákota, and Karel Šimka.

## 2. 6. Awards for Supreme Court Judges

A new tradition, which was being prepared during the year 2023, is the presentation of an award, in the form of a statuette made of Czech glass, to retiring judges for their long-term service not only at the Supreme Court. In most cases, Supreme Court judges retire upon reaching the statutory limit of 70 years of age. At the end of 2023, the tenures of four judges ended this way, namely Jiří Spáčil, Pavel Šilhavec, Kateřina Hornochová, and Pavel Příhoda. Miroslav Ferák resigned as a judge at the end of June 2023. These judges were the first ones to be awarded, by the President of the Supreme Court, a statuette representing scales as a symbol of justice.

The award was also received by the former President of the Supreme Court, Pavel Šámal, who has been a judge of the Constitutional Court since 2020. His term as a Supreme Court judge ended this year when he reached the age of 70.



## 2. 7. Additional Activities of Supreme Court Judges

Apart from the decision-making and unification activities of the Supreme Court, its judges were also substantially engaged in other professional activities in 2023. These included, in particular, legislative, educational and publishing activities, participation in professional conferences and foreign internships.

### 2. 7. 1. Legislative Activity

Pursuant to the Legislative Rules of the Government, the judges of the Supreme Court actively participated in commenting on draft laws. In the long-term, new draft legislation concerning the activities of the Supreme Court or affecting matters within its competence is mandatorily sent to them as part of the inter-ministerial comment procedure. More specifically, the Supreme Court receives draft laws for comment as part of the inter-ministerial comment procedure, if these proposals concern the Supreme Court's competence or the procedural rules governing it. Apart from that, judges also participate directly in the preparation of certain draft laws or amendments thereto as drafters or co-drafters.

### 2. 7. 2. Educational Activities of Judges and Their Participation in Professional Examinations

In accordance with the Act on Courts and Judges, the judges of the Supreme Court contribute to the professional training and education

of judges, prosecutors, judicial candidates, and other judiciary staff as part of the programmes organised mainly by the Judicial Academy of the Czech Republic, the Ministry of Justice, courts and prosecutors' offices. Furthermore, Supreme Court judges also participate in the professional training of attorneys and paralegals organised by the Czech Bar Association. Some of the judges also hold visiting teaching posts at the Judicial Academy of the Slovak Republic.

Some of the judges are also involved in teaching law students at universities or other higher education institutions, either as internal or visiting lecturers. They are also members of the scientific boards of university faculties or universities themselves. Other than that, the judges of the Supreme Court also participate in professional legal examinations, in particular professional judicial and bar examinations.

### 2. 7. 3. Publishing Activity

Supreme Court judges have also participated in publishing activities, particularly by drafting articles in journals or conference proceedings, commentaries, textbooks, and some serve as members of editorial boards of professional journals. Publishing houses or periodicals themselves often approach Supreme Court judges with requests for contributions.

## 2. 8. Administrative Staff in the Administration of Justice Section

The internal organisation of the Administration of Justice Section is centred around judicial departments (“Panels”), which are constituted in accordance with the applicable Work Schedule. The administrative and other clerical work for one or more judicial departments or Panels is carried out by the Court Offices, which consist of a Head of the Court Office and three or four stenographers. In the Court Offices of the Criminal Division of the Supreme Court, in addition to the stenographers, there are mainly clerks of the Court Office.

Stenographers and clerks of the Court Office perform professional, qualified, responsible and demanding administrative activities that require active knowledge of various information systems.

Many of the activities of the stenographers and clerks of the Court Office are carried out independently in accordance with the applicable legislation and the internal rules of the Supreme Court, or as instructed by judges, judicial assistants, or the Head of the Court Office. Part of their daily activities is the administrative processing of all court agenda, including the compilation of documents into often very lengthy files.

At the Criminal Division of the Supreme Court, the clerks of the Court Office organise and subsequently draw up protocols both of videocon-

ferences, through which, for example, the interrogation of the defendant takes place, and of public hearings.

The Head of the Court Office organises, directs, and supervises the work of the administrative staff and ensures the smooth operation of the Court Office for the individual judicial departments (Panels) and their judges and judicial assistants. They are fully responsible for the proper maintenance of the court registers and court files. Part of their daily work is also the announcement of decisions by posting a written copy of the full judgment or a shortened version thereof with supporting reasoning on the official notice board and the electronic notice board of the Supreme Court.

The supervisory clerk is responsible for the operation of all the judicial offices of the Division, which they organise, manage, and continuously monitor. The supervisory clerk prepares statistics on the performance of the Division, drafts guidelines for administrative staff, judges, and judicial assistants, cooperates with other sections of the Court, such as the Public Relations Department, for which they prepare documents needed to process requests pursuant to Act No 106/1999 Coll., on Free Access to Information, as amended (hereinafter referred to as the “Information Act”), etc.

The supervisory clerk is also involved in the implementation of new applications at the Supreme Court that should facilitate and streamline the work of the administrative staff of the judicial offices.

<b>Administrative Staff for the Civil and Commercial Division</b>	
Supervisory Clerk	1
Head of Office	4
Stenographer	12
Secretary of the Division	1
Referendary of the Department of the Collection of Decisions and Opinions	1
<b>Total</b>	<b>19</b>

<b>Administrative Staff for the Criminal Division</b>	
Supervisory clerk	1
Head of the Court Office	3
Clerk of the Court Office	8
Stenographer	1
Secretary of the Division	1
Referendary of the Department of the Collection of Decisions and Opinions	1
<b>Total</b>	<b>15</b>

## 2. 9. Court Agenda Section

The Court Agenda Section is a separate section, although it is structurally integrated into the Administration of Justice Section, and the Head of the Court Agenda Section is directly subordinate to the President of the Court. The employees of the Court Agenda Section must be very knowledgeable about the Supreme Court's agendas and structure, and their activities cannot be carried out without active knowledge of all court registers.

<b>Staff of the Court Agenda Section</b>	
Head of the Court Agenda Section	1
Head of the Records and Registry Department	1
Staff of the Records	4
Registry and Duplicating Staff	2
Registry Archives Clerk	1
Applications Administrator	1
<b>Total</b>	<b>10</b>

The Head of the Court Agenda Section directs and supervises the staff of the Records and Registry Department, the registry archives clerk and the applications administrator. They also, as mandated by the President

of the Court, manage and supervise the supervisory clerks who ensure the operation of the Court Offices, carry out professional supervision, and comprehensively coordinate and monitor the filing service and the pre-archival care of the Supreme Court's files and documents in all sections and departments of the Court in accordance with Act No 499/2004 Coll., on Archiving and Filing Services and on Amendments to Certain Acts, as amended (hereinafter referred to as the "Archives Act"), and the Supreme Court's Office and File Rules. They also implement projects concerning the development of the digitalisation of the judiciary at the Supreme Court, carry out system analyses of user requests for the development of information systems (not only) of the Supreme Court, for example, they initiated the creation of a new module "Registry Archives for Court Information Systems" and are currently actively involved in its implementation. The Supreme Court is a pilot court in the implementation of this module, and it ensures and coordinates cooperation 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.

Part of the Court Agenda Section is the Records and Registry Department, which is divided into the Records, Registry and Duplicating, and Registry Archives. The Records and Registry Department is managed, monitored and supervised by the Head of the Records and Registry Department, who is responsible for the proper operation of the Department.

The Records staff receives and processes all electronic filings received by the Supreme Court and records all filings and files received by the Supreme Court in paper and electronic form in the Supreme Court Information System (ISNS), in accordance with the rules set out in the Work Schedule and the Office and File Rules of the Supreme Court. In 2023, the Records staff processed 16,930 data messages received by the Supreme Court's electronic registry and recorded 10,456 new filings and files in the respective registers.

The Registry and Duplicating staff ensures 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 recording and sale of fee stamps to the parties to proceedings and, if necessary, the duplicating (printing of copies) of documents for the Supreme Court staff. In 2023, the Registry and Duplicating staff processed and entered into the Supreme Court Information System (ISNS) 8,971 documentary filings delivered to the Supreme Court and delivered (dispatched from the Supreme Court) 9,422 documentary consignments and files up to 2 kg and 4,860 over 2 kg (parcels).

The Registry Archives Clerk ensures the professional management of files and documents (pre-archival care) stored in the Supreme Court Registry Archives and, in accordance with the Archives Act and the Office and File Rules of the Supreme Court, prepares and conducts shredding procedures, including the transfer of selected archival materials to the National Archives and the disposal of files and documents that have not been selected as archival materials by the National Archives.

The Registry Archives Clerk keeps a record of the files and documents deposited in the Supreme Court Registry Archives, and in 2023 received and registered 18,078 files and documents of the court administration, which are stored in 692 archive boxes or binders in the Registry Archives.

The seamless functioning of the Supreme Court applications (ISNS, ISIR, IRES) is ensured by the applications administrator. Their activities further include, for example, the training and provision of guidance to the users of the applications, as well as setting access permissions to the applications for individual users in accordance with the Office and File Rules of the Supreme Court. The applications administrator also participates in the implementation of projects relating to the digitalisation of the judiciary.

### 3. HANDLING OF COMPLAINTS UNDER THE ACT ON COURTS AND JUDGES

Pursuant to Act 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 dignity of court proceedings.

In 2023, a total of two complaints were filed with the Supreme Court concerning delays in proceedings before the Supreme Court, one of which was found to be substantiated and the second complaint was found to be unsubstantiated.

In 2023, the Supreme Court again made every effort to meet all the conditions of a fair trial, including the duration thereof.

	<b>Justified</b>	<b>Partially justified</b>	<b>Unfounded</b>
Delays in proceedings	1	0	1
Misconduct of court personnel	0	0	0
Impairment of the dignity of proceedings	0	0	0

Handling of complaints under the Act on Courts and Judges in 2023

## 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 due to 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 2023, 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 pro-

ceedings. Its analysis maps the decision-making practice, both in civil and criminal cases, of the Supreme Court and the Constitutional Court, which formulate fundamental conclusions for adhesion procedure and the assessment of claims for compensation for non-material damage.

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 other departments of the Supreme Court. It also creates analytical materials for decision-making of foreign courts within the international judicial cooperation.

In 2018, the Documentation Department entered 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 bereavement compensation. 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 had 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 2023, 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](http://www.datanu.cz). The database now contains 1662 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 inseparably linked to a heavier administrative burden. Led 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 entered manually) 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 Supreme Court's administrative burden in this area of the Documentation Department's work can be reduced. It minimizes the possibility of errors in the large amount of processed data and simplifies the orientation in the decisions linked to each other. The data obtained is then made available on the Supreme Court's website for each of its published decisions.

In a similar manner, the Documentation Department has dealt with the assignment of the pseudonymisation agenda of the Supreme Court's

decisions since September 2023. This step has led to a significant reduction in the employees involved in pseudonymisation. At the same time, selected employees of the Department are actively cooperating with external contractors on a Ministry of Justice project to develop a software tool that could partially automate the set processes or at least simplify them and thus make them more efficient.

In May 2023, as part of the development of mutual cooperation, the Documentation Department was approached with a request from the Judicial Academy to prepare an international comparative criminal law analysis on the issue of imposing unconditional prison sentences for less serious crimes in the Czech Republic and abroad, specifically the crime of theft under Section 205(1) of Act No 40/2009 Coll., Criminal Code (hereinafter referred to as "Criminal Code"), fraud pursuant to Section 209(1) of the Criminal Code, neglect of mandatory maintenance pursuant to Section 196(1) of the Criminal Code and obstruction of the enforcement of an official decision and eviction pursuant to Section 337(1) of the Criminal Code (with a focus on driving without a driving licence, i.e. point (a)). Closer cooperation was then established with Finland, Slovenia, Germany, Switzerland, Bulgaria and Austria.

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 register of newly issued decisions of the Supreme Court concerning family law regulation. The Documentation Department continues to monitor the Supreme Court's decision-mak-



ing activity relating 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 employees, including in the ASPI and Beck-online legal systems, in order to ensure and maintain the professional level of technical skills of their users. The Documentation Department continued these efforts in 2023, when it proceeded to create analytical material mapping the functioning, internal and work processes in the internal system for processing and recording case law. This analysis is not only a necessary update and supplement to the existing technical documentation, it can also serve as a recommendation and starting material for rationalisation and increase the efficiency of the existing software and work with it.

Also in 2023, as part of the ECLI (European Case Law Identifier) project, the Documentation Department continuously provided the Supreme Court, the Constitutional Court and selected high and regional courts with the ECLI identifier. All indexed decisions are available to the public online and via the ECLI search engine on the e-justice portal, which currently contains 104,675 decisions of the Czech courts. During 2023, the Documentation Department continued its cooperation with the Documentation and Analytics Department of the Supreme Administrative Court to provide support for the implementation of ECLI at

the Supreme Administrative Court. By the end of 2023, after numerous consultations, an optimal technical solution was found for both parties. After the successful implementation of this solution, in 2024 the decisions of all three Czech superior courts, i.e. the Supreme Court, the Supreme Administrative Court and the Constitutional Court, should be provided with a uniform ECLI identifier.

## 4. 1. Department of the Collection of Decisions and Opinions

In March 2021, the Department of the Collection was established to take over and continue processing the agenda related to the publication of the Collection. However, the essential task for the Department was to oversee the project of the digitalisation 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 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. Due to the growing interest, the Department has expanded the website to include the option of subscribing to a newsletter sent to interested parties when a new volume of the Collection is published.

The Department of the Collection works closely with the 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 2023, 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 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 irreplaceable parts of its activities in the past year – it maintained regular contact with foreign courts, as well as 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 several 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 wider than the above points describe. 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 activities of various extents; the 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 delivery of documents in the United Kingdom in a situation when Czech law requires the delivery in one's own hands; the obligation to notify one's contractual partner that they are acting in factual error; or the case law of the EU Member States and the Court of Justice on the regulation on electronic identification and trust services for electronic transactions in the internal market (eIDAS).

The analytical work also focused, for example, on the question of recognition of a Swiss decision on inheritance; the compatibility of wiretapping in surgeries and hospitals with the case law of the European Court of Human Rights; or the consequences of dissolution of a company under the British law in the context of its capacity to be a party to proceedings.

Last but not least, the Department had the opportunity to deal in more detail with the limits of the freedom of expression of judges in the context of trust in an independent and impartial judiciary; the effective investigation of police violence in the context of the case law of the European Court of Human Rights and the Czech legal order; or reasoning of the decisions of the supreme courts when deciding on an extraordinary appeal.

## 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 in which the Department of Analytics and Comparative Law has long been involved. The Selection contains translations of important decisions into the Czech language, which helps make this case law accessible to the wider range of legal professionals.

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](http://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 legal information system ASPI. The Bulletin aims to provide information on current de-

isions of the Supreme Courts of the Member States of the European Union, the European Court of Human Rights and the Court of Justice of the European Union.

### 5. 1. 3. Comparative Law Liaisons Group

Similarly like in 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 of the supreme courts; however, more specific issues are also addressed.

However, the European supreme courts are also daily involved 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 the content of legislation and case law in matters that are the subject of decision-making by one of the member courts of this Comparative Group. This Comparative 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.

Among the individual issues addressed through this network, in the field of civil law, can for instance be mentioned foreign decision-making practice concerning the application of the Convention on the Contract for the International Carriage of Goods by Road (CMR); the conditions for compliance with the requirement of a written form of legal deed in electronic form in the countries of the other members of the Comparative Group, in terms of their legislation and case law; or national requirements for reasoning of the decisions of the supreme courts. In the field of criminal law, the Department consulted within the Comparative Group, for example, the question of the admissibility of wiretapping in surgeries or medical institutions. In addition, the Department of Analytics and Comparative Law provided answers to several questions from abroad.

In addition to the above-mentioned online cooperation, the Eighth Meeting of the Comparative Group took place on 1 and 2 November 2023 at the Supreme Court premises in Brno. In addition to the members of the Department of Analytics and Comparative Law of the Supreme Court, the meeting was also attended by representatives of the Belgian, Finnish, French, Dutch and Slovenian supreme courts. The working session was opened by President, Mr Petr Angyalossy, and in the expert discussion subsequently took part Presidents of Panels of Civil and Commercial Division, Mr Pavel Horák and Mr Lubomír Ptáček; President of Panel of Criminal Division, Mr Petr Škvain; and Di-

rector of the Office of President, Mr Aleš Pavel. The participants learned about the scope of review of the supreme courts in family law matters, the legal regulation of determining the amount of the reduction of price for a defective work and the experience with the institutes of criminal law offering consensual ways of settling criminal cases in court proceedings. The foreign representatives also appreciated the opportunity to learn about the Czech Supreme Court, its history, organisation, and functioning.

#### 5. 1. 4. The Judicial Network of the European Union and Superior Courts' Network

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.

For cooperation between the European Court of Human Rights and national supreme courts, the Superior Courts' Network, set up for the ef-

fective exchange of information, plays an important role. The Supreme Court also participates in this Network through the Department of Analytics and Comparative Law.

#### 5. 1. 5. International Conference “The Role of the Supreme Courts in Providing Effective Legal Protection”

On the occasion of 30 years of its modern existence, the Supreme Court held an international conference in Brno entitled “The Role of the Supreme Courts in Providing Effective Legal Protection”. The two-day conference was held at the seat of the Supreme Court in Brno from 14 to 15 September 2023.

The conference was attended by representatives of the Czech and European judiciary, such as President of the Court of Justice Koen Lenaerts, President of the Supreme Court of the Netherlands Dineke de Groot, President of the Supreme Court of Finland Tatu Leppänen, Vice-President of the Supreme Court Petr Šuk, judges of the Supreme Administrative Court Zdeněk Kühn and Michal Bobek, and President of Panel of Civil and Commercial Division of the Supreme Court Pavel Simon.

The conference offered a great platform for an interesting expert discussion, which provided an insight into the issues at stake from both national and European perspective.

## 5. 2. Participation at Significant International Events and Conferences

### 5. 2. 1. Significant Visits of the President of the Supreme Court

From 27 to 28 April 2023, the President of the Supreme Court, together with the Director of his Office Aleš Pavel, attended the Colloquium of the Presidents of the Supreme Courts of the Visegrad Group in Tomášov (Slovakia). The participants discussed several expert topics, such as the process of selecting judges for the superior courts, the support of the work of judges by judicial assistants, the selection of assistants and their position within the judiciary.

On 10 and 11 May 2023, the President of the Supreme Court and the Director of his Office Aleš Pavel, together with judges Pavel Simon, Petr Škvain, visited the European Court of Human Rights, the Committee against Torture of the Council of Europe and the Enforcement Division of the Council of Europe Secretariat. The delegation was welcomed by the President of the European Court of Human Rights Síofra O’Leary, the Vice-President Marko Bošnjak, as well as other judges and employees of the Court.

On 12 May 2023, the President of the Supreme Court met in Bratislava with the Presidents of the Supreme Courts of Germany, Belgium, Es-

tonia, Ireland, the Netherlands, Slovakia, Sweden, Croatia, Italy and Slovenia to discuss the activities of the Network of Presidents for the next period, as well as expert topics such as the length of proceedings at the superior courts and the role of the councils for judiciary. Moreover, the discussions included the possibility of expanding the group of legal comparatists, of which the Supreme Court of the Czech Republic is also a member.

The President of the Supreme Court gave a speech at an international conference on the enforcement of judgments of the European Court of Human Rights in Latvia, which was jointly organised by the Latvian Supreme Court and the Constitutional Court on the occasion of the Latvian Presidency of the Committee of Ministers of the Council of Europe. The main topic of the conference was the strengthening of the rule of law which was also one of the objectives set by Latvia for its presidency.

From 9 to 11 November 2023, the President of the Supreme Court, together with the Director of his Office Aleš Pavel, participated in the Colloquium of the Network of the Presidents of the Supreme Judicial Courts of the European Union and its joint meeting with representatives of the Court of Justice of the European Union and the European Court of Human Rights. The meeting took place at the Palace of Justice in Vienna.

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

From 4 to 7 June 2023, judges of the Supreme Court Hana Tichá, Petr Vojtek, Martina Vršanská and Robert Waltr visited the Supreme Court of Croatia in Zagreb. The aim of the event was to exchange experience, particularly on the issues of compensation for non-pecuniary damage in case of injury to health and death of a close person.

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

On 22 June 2023, the President of the Supreme Court welcomed a delegation from the Constitutional Court of Taiwan. The foreign delegation was led by the President of the Constitutional Court Tzong-Li Hsu, judge Jau-Yuan Hwang, and judge Tzung-Jen Tsai. During the meeting, the representatives of both institutions introduced each other's judicial systems in their respective countries, with emphasis on the role and position of Supreme Court, Constitutional Court and their relations with each other. Closer focus was then turned to the status of judges and staff of courts of different instances. Representatives of both institutions also discussed the number of cases pending and the admissibility of extraordinary appeals. Attention was also paid to issues of financing of judiciary.

On 7 August 2023, the President of the Czech Republic Petr Pavel visited the Supreme Court. He discussed with the President of the Court

and other top representatives of it the position and competences of the Supreme Court. He was also interested in comparative view of the performance of the Czech judiciary in the European context and issues of current problems of the judiciary and its future.

On 15 November 2023, the President of the Supreme Court Petr Angyalossy welcomed the Ambassador of the United States of America to the Czech Republic Bijan Sabet in the premises of the Supreme Court. The Ambassador was interested in the situation in the Czech judiciary, the subject of the meeting was also the index of perception of the independence and credibility of the Czech courts. The questions of investigating and prosecuting sexually motivated crimes, domestic violence and trafficking in human beings were also discussed.

From 22 to 24 November 2023, the President of the High Regional Court in Hamm Gudrun Schäpers, accompanied by the judge of the High Regional Court Martin Brandt, the judge responsible for foreign relations Claudia Wehrmann, and President of the District Court in Bielefeld, visited the Supreme Court. The delegation was interested, for example, in questions of professional assistance to judges of the Supreme Court, the criteria for selecting judicial assistants, and realization of the internships of judges from lower courts.



## 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 the conditions for its proper administration. 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 employees. Salaries account for more than 90% of annual expenditure.

The operational appropriations of the Supreme Court are used mainly to ensure the actual operability of the Court and also for the maintenance and repair of its listed building and its facilities. Same as the previous year, the Supreme Court spent funds in 2023 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 2023, the Supreme Court carried out another important investment project, namely the installation of cooling (air conditioning) in the his-

toric Supreme Court building, which was a necessary investment because the Supreme Court building had been overheating for a long time due to its orientation to the south side, but also due to the impact of building modifications carried out over the years by previous users. The working conditions in the existing building were already unsatisfactory and at the limit of health and safety regulations, with temperatures in the offices exceeding 30 °C in the summer months.

The implementation of cooling in the building of the Supreme Court will significantly improve the working environment of judges and employees with a significant impact on their work performance. In the future, the possibility of alternative power supply to the air conditioning equipment through renewable sources of electricity also seems possible.

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

In 2023, the continued trend was the widespread use of services enabling communication via remote connection or work from home, which

is why the necessary IT equipment in this area was purchased. High level of attention was also paid to the area of cyber security and protection against cyber-attacks.

Ensuring the professional qualification of judges and employees is another 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 economic, IT and operational management are always guided by the basic principles of economy, efficiency and effectiveness in the use of funds from the State budget. In the process of financial operations of the Supreme Court, internal management control is implemented to ensure control and approval from the preparation of transactions until their full approval and settlement, including the evaluation of the results and accuracy of management.

	Approved budget	Adjusted budget	Actual drawdown
2020	430,871	478,441	443,168
2021	416,069	478,415	435,712
2022	430,236	496,712	472,009
2023	435,848	495,393	474,808

The figures in the table of budgets are expressed in thousands of CZK

## 7. PERSONNEL DEPARTMENT

The Supreme Court reduced the number of its judges by one in 2023. On the other hand, the number of judicial assistants increased in comparison to the previous year, as did the number of other court employees.

	On 31 December 2021	On 31 December 2022	On 31 December 2023
Judges	72	71	70
Judicial assistants	156	154	166
Employees	122	120	124

The following judges were transferred to the Supreme Court in 2023:

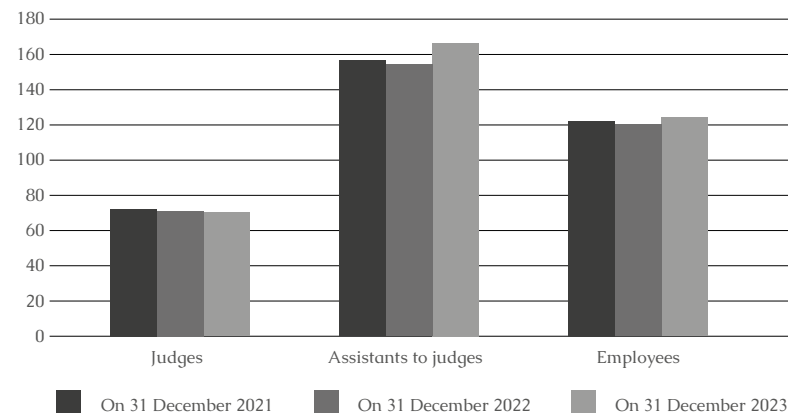
On 1 June 2023 Lucie Jackwerthová Civil and Commercial Division  
 On 1 July 2023 Miroslav Hromada Civil and Commercial Division

In 2023, the following judges retired from the Supreme Court due to the termination of their judicial term:

On 30 June 2023 Miroslav Ferák Civil and Commercial Division

On 31 December 2023

Kateřina Hornochová Civil and Commercial Division  
 Pavel Příhoda Civil and Commercial Division  
 Jiří Spáčil Civil and Commercial Division  
 Pavel Šilhavecý Criminal Division



## 8. PUBLIC RELATIONS DEPARTMENT, PROVISION OF INFORMATION

### 8. 1. Public Relations Department

In 2023, the Public Relations Department, which provides basic information on the status of proceedings to the participants (parties) of the proceedings or their lawyers, or eventually to state institutions or journalists and the media, handled, similarly as in the past, up to 100 telephonic, written or personal enquiries per day. The majority inquiries, 60 to 80 per day, are from parties about the status of proceedings before the Supreme Court. Another 20 to 30 inquiries per day represent various other requests or inquiries from journalists and the public. The Public Relations Department thus handled more than 20,000 requests and enquiries (not only) about proceedings before the Supreme Court in 250 working days in 2023. Requests for information under the Information Act makes a category of its own, for which accurate records are kept.

In addition to handling individual inquiries and requests, one of the essential tasks of the Public Relations Department is to publicize the Supreme Court's decision-making activities. To this end, press releases are issued, statements are made to the media, and in exceptional cases press conferences are held.

The Public Relations Department prepares the Supreme Court Yearbook, publishes the electronic quarterly AEQUITAS, and manages the Supreme Court's social media, including Twitter (now X), LinkedIn and Instagram. In addition, it prepares information materials on the Supreme Court's activities, or guides the implementation of various projects. For example, in 2023 it carried out the establishment of a photo gallery of former Supreme Court judges in the foyer of the František Vážený Hall and its electronic version on the Supreme Court website. Furthermore, it participates in various events of both professional and popular-educational nature, such as conferences or the traditional "Night of Law" event.

From the second half of 2023, the Public Relations Department now consists of a Head of the Department, a Spokesperson, an Information Clerk and a Clerk of the Public Relations Department. The reorganization of the Department was carried out following the unexpected passing away of our long-standing Spokesperson and Head of the Public Relations Department, Petr Tomíček.

The task of the Head of the Public Relations Department is mainly to coordinate the activities of the Department and to handle requests filed under the Information Act.

Since June 2023, the Spokesperson is Gabriela Tomíčková. Her main duties include communicating with the media, issuing press releases, and organizing press conferences, managing public inquiries, organizing field trips for schools in the Supreme Court building, and providing photo and video documentation of Supreme Court events.

In 2023, the Supreme Court published a total of 56 press releases. On 15 September 2023, the Supreme Court held a press conference in connection with the international conference “The Role of The Supreme Courts in Providing Effective Legal Protection”, which was attended, among others, by the President of the Court of Justice of the European Union, Koen Lenaerts.

The Information Office, staffed by two clerks, provides information on the status of proceedings, i.e., whether a decision has been made in a particular case. It also provides information on the case numbers of the proceedings before the Supreme Court and informs about the composition of the Panel. It informs about the progress of work on the reasoning of the decision, or whether the decision and the file have (usually) already been sent to the court of first instance, or where the complete file is currently located.

In addition to handling phone enquiries, the Information Clerk manages written enquiries about the status of the proceedings and does press monitoring on daily basis. The Public Relations Department Clerk manages both the internal network and the Supreme Court’s external website, which serves as a platform for communication with the public.

Until the organisational changes in the Department were implemented, she was also involved in the creation of the press monitoring. Her other work tasks include the preparation of various documents for the intended publicizing of specific decisions of the Supreme Court. She is also involved in the creation of the online quarterly AEQUITAS and takes care of technical and organisational issues related to the publication of the quarterly.

In general, the Information Office cannot communicate the specific results of the proceedings, as it must first insist on proper delivering of the decision to all persons entitled under the relevant procedural rules. The only exceptions are situations where the decision is publicly announced on the Supreme Court’s official notice board.

The Public Relations Department is very often asked to provide legal advice. However, it is not competent to do so. In such cases, it refers the person to lawyers registered in the Register of Lawyers maintained by the Czech Bar Association. In the interests of its own impartiality, the Supreme Court cannot provide legal advice.

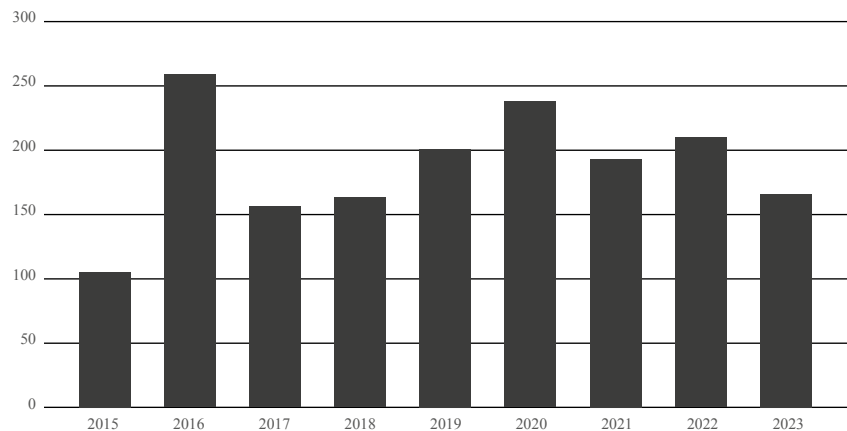
In order to promote legal awareness and to make the Supreme Court more visible to the public, the online quarterly AEQUITAS has been published since 2017 and its main purpose is to introduce judges and other employees to the professional and general public. It also serves to highlight various judicial topics or to inform about the daily functioning of the Supreme Court as well as, for example, about important visits or major judicial events, which are often with international participa-

tion. Articles with a historical perspective or articles of a more leisurely nature are no exception. A broader team of authors is involved in the preparation of the quarterly. From the Public Relations Department it is the Spokesperson, the Public Relations Department Clerk and the Head of the Public Relations Department.

## 8. 2. Providing Information in Accordance with the Information Act

In the period from 1 January to 31 December 2023, the Supreme Court received a total of 166 written requests for information in accordance with the Information Act. Compared to 2022, the “Zin” agenda has seen a decrease by 44 requests (21 %). Numerically, this is exactly the same drop as between 2020 and 2021. However, looking at the longer time series, this is not a significant downward deviation. It appears that a certain base of the agenda is between 160 and 170 requests per year, however a jump in the growth of the agenda cannot be ruled out, moreover it cannot be predicted in advance. The decline in the number of requests may also be caused by the progress of the digitalisation of the judiciary in combination with long-term educational activities in the handling of requests for information, where applicants are instructed how to obtain the information they require by their own activity, without the need of submitting a request.

Looking at a longer time series, it is clear that the agenda has gradually stabilised at between 160 and 210 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, 2022 – 215 requests and 2023 – 166 requests.



Number of requests to provide information

In case of 21 requests (more than 12 % of the total requests), these were not processed on their merits. Of this number, 6 requests were withdrawn by their submitters, 15 requests were set aside in their entirety by the obliged entity for lack of competence. In 7 proceedings, the requests were set aside only partially. Thus, the most frequent reason for setting aside a request was the fact that the request for the provision of information did not belong to the obliged entity's scope of competence in accordance with Section 2(1) of the Information Act.

A total of 145 requests were dealt with on merits (87 %). In 2023, fees for exceptionally extensive searches pursuant to Section 17(1) of the

Information Act were calculated in 3 proceedings. In no case was the fee paid, so 2 requests were partly postponed for non-payment and one in its entirety.

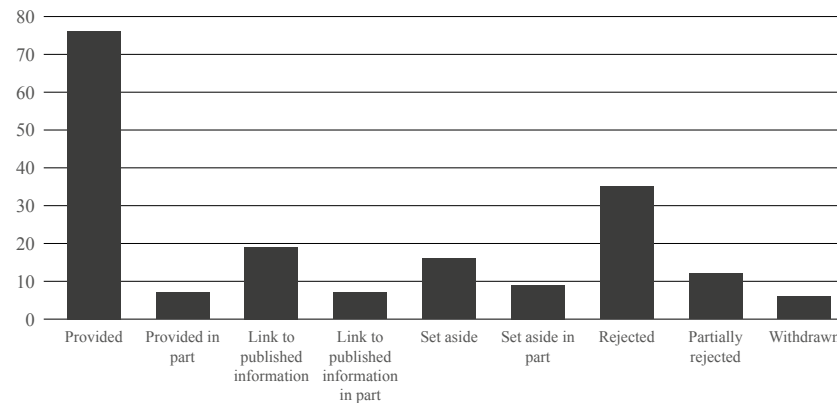
Granted in full (more than 45 %) were 76 requests, and another 7 cases were granted at least partially (4 %). In the case of 19 requests (11 %), the submitters were fully referred to published information; in another 7 cases (4 %), they were partially referred to published information.

Same as last year, the obliged entity rejected 35 (21 %) requests in full and 12 (7 %) 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. There have also been repeated rejections of applications in cases where the applicants sought the opinion of the obliged entity. As a result of the amendment to the Information Act, it is no longer necessary to issue a decision rejecting a request in the case of not providing personal data of parties to proceedings. For this reason, the number of decisions to partially reject a request has significantly decreased.

A total of 8 appeals were lodged by the submitters against the decision to fully or partially reject a request. All appeals were referred to the appellate authority for decision. In 4 cases, the appeals were dismissed by the appellate authority. In 4 cases no appeal decision was made in 2023.

In 2023, two submitters complained about the processing of the request for information. All complaints were referred to the appellate authority for a decision. In one case, the appellate authority upheld the procedure of the obliged entity and the way the request was handled. One complaint was not decided in 2023. The subject of both complaints was disagreement with the setting aside of the application for lack of competence of the obliged entity.

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 <https://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.



Method of processing requests submitted in 2023



## 9. THE CONFLICT OF INTEREST DEPARTMENT

### 9. 1. Departmental Activities

In accordance with the Conflict of Interest Act, the Supreme Court is responsible for receiving and recording notifications of activities, assets, income, and obligations 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 four employees, performs all statutory activities in relation to public officials – judges, whereas in the past it consisted of three members, however considering the workload of the Department, it has been reinforced by an additional position as of 1 October 2023.

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 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 and is confidential. The information contained cannot even be disclosed under the Information Act. Only entities directly designated in the law have access to the information contained in individual notifications.

Judges who were in office as of 1 January 2023 filed "interim notifications" for the period they were in office in the 2022 calendar year and were required to do this by 30 June 2023. During the procedure for the submission of interim notifications for 2022, 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 members 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 2023, the Department also received and recorded entry notification from newly appointed judges and exit notifications from judges who ceased to exercise their functions.

In 2024, 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 Coll., on 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 data provided in other public administration information systems, which the Supreme Court's Conflict of Interest Department is authorised to enter (e.g., the Cadastre of Real Estate and the Registry of Motor Vehicles). In the first half of 2024, the Department is expected to receive interim notifications for the period judges were in office in the 2023 calendar year. In addition, entry and exit notifications will be received and recorded.

## 9. 2. Statistics on the Departmental Activities

As of 1 January 2023, the Central Register of Notifications maintained by the Ministry of Justice listed 3,052 serving judges. One of these judges subsequently died, so the statutory obligation to file an interim notification for 2022 applied to 3,051 judges.

All required interim notifications for 2022 were filed as of 31 December 2023.

In accordance with the Conflict of Interest Act, 54 judges took office in 2023 and thus had a duty to file an entry notification. All of them fulfilled this duty and filed the entry notifications.

The notification obligation in connection with the termination of office arose in 2023 for 112 judges who submitted their exit notifications.

In 2023, 28 judges were checked for the completeness of the notifications submitted.

## 10. DATA PROTECTION OFFICER

At the beginning of last year, the Data Protection Officer (hereinafter referred to as the “Officer”) attended a number of meetings. The common theme of these meetings was the extent of pseudonymisation of Supreme Court decisions. From these meetings, attended by the superior courts and other state bodies, emerged essential points. Based on these points, the Officer, in cooperation with the Head of the Section of the Court Agenda, drafted in the spring of 2023 a new version of the directive on pseudonymisation of Supreme Court decisions.

In connection with the change in the rules on pseudonymisation, the new wording of the Organisational Rules has also led to a change in the employees conducting the pseudonymisation. These employees were trained by the Officer regarding the new pseudonymisation rules. At another training session, the Officer also familiarised the judicial assistants of the Supreme Court judges with the new pseudonymisation rules.

In the process of development of the new pseudonymisation rules and organisational change, the Officer carried out two audits aimed on the correctness of the implementation of pseudonymisation, i.e., compliance with the directive in question. The first inspection took place in

the summer and focused on checking decisions that had been pseudonymised according to the old version of the directive. The second inspection took place at the end of the year and focused on the correctness of the pseudonymisation according to the new version of the directive, considering the organisational change.

At the end of the year, the Officer launched another audit of the High Courts, for which the Officer acts as a supervisory authority in the field of personal data protection. The audit was focused on the inspection of the records of the processing activities.

Throughout the year, the Officer acted as an advisory or consultative body in the context of a number of written, telephone and oral inquiries for a wide range of court employees, and also as a party to the consultation process on the development of the Supreme Court’s internal regulations.

## 11. THE SUPREME COURT LIBRARY

The Supreme Court Library serves primarily to 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](http://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 book collection comprising over 31,700 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 2023, the book collection 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.

The response from Library visitors to the newly built premises, to which the Library moved in September 2019, continues to be very positive. After many years, *de facto* since the beginning of the functioning of the Supreme Court in Brno in 1993, the Library can finally provide its services to readers in more welcoming conditions.

## CLOSING REMARKS BY THE VICE-PRESIDENT OF THE SUPREME COURT

Even King Solomon, in his proverbial wisdom knew, that “the more words, the less sense”. And since the presented Yearbook contains – albeit necessarily imperfectly – all that is essential, for a publication of this type, to say to its readers, there is no need for me to add anything. I can only wish that the Supreme Court will, in the coming year, perform the role for which it was created and which it is supposed to play in society again a little better than in the previous year.

Petr Šuk





Opening of the Judicial Year at the European Court of Human Rights. From left: the Director of the Office of the President of the Supreme Court Aleš Pavel, the President of the Supreme Court Petr Anýalossy. Strasbourg 27 January 2023



The Vice-President of the Supreme Court of the Czech Republic Petr Šuk and the Vice-President of the Supreme Court of the Slovak Republic Andrea Moravčíková at the conference “Freedom of Speech of a Judge”. 1 March 2023



Meeting of representatives of the Supreme Courts of the Czech Republic and the Slovak Republic. From left: President of the Supreme Court of the Czech Republic Petr Angyalossy, President of the Supreme Court of the Slovak Republic Ján Šikuta, Vice-President of the Supreme Court of the Slovak Republic Andrea Moravčíková, Vice-President of the Supreme Court of the Czech Republic Petr Šuk. Bratislava 8 February 2023



Colloquium of the Presidents of the Supreme Courts of the Visegrad Group members in Slovakia. 27–28 April 2023



The President of the Supreme Court Petr Angyalossy together with the Supreme Court judges Pavel Simon, Petr Škvain and the Director of his Office Aleš Pavel visited the European Court of Human Rights on 10 and 11 May 2023



The Board of the Network of the Presidents of the Supreme Judicial Courts of the European Union in Bratislava. 12 May 2023





Visit of delegation from the Constitutional Court of Taiwan. Brno 21 June 2023



The President of the Czech Republic, Petr Pavel, visited the Supreme Court; it was his first visit of the Supreme Court. He discussed the status and competences of the Supreme Court with the President of the Supreme Court Petr Angyalossy and other top representatives of the Supreme Court. Brno 7 August 2023



President of the Czech Republic Petr Pavel (left) and the President of the Supreme Court Petr Angyalossy. Brno 7 August 2023



The International Conference “The Role of the Supreme Courts in Providing Effective Legal Protection” was held on 14–15 September on the occasion of the 30th anniversary of the Supreme Court’s modern existence. Brno 14–15 September 2023



From left: President of the Court of Justice of the European Union Koen Lenaerts, President of the Supreme Court of the Netherlands Dineke de Groot, judge of the Supreme Administrative Court Zdeněk Kühn



From left: Vice-President of the Supreme Court Petr Šuk, President of the Court of Justice Koen Lenaerts and President of the Supreme Court Petr Angyalossy at the press conference held during the international conference “The Role of the Supreme Courts in Providing Effective Legal Protection”. The photo gallery of former Supreme Court judges in the background. Brno 15 September 2023



The joint photo of the top representatives of the European judiciary who took part in the conference “The Role of the Supreme Courts in Providing Effective Legal Protection”. Brno 15 September 2023



Conference in Riga. 20–21 September 2023



30<sup>th</sup> anniversary of the Supreme Court of the Slovak Republic. Bratislava  
26 September 2023



Conference in Budapest. Budapest 27–28 September 2023



Meeting of the criminal judges of the Supreme Court of the Czech Republic and the Supreme Court of the Slovak Republic. Brno 17–19 October 2023



Eighth meeting of the Comparative Group. Brno 1–2 November 2023



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Colloquium of the Network of the Presidents of the Supreme Judicial Courts of the European Union, Vienna 9–11 November 2023



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Visit of the US Ambassador Bijan Sabet to the Supreme Court, Brno 15 November 2023



Visit of the delegation from the High Regional Court in Hamm, Brno 22–24 November 2023



Visit of the delegation from the High Regional Court in Hamm, Brno 22–24 November 2023





Conference in Slovenia. 14 December 2023



Awards for judges leaving the Supreme Court

## The Supreme Court Yearbook 2023

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