The Supreme Court Yearbook

2016

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2016

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FOREWORD FROM THE PRESIDENT OF THE SUPREME COURT

Dear Readers,

Before you leaf through this new Yearbook of the Supreme Court, let me share with you some of my personal observations on its content and on the Supreme Court's operation last year.

I regard 2016 as a year of stabilisation. We stepped into 2016 with newly appointed Heads of the two Divisions and together with them, continued revamping the organisation of our work and developing a more trustworthy and also user-friendlier face for our institution, a process which was started in 2015. A renowned expert, Mr František Púry, was appointed to head the Criminal Division while Mr Vladimír Kůrka took over as Head of the Civil and Commercial Division following the end of his mandate as a Constitutional Court judge and his return to the Supreme Court. Both of them continued with their predecessors' high-quality work and during the year provided convincing evidence of being the right, and respected, appointees to these positions due to their expertise and managerial capabilities.

The two Divisions had to cope with a considerable rise in workload in 2016. The number of Justices remained unchanged while the caseload of appeals on points of law reaching the Criminal Division and the Civil and Commercial Division rose by more than 10% and more than 5%, respectively, on 2015. Thus, the various Panels delivered the largest number of decisions in the Supreme Court's history: 66 Justices across agendas decided on 8,930 cases. The Justices were ably supported by their assistants, without whom such a caseload would have been manageable only with difficulties. In this context, let me express my appreciation for the positive approach taken by the Ministry of Justice, which has supported the creation of new assistant posts at ordinary courts, including the Supreme Court, in recent years.

Should the caseload continue to increase year by year, in particular for the Civil and Commercial Division, the number of Justices will have to be increased proportionately. Last year, each of the Civil and Commercial Division Justices decided in the role of Presiding Judge – on appeals on points of law alone – 138 cases on average, co-deciding as a regular member of the three-member Panels on another almost 280 appeals on points of law. In the light of such responsible work, accompanied by a number of other duties and activities associated with serving as Supreme Court Justice, I cannot but notionally take my hat off to my colleagues.

the Supreme Court proved again last year how important its case law is. In the domain of civil law, seminal decisions under the New Civil Code, so eagerly expected by lower courts, already began appearing. For example, the Civil and Commercial Division delivered its opinion on certain issues of the incorporation of business corporations in the commercial register and on judges actually seeing the persons being assessed in proceedings on their sui iuris capacity. The Civil Division's Grand Panel unified the Supreme Court's and The Constitutional Court's decision-making practice as regards the possibility to acquire the title to real estate, entered in the land register, from a person other than the owner (under laws effective until 31 December 2013 and 31 December 2014). The decision of the Civil and Commercial Division's Panel No 32 on the calculation of the annual percentage rate of cost (APR) for consumer loans met with an unusual and highly positive response from the general public.

Justices of the Criminal Division's Panel No 8 received an award for the best decision of the past two years at the Karlovy Vary Juristic Days [Karlsbader Juristentage] in June 2016; the decision concerned vexatious insolvency petitions. Of last year's almost 2,000 decisions in criminal cases, worth highlighting are several on the criminal liability of juristic persons, or the decisions, which are progressively being delivered, in ancillary proceedings on claims to compensation for non-pecuniary damage caused by criminal activity. In this context, the Supreme Court has drawn up a detailed analysis of hundreds of lower courts' decisions on such claims in order to be able to appeal for the unification of decision-making on these matters.

In the realm of criminal law, Justices' seminal decisions definitely include an order delivered in a case of the lesser offence of negligent grievous bodily harm committed by a pet keeper when she failed to prevent her pet from running around on a road, which resulted in a tragic road accident. The Supreme Court also expressed its legal opinion on criminal liability for the lesser offence of negligent grievous bodily harm committed by the perpetrator in connection with his unauthorised sale of pyrotechnic products to minors; another of the Criminal Division's Panels formulated its legal opinion on the crime of misappropriation committed by a solicitor who misappropriated another person's funds that he had accepted for safekeeping.

The above constitute just a fraction of the Divisions' 169 decisions and opinions that were published in the Supreme Court's Reports of Cases and Opinions last year. The Supreme Court is also continuously making these 'green reports' more user friendly. In 2016, the green reports were given a new cover and a clearer structure that facilitates orientation and more precise citations. Their currency has also been improved. The 'blue reports', a digest of major decisions of the European Court of Human Rights, also have a new cover and are now user friendlier as well. Work has been started on digitising the two books of reports, and the online version is to be launched soon.

One more prominent activity should be mentioned in connection with the Criminal Division's operation. Working with the Supreme Public Prosecutor's Office, the Supreme Court has started drawing attention to the small percentage of pecuniary penalties handed down by trial

courts. In an effort to turn around the unflattering statistics showing that in the Czech Republic, pecuniary penalties are imposed in only about 4% of decisions, we strive for a situation where public prosecutors will, in appropriate cases, move for adequate pecuniary penalties as early as in the indictment or in the motion for punishment on the basis of collected information relevant for the possible imposition of a pecuniary penalty. Judges would then have sufficient information for deciding on such punishments.

In addition to the operation of the Divisions and the Justices' and their assistants' effort, let me also underline other achievements of the Supreme Court's employees, for example, the contribution of the Department of Analytics and Comparative Law. This department has been developing 'the green paper on justice' for some time. It is an analytical paper being developed at the Supreme Court as a basis for general consultation on the forthcoming justice reforms. The paper highlights various foreign models that may be inspirational for the reform of the Czech judiciary system. To date, the green paper covers the following: The Supreme Judiciary Council, the Judicial Maps, Judges, Lay Judges, and Training of Judges. It also refers to the fundamental independent role of a Supreme Judiciary Council, the establishment of which is being considered.

Nevertheless, the Department of Analytics and Comparative Law primarily carries on analytical, comparative and research activities serving the needs of Supreme Court Justices and lower courts' judges, above all in the areas of European law and comparative law. The department draws up analyses catering to judges' practical needs, relying on its in-house expertise and command of languages as well as a network of contact persons, including the Comparative Law Liaisons group within the Network of the Presidents of the Supreme Judicial Courts of the European Union. This 'pilot group' offers a platform for informal exchanges of information between the supreme courts of seven EU member states via their analytical departments.

The Department of Analytics and Comparative Law also carefully monitors the case law of the European Court of Human Rights and the Court of Justice of the European Union. It monitors and evaluates this case law and delivers outputs for the needs of the Supreme Court and other institutions, thereby contributing to the high-quality implementation of EU law in the decision-making of all Czech courts.

The Supreme Court's international engagements have many more facets. The most important of them include regular meetings of the Network of the Presidents of the Supreme Judicial Courts of the European Union. In October 2016, Supreme Court Presidents met in Madrid, where we discussed certain issues of legal practice in Alternative Dispute Resolution and The Role of the Supreme Courts in the Development of the Law. I had the honour of delivering my contribution on alternative dispute resolution and mediation, primarily in criminal proceedings, in Madrid.

In May 2016, Mr František Púry, Head of the Criminal Division, and other Presiding Judges in the Criminal Division and the Civil and Commercial Division went to Italy on an official visit to meet with the President of the country's Corte Suprema di Cassazione and the prosecutors of the Milan

Public Prosecutor's Office. Mr Michal Mikláš, a Presiding Judge in the Criminal Division, was in the Czech delegation that attended a meeting of judges from all over the world with Pope Francis in June 2016.

Administration of justice is primarily public service. Courts should therefore not shy away from the public. Last year, our Public Relations Department handled more than 10,000 instances of providing information about progress of proceedings before the Supreme Court, answering many questions from the parties, law firms and journalists. 259 requests for information under the law on free access to information were handled on time. The number of such requests more than doubled in 2016 on 2015. Since April 2016, the Supreme Court has operated a redesigned website with new sections, offering new added value to both experts and laymen. The Supreme Court operates its profiles on Twitter and LinkedIn. We are planning to publish an e-quarterly on our Justices and employees.

In conclusion, a brief look at the planned annex to the court's building in the Bayerova Street. The Supreme Court has been striving for the annex for more than 15 years. Although 2016 was largely marked by the administrative steps required before construction itself, I am pleased to see the project heading towards the planned start of construction work in mid-2017, with the modern office wing of the building put to use as early as 2018. For this, my thanks go to the administration of the court under its new head and, in particular, to the Ministry of Justice, i.e. the investor. That said, I have to reiterate that this is still a temporary solution only. The court's main building, built originally as a bank in the 1930s, will fall a long way short of meeting our requirements even with the modern annex. We therefore continue to look for a representative building in the centre of Brno, which will better meet the needs of the Supreme Court Justices.

Yes, by its very nature, a yearbook is always a look back. Nevertheless, in the pages presented to you by the Supreme Court I also see that we are on the right track for good work in the coming years. I know that I can rely on dependable teams amongst the Justices, assistants and other staff of the court; together with them, I look forward to more respectable facilities for their work, and together with them I believe in our mission and in fair decisions.

JUDr. Pavel Šámal

Mr Pavel Šámal
President of the Supreme Court of the Czech Republic

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

The Supreme Court as the highest judicial authority in matters within courts' jurisdiction, with the exception of matters decided by the Constitutional Court and the Supreme Administrative Court, decides in civil procedure and criminal procedure on extraordinary remedies. The Supreme Court decides on appeals on point of law filed against appellate courts' decisions, and on complaints claiming violations of the law. The Supreme Court also performs an important function of unifying the Czech case law.

In addition to the above, the Supreme Court decides on local jurisdiction in the judiciary system, recognition of foreign decisions, permission to transit persons on the basis of European arrest warrants, review of interception warrants, and in cases of doubts about removing a matter from the competence of authorities involved in criminal proceedings.

1.1 Composition of the Supreme Court

The President of the Supreme Court, Mr Pavel Šámal as of 22 January 2015, has a managerial and administrative role. In addition to that, he also participates in decision-making, appoints Heads of Divisions, Presiding Judges and assistants to Justices and also court employees to managerial positions. He issues the Organisational and Office Rules and, following discussion at the Plenary Session, the Rules of Procedure. Upon consultation with the Council of Justices, he issues a work plan for every calendar year. The President of the Supreme Court determines the agenda for the Plenary Session. He proposes opinions on courts' decision-making to the Plenary Session and to the Divisions.

The Vice-President of the Supreme Court acts as a deputy for the President of the Supreme Court when the latter is absent; when the latter is present, the Vice-President exercises the powers conferred on him by the President. Mr Roman Fiala has been the Vice-President of the Supreme Court since 1 January 2011. The Vice-President oversees the handling of complaints, in particular those concerning proceedings before courts at all levels of the judiciary, collects comments from the

Supreme Court Justices on forthcoming Acts of Parliament and, in cooperation with the Justice Academy, sponsors training courses for assistants, advisers and employees of the Supreme Court. The Section of the Vice-President of the Supreme Court has been headed by Ms Blanka Láníčková since 1 January 2011 and it also includes the Czech Case Law and Analytics Department that keeps documentation on and analyses Czech case law.

The Supreme Court has two **Divisions,** a Civil and Commercial Division and a Criminal Division. The Divisions are headed by Heads of Divisions who manage and organise their activities. The Divisions adopt opinions on courts' decision-making practice, monitor and evaluate their final decisions and generalise the findings. They initiate proposals for opinions on courts' decision-making, submitting their suggestions to the President of the Supreme Court. Upon proposals by the President of the Supreme Court, Heads of Divisions and Heads of Grand Panels, the Divisions adopt opinions, and select and decide to include seminal decisions in the Reports of Cases and Opinions.

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

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

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

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

The Council of Justices has been established at the Supreme Court as an advisory body for the President of the Supreme Court. The Council of Justices has been chaired by Mr Petr Gemmel since 2013. Members are elected at the assembly of all Supreme Court Justices for a term of five years.

1.2 Seat of the Supreme Court, contact

Address of the Supreme Court: Burešova 570/20, 657 37 Brno
Telephone: + 420 541 593 111
E-mail address: podatelna@nsoud.cz
Data mailbox ID: kccaa9t

Since 1993, the Supreme Court has been located in a listed building of the erstwhile General Pension Institute, which was built to a design by Emil Králík, a professor of the Czech Technical University in Brno, between 1931 and 1932. After World War II, several institutions were progressively located in the building. From the 1960s, the secretariat of the Regional Committee of the Czechoslovak Communist Party had its offices there and for its needs, in 1986 an insensitive extension, a mansard floor, was built to a design by Milan Steinhauser, which significantly changed the appearance of the building. 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.

Because of the limited capacity of the main building and the rising number of Justices and, in particular, assistants to Justices and employees, the Supreme Court rents outside offices in the surrounding area every year. Since 2000, the Supreme Court has been seeking to increase the capacity of its operations. It was only on the basis of discussions between the President of the Supreme Court, Mr Pavel Šámal, and the Minister of Justice, Mr Robert Pelikán, in 2015 that a decision to finance an annex to the main building at Bayerova 3 was taken.

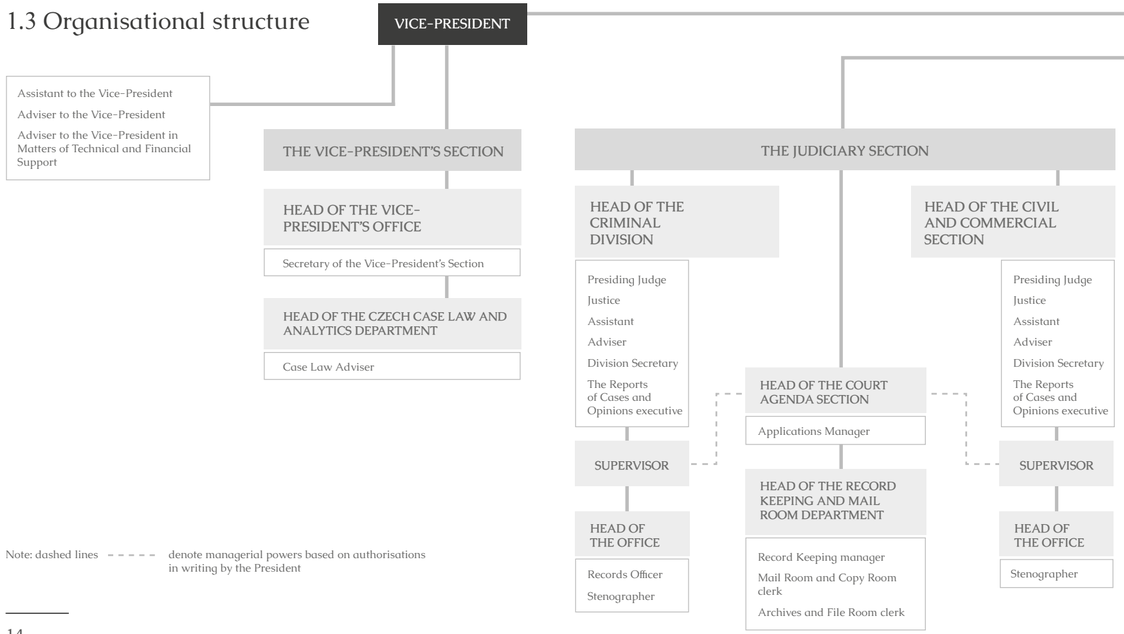
1.2.1 The Bayerova 3 building, the schedule of building the annex to the Supreme Court's main building

On 21 December 2015, the right of use to an adjacent residential building at Bayerova 3, which had belonged to the Supreme Court since 2002 after all tenants had moved out, was transferred to the Ministry of Justice. When the building is demolished in 2017 the Ministry will have a new building erected there, offering 100 modern office places, a respectable location for the Supreme Court's library, a multi-purpose courtroom and lodging quarters for Justices and visiting judges.

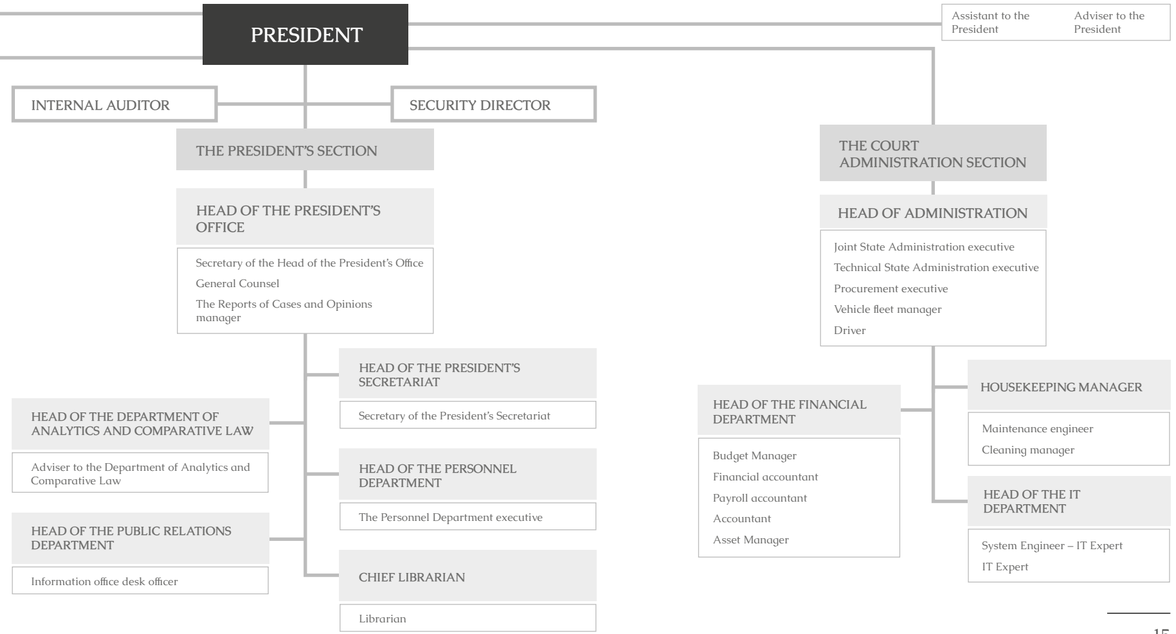
Realisation of each activity including the time schedule is given in detail in the table below.

Activity:	Activity milestone:
Approval and registration of an investment plan entitled: MJ [Ministry of Justice] – demolition and subsequent erection of a building at Bayerova 573/3, Brno-Veveří, reg. no. 136V11800 0221	APPROVED on 8 February 2016, registered amount of expenditure: CZK 150 million
Review of the Design, Supervision by the designer (negotiated procedure without prior publication), the estimated value of the public contract is CZK 2 million	Contract with ARCH DESIGN, s.r.o. signed on **18 April 2016.** The Design review was carried out and paid by the MJ. Documents drawn up by the designing company are used for the selection procedure.
Selection of the investor's Technical Supervisor (TDI) (a sub-threshold public contract in a light touch sub-threshold procedure), the estimated value of the public contract is CZK 2.5 million	Investor's Technical Supervisor (TDI) selected, MJ concluded the contract with the contractor.
Selection of the contractor (a sub-threshold public contract for construction work, open procedure), the estimated value of the public contract is CZK 135 million	The tendering procedure for the contractor was published on 9 December 2016; the opening of tenders was set for 16 February 2017
Project kick-off, demolition and subsequent erection of the building	May/June 2017 (the date depends on the meeting of the preceding milestones)
Project completion – estimated	Within 14 months from the start of construction

1.3 Organisational structure



Note: dashed lines - - - - - denote managerial powers based on authorisations in writing by the President



1.4 Supreme Court Justices in 2016

The Criminal Division

Mr Jan Bláha
Mr Antonín Draštík
Mr Jan Engelmann
Mr Karel Hasch
Mr František Hrabec
Mr Petr Hrachovec
Mr Vladimír Jurka
Mr Ivo Kouřil
Ms Věra Kůrková
Mr Michal Mikláš
Ms Danuše Novotná
Mr Jiří Pácal
Mr František Púry
Mr Stanislav Rizman
Ms Blanka Roušalová
Mr Petr Šabata
Mr Pavel Šámal
Ms Milada Šámalová
Mr Pavel Šilhavecký
Mr Eduard Teschler
Mr Jindřich Urbánek
Mr Vladimír Veselý

The Civil and Commercial Division

Mr Vít Bičák
Ms Pavlína Brzobohatá
Mr Filip Cileček
Mr Zdeněk Des
Mr Jiří Doležílek
Mr Ljubomír Drápal
Mr Václav Duda
Mr Bohumil Dvořák
Ms Jitka Dýšková
Mr Jan Eliáš
Mr Miroslav Ferák
Mr Roman Fiala
Ms Hana Gajdzioková
Mr Miroslav Gallus
Mr Petr Gemmel
Mr David Havlík
Mr Pavel Horák
Ms Kateřina Hornochová
Mr František Ištvánek
Ms Miroslava Jirmanová
Mr Michal Králík
Mr Petr Kraus

Mr Pavel Krbek
Mr Zdeněk Krčmář
Mr Vladimír Kůrka
Ms Blanka Moudrá
Mr Zdeněk Novotný
Mr Pavel Pavlík
Mr Miloš Pól
Mr Milan Polášek
Mr Zbyněk Poledna
Mr Pavel Příhoda
Mr Lubomír Ptáček
Ms Olga Puškinová
Mr Mojmír Putna
Mr Pavel Simon
Mr Jiří Spáčil
Ms Marta Škárová
Mr Petr Šuk
Mr Petr Vojtek
Mr Pavel Vrcha
Mr Robert Waltr
Mr Jiří Zavázal
Ms Ivana Zlatohlávková

1.4.1 Visiting judges at the Supreme Court in 2016

The Criminal Division

Ms Marta Ondrůšová 1. 1. 2016 – 31. 12. 2016*
Mr jiří Říha 1. 1. 2016 – 31. 12. 2016**
Ms Michal Vrtek 1. 5. 2015 – 31. 10. 2016

The Civil and Commercial Division

Mr Marek Doležal 1. 1. 2015 – 31. 12. 2016**
Mr Bohumil Dvořák 1. 10. 2015 – 30. 9. 2016
Mr Miroslav Hromada 1. 9. 2015 – 31. 8. 2016
Ms Ivana Kudrnová 1. 7. 2016 – 31. 12. 2016*
Mr Michael Pažitný 1. 7. 2016 – 31. 12. 2016*
Mr Karel Svoboda 1. 1. 2016 – 31. 12. 2016**
Ms Ivana Tomková 1. 7. 2016 – 31. 12. 2016*
Ms Monika Vacková 1. 10. 2016 – 31. 12. 2016*
Mr Pavel Vlach 1. 2. 2015 – 31. 1. 2016
Mr Aleš Zezula 1. 1. 2015 – 30. 6. 2016

* continues his internship also in 2017
** subsequently appointed as a Supreme Court justice

1.4.2 Brief biographies of new Supreme Court Justices

Mr Vít Bičák
A Justice of the Civil and Commercial Division
Judge since 2003
A Supreme Court Justice since 2016

Mr Bičák graduated from the Faculty of Law of Charles University in Prague in 1999. He then worked at a law firm for some time and spent 2001 to 2003 as a trainee judge. In 2003, he was appointed as a judge of the Praha 2 District Court; in 2013, a visiting judge at the Prague Municipal Court; and in 2014 and 2015, a visiting judge at the Supreme Court in Brno and then appointed a Justice of the Supreme Court.

Mr Bohumil Dvořák
A Justice of the Civil and Commercial Division
Judge since 2005
A Supreme Court Justice since 2016

Mr Dvořák graduated from the Faculties of Law of Charles University in Prague and Eberhard Karls Universität Tübingen. He served as a Presiding Judge at the Praha 10 District Court from 2005 and at the Praha 1 District Court from 2011. Between 2012 and 2014, Vice-President of the Praha 9 District Court. In 2014 and 2015, he was seconded to the Prague Municipal Court to serve as a judge.

1.4.3 The biography of a deceased justice Mr Jindřich Urbánek (∗ 1951 † 26. 12. 2016)

Mr Jindřich Urbánek died at the age of 65 on 26 December 2016 after a long and serious illness.

A Criminal Division Justice
Judge since 1978
A Supreme Court Justice since 1995

Mr Urbánek graduated from the Faculty of Law of Jan Evangelista Purkyně University (today's Masaryk University) in Brno. From 1978, he served as a Presiding Judge at the Kroměříž District Court, where he also held the position of Vice-President from 1993. He served as a Presiding Judge at the Praha 10 District Court from 2005 and at the Praha 1 District Court from 2011. Between 2012 and 2014, he was the Vice-President of the Praha 9 District Court. Between 2014 and 2015, he was seconded to the Prague Municipal Court to serve as a judge.

Mr Urbánek actively represented the Supreme Court in the *Association des hautes juridictions de cassation des pays ayant en partage l'usage du français* and contributed ground-breaking decisions, which he himself translated, to its joint database. He was one of the editors of the 'blue reports' of the decisions of the European Court of Human Rights in Strasbourg, published by the Supreme Court on a regular basis. From 2014, he represented the Czech Republic and Czech justice as an *ad hoc* judge in the independent joint supervisory body of Eurojust in The Hague, the Netherlands.

2 DECISION MAKING

2.1 The Civil and Commercial Division in 2016

2.1.1 Summary of decisions of the Supreme Court's Civil and Commercial Division

I

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

The meeting of the Supreme Court's above fundamental tasks was also to be facilitated by the amendment to the Civil Procedure Rules (CPR) enacted through Act No 404/2012, that came into effect on 1 January 2013; according to the explanatory report, the aim pursued was to modify the institute of appeals on points of law with a view to alleviating the overload on the Supreme Court and strengthening the role of the Supreme Court as the authority unifying courts' case law, as mentioned above; the previous provisions governing appeals on points of law provided no more opportunities and did not allow the Supreme Court to interfere specifically in cases in which it had been proved to be necessary. While this second aim has been achieved, the first one has not; the caseload of appeals on points of law keeps increasing.

II

As at the end of 2016, the Civil and Commercial Division was composed of its Head and fifty Justices (six of whom were temporarily seconded) and arranged in eleven court departments on the basis of a work plan set out by the President of the Supreme Court for that year, including its modifications during 2016. As a matter of principle, this work plan is based on aspects of specialisation, reflecting the existence of separable

and relatively independent civil (commercial) agendas; **in brief,** appeals on points of law in cases of the execution of decisions and enforcement – department 20; in labour, probate, family and other cases – department 21; cases of real rights – department 22; damages – department 25; lease – department 26; disputes over property restitution and unjust enrichment – department 28; protection of personal rights and compensation for pecuniary and non-pecuniary damage caused by public authority – department 30; contracts – department 33; while the court departments dealing with commercial matters are further divided according to whether the cases entail disputes arising from contract (departments 23 and 32) or other cases (companies, bills/notes, insolvency etc., which are covered by department 29).

Agendas of the Civil and Commercial Division of the Supreme Court:

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

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

ICdo
– Incidental disputes arising from insolvency proceedings;

Ncu
– Motions for the recognition of foreign decisions;

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

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

Before 1 September 2016, the composition of each of the procedural (three-member) panels called upon to hear and decide a specific case that was assigned to the court department on the basis of the work plan was, in principle, handled by the 'managing head' of the competent court department (who was also determined by the work plan). The managing head specified the panel that would decide the case primarily

on the basis of criteria such as internal specialisation, expertise of the Justices and their specific workload.

As of 1 September 2016, within a court department the panel that decides a case is determined by the work plan directly; the schedule sets a mechanism via which a new case is immediately assigned to a specific Justice (on the basis of a regular rotation system) and this leads to the composition of a three-member panel, which is also predetermined.

This modification of case scheduling was introduced in order to exclude any objections claiming lack of respect for fair trial rules and the right to a lawful judge embodied therein.

The Justice assigned to the case prepares a draft decision, which is then put to vote in the panel configured as above.

III

The focal point of the decision-making of a Division's Panels are appeals on points of law against final decisions of courts of appeal, appeals on points of law being one of extraordinary remedies under valid and effective Act No 99/1963, Civil Procedure Rules (CPR), and also predominant over others. Since 1 January 2013, proceedings on appeals on points of law have been governed by Part Four, Title Three of the CPR, specifically by Sections 236 to 243g.

The appeal on a point of law is a remedy against appellate courts' final decisions, i.e. against decisions of regional and high courts (and the Municipal Court in the case of Prague), where those courts decided on appeals against first instance courts' decisions (with an exception under Section 238a CPR); appeals on points of law can only be filed within two months from the service of the challenged decision (Section 240(1) CPR).

Unless the person filing the appeal on a point of law or a person representing him has legal education, when submitting the appeal on a point of law such person must be represented by a lawyer, or, in specific cases, by a notary (Section 241 CPR).

The appeal on a point of law is not always admissible; it is only admissible when the law provides so (Section 237, a contrario Section 238 CPR), and it is not admissible even in cases when the court of appeal incorrectly advises a party that an appeal on a point of law is admissible.

The above amendment to the CPR significantly has also affected the provisions on the admissibility of an appeal on a point of law; now, it is admissible against all appellate court decisions upon which the appellate proceedings are concluded, regardless of the wording of the challenged ruling. It is therefore not relevant whether or not the appellate court's decision modified, upheld or even quashed the first instance court's decision, and it is also not necessary for the appeal on a point of law to be directed against a decision on the merits of the case as was the case under the previous regulations.

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

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

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

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

d) if the court dealing with appeals on points of law is to assess that issue in a different way.

Section 238 CPR provides an exhaustive list of situations when an appeal on a point of law against an appellate court's decision that concludes the proceedings is not admissible (the pecuniary criterion is significant in this respect: with the exceptions of specified cases, an appeal on a point of law is not admissible against judgments and orders in which the ruling challenged in the appeal on a point of law decides on a financial payment not exceeding CZK 50 000).

Regardless of the limitations set out in Section 238 CPR, an appeal on a point of law under Section 238a CPR is admissible against appellate courts' decisions that were delivered during appellate proceedings and in which it was decided:

a) who was a party's procedural successor,

b) on the entry of a party into the proceedings in the place of the current party (Section 107a CPR),

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

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

An appeal on a point of law can only be filed for the reason that the appellate court's decision is based on an incorrect assessment as to the law, whether substantive or procedural law, which was decisive in the challenged decision (Sections 241a(1) and 237 CPR). Another reason for an appeal on a point of law cannot be effectively raised, which is worth emphasising, in particular, in relation to the rather frequent efforts of persons filing appeals on points of law to challenge decisions by claiming that their factual basis is incomplete or incorrect.

As of 1 January 2013, the CPR have also tightened the formal and substantive requirements placed on the appeal on a point of law; in addition to general requirements (Section 42(4)), information about the decision against which it is directed, the extent to which it challenges that decision and what the person filing the appeal on a point of law is claiming, it must also contain specification of the grounds for the appeal

on a point of law and what the person filing the appeal on a point of law regards as the satisfaction of the requirements for the admissibility of the appeal on a point of law as these are embodied in the above-cited Section 237 CPR. When any of these particulars are missing, the appeal on a point of law is defective, which often has fatal consequences because such defects can only be removed within the time limit for filing the appeal on a point of law (see above, Section 240(1) CPR), while the procedure under Section 43 CPR does not apply in proceedings before the court dealing with appeals on points of law, which means that the person filing the appeal on a point of law is not invited to correct or supplement his appeal on a point of law lacking any of the particulars. If the defect in the appeal on a point of law is not removed the court dealing with appeals on points of law dismisses the appeal on a point of law without being able to consider the merits of the appeal on a point of law.

When the person filing the appeal on a point of law does not sufficiently specify what he regards as the satisfaction of the requirements for the admissibility of appeals on points of law, it is now also a reason for dismissing the appeal on a point of law, while the court dealing with appeals on points of law can only make this decision through the Presiding Judge or a Justice authorised by him (Section 243f(2) CPR). For example, when the person filing an appeal on a point of law claims that the appellate court diverged from the adjudicating practice of the court dealing with appeals on points of law, in his appeal on a point of law he must mention the conclusions of the decisions from which the court of appeal allegedly diverged, which places obviously considerable requirements on such person.

The above as well as other requirements are, however, compensated for by the obligatory (expert) representation (in particular by a lawyer) and therefore the provisions governing appeals on points of law require that appeals on points of law be prepared by a lawyer (or a notary) (Section 241(4) CPR); any submission by a person appealing on a point of law not so represented is disregarded (Section 241a (5) CPR).

The Supreme Court reviews the challenged decision, as a matter of principle, only in the extent to which the person appealing on a point of law has challenged that decision and from the perspective of the grounds for the appeal on a point of law specified therein (exceptions to this rule are set out in Section 242(2) CPR).

In the vast majority of cases the Supreme Court decides on appeals on points of law without holding a hearing.

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

When the appeal on a point of law is not admissible or contains defects preventing the proceedings on the appeal on a point of law from continuing, the Supreme Court dismisses the appeal on a point of law. The Supreme Court delivers a decision to this effect within six months from the day on which the case was submitted to it (Section

243c(1) CPR). When the appeal on a point of law is dismissed for being inadmissible, all Panel members must agree with this.

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

However, where the Supreme Court concludes that the appellate court's decision is not correct it can (now, under the legislation in force since 1 January 2013) modify that decision if the outcomes of the proceedings show that it is possible to decide on the matter (Section 243d(b) CPR). Otherwise, the Supreme Court quashes the appellate court's decision and remands the case to it for further proceedings; if the reasons for which the appellate court's decision is quashed also apply to the first instance court's decision, that decision is quashed too and the case is remanded to the first instance court for further proceedings (Section 243e(2) CPR).

The Supreme Court does not always decide in three-member panels; in order to ensure the uniformity of its own decision-making practice, the Supreme Court has the Grand Panel to which a Panel resorts when it reaches a legal opinion that is different from the legal opinion expressed in an earlier decision of the Supreme Court. The Panel is then obliged to refer the case to the Grand Panel (composed of representatives of the various court departments, the Vice-President of the Supreme Court and the Head of the Division) and the Grand Panel is called upon to decide the case (the number of cases has evolved as follows: 2010: 17 cases, 2011: 16 cases, 2012: 18 cases, 2013: 15 cases, 2014: 11 cases, 2015: 8 cases, and 2016: 8 cases).

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

2.1.2 Statistical data

It is an unfortunate fact that the ratio of the new caseload to the Supreme Court's adjudicating capacity is causing decisions on appeals on points of law to be delivered with a certain delay. Cases are basically handled in the order in which they reach the court, while also taking into consideration the priorities that reflect the aspect of the overall length of (the preceding) court proceedings and their specific individual or public importance.

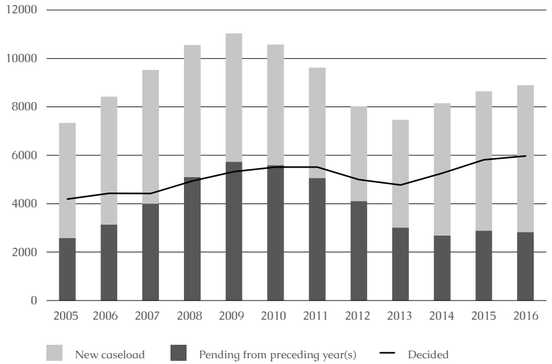
31 December 2016 saw 24 pending cases older than two years, which implies an obvious and significant decrease compared with early 2015 (82 cases), although the Supreme Court had stepped into 2016 with a smaller number of such cases (22); thus, increased attention paid to the disposal of such cases has therefore borne fruit. The reasons for which these cases were not concluded are chiefly objective ones and primarily include consequences of declarations of receivership, processes for the appointment of procedural successors, the laying of

cases before the Grand Panel, proceedings before the Constitutional Court, and requests for preliminary rulings to the CJEU.

The purpose of involving assistants in Justices' activities is to reduce the length of proceedings, increase Justices' output in terms of quantity, and focus attention on decision-making as such; every Justice currently has one to three assistants; at the end of 2016 the Civil and Commercial Division had a total of 103 assistants.

However, the statistical data clearly indicate that despite the efforts made and the undeniable progress achieved—since more cases than the new caseload were decided (except for 2016)—the court is still unable to reduce significantly the remainder of (all) pending cases as the following table shows:

Year	Pending	New case load	Decided	Pending
2005	2,592	4,747	4,195	3,144
2006	3,144	5,284	4,432	3,966
2007	3,996	5,534	4,427	5,103
2008	5,103	5,453	4,942	5,613
2009	5,731	5,309	5,327	5,595
2010	5,595	4,986	5,515	5,066
2011	5,066	4,559	5,514	4,111
2012	4,111	3,914	5,000	3,025
2013	3,025	4,444	4,777	2,692
2014	2,692	5,462	5,262	2,893
2015	2,893	5,757	5,812	2,838
2016	2,838	6,065	5,971	2,930



An obvious cause of this situation is the fact that the caseload of submitted appeals on points of law has significantly increased; in 2015, it was 5,757 cases, i.e. 67% more than in 2012, and although in 2015 the Civil and Commercial Division Justices disposed of the hitherto largest number of cases (5,812), the number of pending cases, 2,838, was considerable anyway; the same is true for 2016 when the new caseload increased to 6,065 and although an even larger number of cases were decided than in 2015 (5,971), the remainder of pending cases rose by 92 to 2,930.

Achieving the Supreme Court's basic mission (to inform courts' practice through matter-of-factly and well-qualified decisions) is burdened by the demands, in terms of both time and substance, caused by having to deal with matters that eventually cannot be subjected to review on the merits and appeals on points of law that must be dismissed, whether for defects or for inadmissibility. In 2013, the court dismissed 2,348 appeals on points of law in the Cdo agenda, in 2014 it was 2,789, in 2015 the figure was 3,168 and in 2016 it was 3,132 cases. Thus, the court has not been successful for a long time in meeting the purpose, which is associated with the requirement for a mandatory representation by a solicitor.

It is also turning out that despite the otherwise correct orientation of the abovementioned amendment to the Civil Procedure Rules, room has been opened for the filing of appeals on points of law even in issues (in particular procedural ones) lacking the potential to offer broader relevance for the case law, which do not even require an individual review by the supreme level of the judiciary; this has caused a considerable rise in the caseload, which should not be viewed as temporary only.

Such a tendency has to be addressed adequately, in particular (and right now) when aware of the Supreme Court's above mission; going forward, this mission will be embedded in extreme circumstances as the already existing need to interpret the new private-law regulations will increasingly be felt; to wit, this need is capable – because of the expected novelty of the legal questions not yet addressed by a court dealing with appeal on a point of law – of burdening the caseload of appeals on points of law in terms of its specificities, not only in terms of quantity (see the above conditions for the admissibility of appeals on points of law). And for that matter, it is also a question whether the recently improved efficiency in handling the caseload is sustainable on a long-term basis given that the options for reinforcing the Supreme Court's staffing are apparently limited.

Therefore as early as late 2015, debate was started in communication with the Ministry of Justice on how to alleviate the heavy burden on the Supreme Court; the debate was running for the first half of 2016. The outcomes included consensus on certain restrictions on access to appeals on points of law through extending the range of exceptions hitherto set out in Section 238 CPR to include, specifically, decisions on the party's request for court fee remission, decisions rejecting the party's request for the appointment of a representative in proceedings, and decisions whereby the court of appeal has quashed the decision

of the court of first instance and remanded the case to it for further proceedings (since admissible, legally relevant questions are usually not presented in appeals on points of law in any of the abovementioned cases), and also consensus on eliminating the six-month period allowed for dismissing appeals on points of law (Section 243c(1) CPR), or, better said, keeping this period as only a good-order time limit, because its existence complicates the possibility to focus on cases that are, on the contrary, open for review on the merits. The reason is that exceeding this time limit triggers the State liability mode under Section 13(1) of Act No 82/1998 on account of incorrect official procedure (also including situations where the decision was not delivered "within the period set out in the law"), which results in delays in cases that are truly important for the case law.

The bill to amend the Civil Procedure Rules, which includes the above changes, is currently at the stage of parliamentary debate.

IV

Although appeals on points of law are key for the Supreme Court and constitute the core of its operations, the Supreme Court also decides on other matters as the Civil Procedure Rules and other laws require it. It is worth mentioning that it decides disputes over jurisdiction of courts, both in rem jurisdiction (Section 104a CPR) and local jurisdiction (Section 105(3) CPR), it decides which court has local jurisdiction if the case falls within Czech courts' competence but the preconditions for local jurisdiction are lacking or cannot be established (Section 11(3) CPR), it decides on motions for removing and delegating a case if the competent court cannot consider the case because its judges have been recused or if this is appropriate (Section 12(3) CPR), it decides on partiality pleas against High Court judges (first sentence of Section 16(1) CPR) and on recusing its own Justices (by a different Panel under the second sentence of the same Section), and it also steps into proceedings on motions for the determining of a time limit for the carrying out of a procedural step under Section 174a of the law on courts and judges. Under Section 51(2) of Act No 91/2012 the Supreme Court is called upon to decide on the recognition of final foreign decisions on divorce, separation and annulment of marriages and to determine whether or not a marriage exists, in situations where at least one of the parties to the proceedings has been a Czech national.

In respect of the non-adjudicating line of its business the Division plays its unifying role by opining on lower courts' decisions in cases of certain types, on the basis of examining such courts' final decisions that are contradictory in terms of the legal opinions expressed in them. The Supreme Court also pursues the same interest – to promote unified decision-making – by publishing, in the Reports of Cases and Opinions issued by the Supreme Court, fitting or otherwise important decisions (and not only its own) on the basis of decisions passed by a simple majority of all Justices.

2.1.3 Selection of important decisions of the Supreme Court's Civil and Commercial Division published in 2016

Although at the beginning of 2014 laws related to the re-codification of private law came into effect (in particular the Civil Code and the Business Corporations Act) the Supreme Court has not yet had many opportunities to observe on the new legislation, and therefore a significant part of the decisions outlined below is based on the previous legislation. Nevertheless, the selected decisions are such that despite the changes in private law, they should not lose their significance and capability to unify courts' decision-making under private law.

2.1.3.1 Decisions of the Grand Panel

Enforcement discontinued under Section 268(1)(g) CPR after insolvency proceedings were brought

In its order of 13 March 2016, File No 31 Cdo 1714/2013, the Grand Panel of the Civil and Commercial Division examined the question of whether a payment in cash provided by a third party to pay, in lieu of the obliged person, the debt (together with incidentals) being recovered in enforcement, plus the enforcement costs and the entitled person's costs, following a final enforcement order and following the enforcement warrants to carry out the enforcement, is – after the bringing of insolvency proceedings against the obliged person – a reason for discontinuing the enforcement under Section 268(1)(g) CPR taken together with Section 52(1) Enforcement Rules.

The Supreme Court concludes that in enforcement carried out under the Enforcement Rules, the payment made by the obliged person and consisting of the payment of the principal and incidentals, the entitled person's costs and the enforcement costs, which is remitted to the enforcement officer's bank account following the service of the enforcement order, i.e. already as part of the enforcement process, constitutes the recovered debt, and therefore is not a reason to discontinue enforcement under Section 268(1)(g) CPR.

The enforcement officer is not a person authorised to file an appeal against the order whereby the enforcement court has discontinued enforcement under Section 268(1)(g) CPR upon the obliged person's motion. If the enforcement officer is not in a position to challenge the accuracy of the order that discontinues enforcement, he cannot be divested of the right to argue (using remedies against the accessory ruling on enforcement costs) that regardless of the final ruling in the enforcement court's order that discontinues enforcement under Section 268(1)(g) CPR, enforcement was discharged even before that through the 'carrying out' of the enforcement (Section 47(5) Enforcement Rules).

The amount remitted by a third party under agreement with the obliged party to the enforcement officer to satisfy the debt being recovered (including incidentals, enforcement costs and the entitled person's costs) in the period of still lasting effects resulting from the bringing of insolvency proceedings against the obliged person can be regarded as the 'recovered debt' that has caused the discharge of enforcement through the 'carrying out' thereof no earlier than from the moment at which these effects cease to exist.

Even after the emergence of the effects resulting from the bringing of insolvency proceedings against the obliged person (debtor), the enforcement court has the power to discontinue enforcement against the assets of the obliged person (the debtor) and to decide, in an accessory ruling, on enforcement costs; handing down an order 'to discontinue' enforcement is not an act whereby enforcement 'is being carried out' (within the meaning of Section 109(1)(c) Insolvency Act); the enforcement court also has the right to reject a motion for enforcement to be discontinued if it concludes that there are no reasons to discontinue the enforcement. This applies *mutatis mutandis* to the discontinuation of the execution of decisions.

Acquiring real estate from a person other than the owner

The adjudicating practice of the Constitutional Court and the Supreme Court as regards the possibility to acquire the ownership title to a real property recorded in the land register from a non-owner on the basis of the acquirer's good faith in the relevant entry in the land register under pieces of legislation in force until 31 December 2013 and 31 December 2014 has been unified through the decision of the Supreme Court's Grand Panel of 9 March 2016, File No 31 Cdo 353/2016, in favour of the legal opinions expressed by the Constitutional Court in, e.g., cases under file nos. II. ÚS 165/11, I. ÚS 3061/11, II. ÚS 800/12, IV. ÚS 4905/12, IV. ÚS 4684/12, I. ÚS 2219/2012, IV. ÚS 402/15, III. ÚS 415/15 and III. ÚS 663/15; these decisions show that under legislation in force until 31 December 2013, it was possible to acquire the title to real estate recorded in the land register from a non-owner on the basis of the acquirer's good faith in the entry in the land register; this was so as a legal consequence of the application of the principle of legal certainty and protection of acquired rights and possessions within the meaning of Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Invoicing a discount as a contractual penalty

The Supreme Court's Grand Panel addresses the issue of whether a provision on contractual penalty, according to which "in case the invoice is not paid by the due date determined under the contract terms, the amount of the provided discount shall be additionally invoiced in order to pay the advertisement in full", is sufficiently specific in its judgment of 19 October 2016, File No 31 Cdo 2674/2014, and concludes that the provision on contractual penalty is sufficiently specific, for the parties agreed that if the agreed price with the discount was not paid on time (i.e. if the invoice stating the agreed price, less the discount, based on contract terms was not paid by the due date) the penalty amounting to the provided discount from the full price of the deliverable should be paid.

Form of claim under the CMR Convention

In its judgment of 19 October 2016, File No 31 Co 1570/2015, the Supreme Court dealt with an autonomous interpretation of the requirement of a *written claim* under the CMR Convention. The Supreme Court's Grand Panel concludes that given the absence of an international body autonomously interpreting the CMR Convention, there is a need to interpret its crucial concepts independently of their meaning in the national law and to find an interpretation that pursues the purpose and objectives of the CMR Convention as best as possible and is in line with the general decision-making practice across the contracting States. With regard to foreign court decisions, the Supreme Court concludes in the present case that the written form of a claim under article 32, paragraph 2 of the CMR Convention is also maintained when the claim is made via e-mail without an advanced electronic signature.

***Locus standi* of a participant in a public tendering process in proceedings to declare a contract invalid**

The Supreme Court's Grand Panel has also unified the Supreme Court's adjudicating practice in its judgment of 10 February 2016, File No 31 Cdo 4001/2013, where it agrees with the conclusion that a participant in a public tendering process has *locus standi* to bring an action for declaring the invalidity of a contract concluded, as part of this tendering process, between the organiser of the tendering process and another participant in the tendering process. For the action to determine whether or not the right or the legal relationship exists within the meaning of Section 80(c) CPR, as in force before 31 December 2013, to be granted, however, the requirements include not only the claimant's *locus standi* but also his urgent legal interest.

Invalidity of provisions deteriorating the position of the weaker party

The Supreme Court's Grand Panel, in its judgment of 13 April 2016, File No 31 Cdo 3737/2012, confirms the Supreme Court's existing decision-making practice in situations when opting for the Commercial Code as a source of provisions governing the claiming of defects of work done caused a deterioration in the position of the defendants who were not conducting business and were in the position of consumers, in cases where the parties had not agreed to exclude the application of Section 562(2) Commercial Code. Therefore, the written agreement of the parties to the contract for work that their contractual relationship that does not fall under relationships specified in Section 261 Commercial Code is governed by the Commercial Code, is conducive to a deterioration in the legal position of the customer who does not conduct business if the parties also failed to agree that for a notification of defects of the work to be on time, the customer was to notify the contractor of the defects of the work within the warranty period (Section 562(2) Commercial Code, Section 649 CC). Such arrangement is invalid, which means that the legal relationship under the contract for work as a whole is governed by the Civil Code (in the wording in force until 31 December 2013).

Jurisdiction *in rem* of courts in matters of unit owners' associations

The issue of jurisdiction *in rem* of courts to hear disputes over the payment of contributions of members of unit owners' associations to the management of the building and land and their payments for services related to unit use has been resolved by the Grand Panel in its judgment of 1 November 2016, File No 31 Cdo 4848/2014; it concludes that district courts possess jurisdiction *in rem* in such cases. The Grand Panel notes that the following have to be distinguished: cases concerning the acts of the assemblies of unit owners' associations (i.e. review of the assembly's decisions or substitution for the decisions that were not adopted), for these are, by their nature, cases involving the status of the association and affecting the essence of that juristic person's life – where regional courts therefore possess jurisdiction – and disputes over unpaid advance payments for costs incurred in the management of the building, which cannot be considered to be such (necessarily specialised) agenda.

Compensation for loss of earnings

In its judgment of 11 May 2016, File No 31 Cdo 1278/2015, the Grand Panel has unified the decision-making practice as regards compensation for loss of earnings following the end of incapacity to work, emphasising the necessity to distinguish between the reasons for which the aggrieved person has right to compensation for loss of profit under Section 442 CC or to compensation for loss of earnings under Section 447 CC. The Grand Panel concludes that if the aggrieved person does not achieve earnings due to the situation in the labour market rather than due to his lower capacity to work caused by an occupational injury, he cannot be compensated for damage consisting in the fact that due to lack of appropriate opportunities he has no income from his own gainful activity, either in the form of compensation for loss of earnings, or in the form of compensation for loss of profit.

2.1.3.2 Opinions adopted by the Supreme Court's Civil and Commercial Division in 2016

Cpjn 204/2015

The Civil and Commercial Division's opinion of 13 January 2015 on some issues related to the registration of business corporations in the commercial register.

I The memorandum of association of a private limited company the inception of which is dated before 1 January 2014, which has not submitted to the Business Corporations Act (BCA) as a whole using the procedure under 777(5) BCA, can, under Section 135(1) BCA, allow different classes of ownership interests.

II Where the memorandum of association of a private limited company does not allow different classes of ownership interests to be created (Sections 135(1) and 136 BCA), the information about the class of the ownership interest is not entered in the commercial register under Section 48(1)(j) of the Public Registers Act (PRA). Where a private

limited company has not issued certificates of ownership interest, the information that certificates of ownership interest have not been issued is not entered in the commercial register under Section 48(1)(j) PRA.

III A resolution of a private limited company's general meeting on its agreement with the transfer of an ownership interest to a person who is not a member (Section 208(1) BCA) is not a resolution causing a change to the memorandum of association under Section 171(1)(b) BCA; thus, nor is it a decision that must be attested to in a public document under Section 172(2) BCA.

IV Where a charge is being created over an ownership interest in a private limited company and this ownership interest is not represented by a certificate of ownership interest, the signatures of the contracting parties on the security agreement must be notarised.

V The 'statutory CEO' of a public limited company having a one-tier (monistic) internal structure can also be the chairman of its one-member board of directors and can also be a member of a multiple-member board of directors.

Cpjn 201/2015

The Civil and Commercial Division's opinion of 13 April 2016 on the interpretation of Section 55(1) of Act No 89/1912 Civil Code (CC) and Section 38(2) of Act No 292/2013 on Special Court Proceedings (SCP).

As a matter of principle, the judge must actually see the person being assessed under Section 55(1) CC and Section 38(2) SCP in the proceedings on such person's *sui iuris* capacity.

Cpjn 31/2014

The Civil and Commercial Division's opinion of 8 June 2016 on the interpretation of Section 31(1) and (2) of Act No 82/1998 on Liability for Damage Caused in the Exercise of Public Authority by a Decision or Incorrect Official Procedure and Amending Czech National Council Act No 358/1992 on Notaries (Notarial Rules) (State Liability Act), in relation to the legal representation costs incurred in proceedings on a constitutional appeal for the elimination of an unlawful decision.

The legal representation costs of a party to proceedings on a constitutional appeal whereby the party has achieved the reversal of an unlawful decision do not constitute damage within the meaning of Section 31(1) and (2) of Act No 82/1998 State Liability Act, for which the State is liable under the same law.

Cpjn 204/2012

The Civil and Commercial Division's opinion of 19 October 2016 on establishing the capacities, abilities and means of the obliged person in proceedings on support for minor children.

I

The child support obligation of grandparents and other ancestors towards the child is activated when a parent is unable to even partly perform his child support obligation – until 31 December 2013: when a parent failed to perform his child support obligation in the scope satisfying the child's vital needs – for objective reasons or when it was out of question to demand the performance of their child support obligation from the parents. With effect since 1 January 2014, courts shall determine the child support amount for grandparents and other ancestors in the amount adequate to the justified needs and the means of the entitled person, and also to the abilities, capacities and means of the obliged person(s); however, the law does not lay down any criterion requiring the same standard of living for the child as that of its grandparents and other ancestors. The court shall bring proceedings on the grandparents' and other ancestors' support obligation towards a minor child, or join these persons to pending proceedings on the support obligation to a minor child, *ex officio* at the moment when it transpires that the child's parents are unable to honour their support obligation.

II

In the reasoning of its decision endorsing the parents' agreement on child support the court must describe its findings of the child's justified needs on the one hand, and the obliged person's abilities, capacities, means and standard of living on the other hand, having regard to who takes personal care of the child and to what extent, and shall do so to at least such an extent as to make it apparent that the parents' agreement is not manifestly contrary to the child's interests.

III

Effective since 1 January 2014, when a court is deciding on owed child support, statutory late charges cannot be awarded to the entitled person together with the owed support.

IV

A. When determining the level of potential income, the court shall not rely on any higher income that the obliged person achieved earlier but on the income that the obliged person would be able to achieve in the light of his actual abilities and capacities (potentially also including property) given by, *inter alia,* his physical condition, talent, education, work experience, and the supply and demand on a reasonably regionally defined labour market.

B. The requirements of Section 913(2) CC (earlier Section 96(1) Family Act) can be deemed satisfied, in particular, where the obliged person has long reported an accounting loss, has repeatedly been excluded, as a penalty, from records of job applicants, is evading offered jobs adequate to his age, health and education, through his own fault has not acquired the entitlement to disability pension due to failure to achieve the required period of insurance, has forsaken, gratuitously

or for an obviously low consideration, real estate or another asset or a part thereof having a considerable value from which he could derive pecuniary benefit, etc.

C. Serving a sentence or being held on remand when a crime of neglecting obligatory child support within the meaning of Section 196 of Act No 40/2009 Criminal Code or a wilful crime is involved, justifies a conclusion of the potentiality of the income of the obliged person who has no income throughout the time of serving the sentence or being held on remand. However, the court shall not impose the obligation to pay child support equalling the obliged person's potential income should it be contrary to the child's best interests.

D. Only such income that matches the obliged person's abilities and capacities as well as, in particular, supply and demand on a reasonably regionally defined labour market, which is adequate to the obliged person's abilities and capacities, can be understood to be potential income.

E. Potential income relates to work that the obliged parent can perform with regard to his abilities and capacities, and also to supply and demand on a reasonably regionally defined labour market, rather than to potential allowances (sickness benefits) that could (hypothetically) be derived from his potential income.

F. In respect of employments terminated after 1 January 2012 by mutual agreement under Section 49 Labour Code, the satisfaction of the requirements in Section 913(2) CC (Section 96(1) Family Act) cannot be inferred automatically.

G. The potential income of an obliged parent living abroad is the income that the parent would be able to achieve with regard to his abilities and capacities and to supply and demand on a reasonably regionally defined labour market.

V

As regards self-employed persons obliged to pay child support, courts shall examine not only disclosures of their result but also their overall standard of living, which the children have the right to share (Section 915(1) CC).

***

Concluding remark: As at the end of 2016, another two draft opinions were at the stage of debate; one on the interpretation of Section 75c(4) of Act No 99/1963 CPR in relation to the decision-making of a court of appeal on an appeal against a first instance court's order concerning an interim injunction (Cpjn 202/2016), and the other on court decisions concerning the time bar of the legal capacity to exercise suffrage (Cpjn 23/2016).

2.1.3.3 Other decisions

The 'minimum eligible income' from business and compensation for loss of earnings

In its order of 19 January 2016, File No **21 Cdo 2378/2014,** the Supreme Court examines a case where the claimant demanded the payment of a financial amount as compensation for loss of earnings occasioned by the fact that because of a diagnosed occupational illness, her employment was terminated, on the basis of mutual agreement, for incapacity to perform the work that she had been performing until then. The Supreme Court concludes that the earnings of an employee who later carries on a business or another self-employed activity can – after the diagnosis of an occupational illness and for the purpose of calculating the compensation for loss of earnings following the end of inability to work or upon the acknowledgement of the disability relevant for this employee – only consist of earnings actually achieved by the employee or of those determined taking into account the amount that the employee omitted to earn without valid reasons, but not the 'minimum eligible income' from business or another self-employed activity as such income is specified in Section 8(2) of Act No 110/2006 for the purpose of calculating the minimum subsistence and existence levels, which this employee does not achieve.

Transferring an employee to different, suitable work upon reaching the highest permissible exposure

The subject matter of the case under File No **21 Cdo 2400/2014** (judgment of 20 January 2016) is an exercised right to be transferred to different, suitable work where exposure will no longer be cumulated when the employee has already reached the highest level of permissible exposure. The Supreme Court notes that the purpose of controlling the highest permissible exposure is to determine for employees exposed to the unfavourable effects of the working environment when working in the underground of a mine, a certain number of shifts following the working of which the employee is no longer allowed to perform this work and must be transferred to a demonstrably less risky workplace if the factors detrimental to the employee's health cannot be eliminated otherwise and the employee's continued posting in the original workplace would be a source of an increased risk of illness (in particular occupational diseases). Under the relevant regulations, the competent public health authority (the locally competent regional public health office) determines, in its decision, the highest permissible exposures for working at the various workplaces in the underground of deep mines. Having examined the level of the load by the factors that are relevant for the quality of the working conditions in health terms, this authority is competent to decide on the inclusion of the type of work in a certain category, and such decision is issued in compliance with and within the limits of the law, and the court relies on this decision in civil proceedings. On the other hand, the law does not vest in the regional public health office the authority to decide

what work employees can perform once they have reached the highest permissible exposure.

(In)validity of an unnumbered addendum to a contract

In its order of 19 January 2016, File No **23 Cdo 2925/2015,** the Supreme Court decides on the validity of an addendum to a contract which was not numbered although it should have been numbered under the contracting parties' earlier agreement. Thus, although the parties expressly agreed in one clause of the examined contract for work that every addendum to the contract would have to be stamped by each contracting party's official stamp and all addenda to the contract were to be chronologically ordered in the ascending order and numbered, the Supreme Court considers that these provisions have the nature of good order only. The challenged legal act failed to have the above particulars as agreed in the contract, but this was not a defect capable of voiding the legal act; a different conclusion would have the signs of exaggerated formalism.

The statutory basis for assessing the limitation of a claim to compensation for loss of earnings and the limitation of the successively arising claims to the individual payments, repeated monthly, under the above claim

The Supreme Court examines the question of the emergence of the claim to compensation for loss of earnings and the successively arising claims to the individual payments, repeated monthly, and the related question of their time bar, in its judgment of 27 January 2016, File No **25 Cdo 4617/2014.** The Supreme Court considers that a difference should be made between them, because the claim to compensation for loss of earnings is time-barred as a repetitive payment as a whole. Compensation for loss of earnings under Section 447 CC is provided in the form of pension and usually paid monthly, but the limitation of claims to individual payments arising from this claim is, in the light of Section 110(3) CC, examined under the general provision in Section 101 CC, which lays down a three-year period of limitation that runs from the day on which the right could first be exercised.

An excusable reason for service to be ineffective

In its order of 22 February 2016, File No **20 Cdo 218/2016,** the Supreme Court deals with the interpretation of provisions on the ineffectiveness of service under Section 50d(1) CPR, according to which the serving court shall, upon the party's motion, decide that the service is ineffective if the party or his representative could not become familiarised with the document for an excusable reason. It concludes that an excusable reason under Section 50d(1) CPR (hospitalisation, long-term stay abroad etc.) can only be applied to a situation where the addressee of the process was not staying at the address of his permanent residence (or another address expressly designated by him); if in the same situation he was not staying at another address at which he was otherwise staying "in fact", this is not a reason for holding that the service is ineffective.

Reward for the accomplishment of an extraordinary task on job

Under the Supreme Court's judgment of 23 February 2016, File No **21 Cdo 4481/2014,** a reward for the accomplishment of an extraordinary or particularly important task on job, such reward otherwise being a non-claimable (i.e. facultative) component of the employee's wage, becomes a claimable (i.e. obligatory) component of the wage upon the employer's decision to grant such reward; however, where an employer, of those listed in Section 109(3) Labour Code, in its decision to grant a reward to an employee under Section 134 Labour Code pretends to be granting such reward to the employee for the accomplishment of an extraordinary or particularly important task on job with a view to disguising the true reason for granting the reward, while labour regulations do not provide an opportunity to grant a reward to the above employer's employee for such reason, such decision to grant a reward is void for lack of the employer's sincere will and for contravention of the law, and therefore cannot establish the employee's claim to the reward.

Urgent legal interest in a court declaration of exclusive property of a debtor's spouse

In its judgment of 26 January 2016, File No **22 Cdo 11/2014,** the Supreme Court answers the question (not fully resolved until then) of whether a creditor has an urgent legal interest in a declaration that as at the day of the death of his debtor's spouse, the community property of the spouses contained property that had been transferred, under an agreement on the narrowing of the community property, to the exclusive ownership of the debtor's spouse, if the claimant's receivable from the deceased debtor is still only alleged by the claimant but not yet acknowledged judicially with finality. In the present case, the Supreme Court actually finds the existence of the claimant's urgent legal interest, because on the basis of this decision such real estate can, as part of additional probate considerations, be included in the assets of the deceased's estate, thereby increasing the customary value of the deceased's estate and, in turn, the value of the inheritance acquired. In addition, the claimant, as the creditor of the decedent, will be able to seek the satisfaction of his receivable claimed from the beneficiaries up to the value of the acquired inheritance, which will be higher as the result of the sought declaration of title to the real estate in question. Thus, the Supreme Court holds that the fact that the claimant has only an alleged receivable rather than a judgment debt does not constitute grounds for rejecting the action for declaration because of the absence of an urgent legal interest. To wit, the debtor's obligation has not been discharged by his death (the obligation is not such as must be performed by the debtor in person, *cf.* Section 579 CC), while it is enough for the creditor to prove his receivable, the satisfaction of which might be jeopardised or prevented should the sought title be not declared. Since the Supreme Court considers that the above suggests that a legal position more advantageous for the claimant can be achieved through the declaration of the title in the present case, the claimant has an urgent legal interest in the declaration that he seeks.

The sequence and a change in the precedence of obligations to be performed (23 Cdo 663/2015)

The established facts of the case show that in this case, three contracts for work were concluded, and the issue arising from the appeal on a point of law, which is addressed in the judgment of 19 January 2016, File No **23 Cdo 2413/2015,** consists in assessing whether or not a debtor proceeding in line with Section 330(1) Commercial Code has an opportunity to change his will unilaterally in retrospect if he has already determined which of the obligations he is performing. The Supreme Court concludes that where in performing his obligations the debtor designates, in line with Section 330(1) Commercial Code, which of the obligations he is performing, for example, by way of specifying the invoice number as the 'variable symbol' [for the bank in credit transfers], then *ex lege* at the moment of performance (the payment), the obligation so designated by the debtor is discharged (Section 324(1) Commercial Code). The legal consequences of such act cannot be retrospectively changed by the debtor notifying in a letter that he intended to perform a different obligation; if the legal act made by the debtor has reached the addressee's realm and caused the effects envisaged by the law, a retrospective change of will is ruled out.

Liability for damage caused to road users

The subject matter of the Supreme Court's judgment of 26 January 2016, File No **25 Cdo 134/2014,** is a claim for compensation for damage caused to a passenger car driving on a category II road and hit by rocks falling down from a rocky massif on the right-hand side of the carriageway. The Supreme Court dismisses the conclusion of the court of appeal that this situation entails a defect in road serviceability under Section 26(6) Highway Act, because it does not correspond to the literal wording of the law and cannot even be inferred through the interpretation of the purpose of the law. On the contrary, the Supreme Court notes that a rock falling down from a place off the road, which damages a vehicle (and can damage it regardless of whether the vehicle is moving or stationary), is not connected in any way with the condition of the road in structural or transport engineering terms and cannot be described as a defect in road serviceability causing damage sustained by the vehicle. To wit, the basis is that the road manager's objective liability for damage caused by a defect in road serviceability under the Highway Act is associated with such a situation on the carriageway where a major change (deterioration) in the serviceability of the road, which, although remediable by normal maintenance, has characteristics that are so much off-spec as regards the [required] condition of the road in structural and transport engineering terms and the weather effects that the driver is unable, even when driving cautiously and taking into account the condition of the road and the potential consequences of the weather factors, to expect its occurrence and effectively react during driving with a view to preventing the defect from affecting his driving and damage from being caused.

Exhibit having the form of a document written in a foreign language

The Supreme Court addresses the issue of whether a document written in a foreign language can be taken as evidence by reading it out or

by conveying its content without an official translation into the Czech language, in its judgment of 16 March 2016, File No **23 Cdo 1656/2015,** and concludes that a document in a foreign language the content of which is understandable to the court can only be taken as evidence without a translation into the Czech language on condition that none of the parties has raised their right to communicate in their mother tongue in court. Indeed, should courts be obliged to translate into Czech even documents the content of which is without any doubt and that can be taken as evidence in accordance with Section 129(1) CPR even without translation into Czech, such procedure would be contrary to the principle of the economy of proceedings and would extend the proceedings completely unnecessarily; where a party objects that they do not agree with the content of the document as conveyed or read out by the court and insists on a translation into the Czech language, it is up to the court to arrange for a translation into the Czech language even when it has no doubt about the content of the document; otherwise, the court would deny the party their right to communicate in their mother tongue.

On the term 'blank bill/note'

The Supreme Court concludes that the designation 'blank bill/note' [*blankosměnka* in Czech] (instead of the designation 'bill/note' [*směnka* in Czech]) in the text of a bill/note does not result in the invalidity of the bill/note, in its judgment of 24 February 2016, File No **29 Cdo 4535/2014,** in which it also notes that the requirement arising from Part I, Section 75, point 1 of the law on bills/notes is satisfied not only by using the word 'bill/note' but also by using a compound noun [in Czech, *blankosměnka* is a compound noun] if the word bill/note is a part of this noun. After all, a part of the designation (blank) cannot be interpreted otherwise than that it is (although an inappropriately selected, but yet clear as to content) an informative annex the purpose of which is to inform the parties to the exchange/promissory relationship that the 'instrument' (blank bill/note) will only become a (whole) bill/note once completed.

Interpretation of prorogation clauses

In its order of 24 February 2016, File No **30 Cdo 1860/2015,** the Supreme Court interprets the content of a prorogation [of jurisdiction] clause that appoints 'the ordinary court with jurisdiction over the place of the creditor's permanent residence' as the competent court, holding that if in a case with an international element it is not clearly apparent from the clause conferring jurisdiction that the parties intended to agree only on the local jurisdiction of a certain court, such provision should be regarded as an agreement on opting for an international jurisdiction of a court or for courts of a certain country. The conclusion that such clause contains only agreement on local jurisdiction under Section 89a CPR would be correct only in the absence of the international element in the given legal relationship, and therefore the clause must be viewed as a provision on power (international jurisdiction) despite its wording that does not expressly refer to a court of a certain country; the reason is that a prorogation clause can be directed both at courts of a certain country and at a court that is not explicitly identified but is identifiable on the basis of the criteria contained in the clause.

Incorrect official procedure and impairment of the value of a vehicle

The Supreme Court has resolved the question of whether the State is liable for loss, claimed by the claimant, consisting of an impairment to the customary value of the claimant's vehicle due to passage of time when he could not use the vehicle for a certain period of time because of incorrect official procedure, in its judgment of 14 January 2016, File No **30 Cdo 4973/2014,** in which it concludes that there is no causal link between such impairment to the vehicle's customary value and the unreasonably long administrative proceedings, because the causal link exists when the loss is, depending on the general nature, the usual running of affairs, and experience, an adequate consequence of an illegal act or the occurrence of an insured claim; on the contrary, the drop in the value is independent of the incorrect official procedure alleged by the claimant, because it would have occurred regardless of the existence or non-existence of the incorrect official procedure.

On damage caused by species subject to special protection

The order of 29 March 2016, File No **25 Cdo 4768/2015,** notes that an action for damages under Section 10(4) of the law on compensating damage caused by certain species subject to special protection is an action for payment under a private law relationship, and it can therefore be considered under Part III CPR; here, the State appears in the position of a party to a private relationship, and it is therefore not possible for the competent authority acting for the State to decide, authoritatively by way of an administrative decision, on the claim raised by the other party to this relationship, and such authority therefore does not issue any administrative decision, whether formal or substantive, in the process of examining the damaged party's application under Section 8(2) of the law. The damaged party's application for damages, filed with the competent authority, then has the nature of a creditor raising his claim against the debtor on a preliminary basis, and it is a preventive tool that helps to prevent the undesirable situation where a court would have to decide on every claim for damages even when the debtor (the State) acknowledges its debt and is willing to pay it.

On the obligation of a defaulting winning bidder

In its order of 12 April 2016, File No **20 Cdo 87/2016,** the Supreme Court holds that the obligation under Section 336n(1) CPR, requiring a defaulting winning bidder to pay the balance to match the winner's highest bid in cases where a lower winning bid was knocked down in the subsequent auction round, is not subject to the time bar. The court thereby followed up on its earlier decision under 20 Cdo 2332/2010, noting that an opposite opinion on the substantive law nature of the obligation cannot hold up.

Compensation for loss of earnings in relation to entitlement to old-age pension

The Supreme Court addresses loss of earnings for the period from the end of mandatory school attendance, studying or vocational training until the grant of a disability pension in its judgment of 30 March 2016,

File No **25 Cdo 5024/2014,** according to which the compensation is calculated as the difference between the probable earnings that the person would have achieved but for the damage to his health and the disability pension, including the period when the person was not receiving the disability pension only because he applied for it later than his entitlement to it came into existence. The responsibility for an application filed late cannot be transferred to the obliged person, since it is only up to the damaged person whether and how he will apply for a disability pension. Thus, the amount of the subsequently granted disability pension, covering the whole period eligible for compensation for loss of earnings, must be deducted from the probable earnings that the damaged person would otherwise have achieved.

Loss of enjoyment of holiday and compensation therefor

In its judgment of 28 April 2016, File No **33 Cdo 747/2015,** the Supreme Court formulates and substantiates its conclusion that under Section 852i CC, a travel agency is also liable for non-pecuniary damage sustained by its customer through a breach of the obligations under the travel contract in place; where the travel agency fails to arrange for the required quality of accommodation for the client it is obliged – in addition to returning the extra charge for adequate rooms – to compensate the client for damage consisting of the disruption of a peaceful holiday, because despite his expectations the required accommodation was not provided to him. However, such right does not arise as the result of any inconvenience that occurs during the holiday; the breach of the travel agency's obligation must reach intensity capable of spoiling the trip objectively.

Non-pecuniary damage to a third party enjoined in proceedings

A third party has no right to compensation for non-pecuniary damage caused by an unreasonable length of the proceedings. In its judgment of 27 April 2016, File No **30 Cdo 2539/2015,** the Supreme Court explains that although it cannot be ruled out that the consequences of an incorrect official procedure, consisting of an uncertainty as regards the outcome of the proceedings, are felt not only by the party to the proceedings but also by the enjoined third party, this is not so directly, but only indirectly through the third party's substantive law relationship to the main party to the proceedings: indeed, but for the existence of a legal relationship to the main party, the third party would not feel the damage caused by the unreasonable length of the original proceedings, because the outcome of these proceedings could not affect the third party's legal position (i.e. the rights and obligations arising from substantive law) in any way. This then suggests that the causal link between the incorrect official procedure, consisting in an unreasonable length of the proceedings, and the emergence of non-pecuniary damage on the part of the third party is broken by the third party's legal relationship to the main party, whom the third party supports, because the third party personally derives his damage from this (claimed) legal relationship rather than from the incorrect official procedure.

Prior consultation of a claim

The Supreme Court clarifies the nature of the prior consultation of a claim under Section 14 State Liability Act with the authority

competent under Section 6 of this law, in its judgment of 12 April 2016, File No **30 Cdo 258/2015,** holding that such consultation is not an administrative proceeding and therefore is not governed by Act No 500/2004 on Administrative Proceedings (Administrative Procedure Rules). It accepts the opinion that this prior consultation does not yet have the nature of raising the claim with the authority that is called upon to decide on the claim, i.e. a court, and that it is consultation of an informal nature for which no procedural regulations exist; nor is the authority itself expected to deliver a decision; the purpose of prior consultation is to formulate the State's will concerning potential compensation before court proceedings are brought. The competent authority's communication to the damaged person that the claim raised by the latter will or will not be satisfied is not an administrative decision; its nature is that of a civil law act (or legal act) by the State acting through the competent administrative authority.

On some aspects of parents' agreement on child support

In its order of 24 May 2016, File No **20 Cdo 380/2016,** the Supreme Court holds with certainty that an agreement, endorsed by a court, between parents on support for a minor cannot be effectively changed otherwise than by a court decision, i.e. a judgment whereby a court determines the new amount of child support or a judgment whereby a court endorses a new agreement on child support (*cf.* Section 99 Act No 94/1963 on Family, as in force until 31 December 2013). An agreement on child support not endorsed by a court and made in a situation where the court has already determined child support in its decision, does not constitute enforcement grounds on the basis of which enforcement could be ordered, and it is not capable of changing the child support determined in the court decision; in this situation only a court has the competence to review the agreement and also whether the new amount of support matches the justifiable needs of the (minor) child and the obliged parent's abilities and capacities; after all, this can also be inferred from the principle of protecting the child's interests, which should be (primarily) taken into account.

The State's liability for enforcement officers' incorrect procedure

If an enforcement officer fails, at variance with Section 46(4) Enforcement Rules, to pay the entire recovered debt to the entitled person, this constitutes incorrect official procedure under Act No 82/1998, for which the State is liable in the light of Section 3(1)(b) taken together with Section 4 State Liability Act. This is the Supreme Court's conclusion in its judgment of 10 May 2016, File No **30 Cdo 2082/2015,** whereby it followed up on its earlier order of 29 June 2005, File No 20 Cdo 1329/2004.

2.2 The Criminal Division

2.2.1 Decisions of the Criminal Division of the Supreme Court

In 2016, the Criminal Division of the Supreme Court ('the Criminal Division') was composed of the Head of the Criminal Division and another 21 Justices; in addition, seconded Justices were working there (three until 31 October 2016 and two until the end of 2016). The Criminal Division Justices are posted in seven adjudicating Panels that constitute seven court departments. There is also a Grand Panel of the Criminal Division, a Reports Panel and a separate panel for appeals against decisions of the Supreme Audit Office's disciplinary chamber.

The Head of the Criminal Division assigns each of the criminal cases to the seven adjudicating Panels ('Panels') under the rules contained in the Supreme Court's case management guideline. The managing Presiding Judge assigns particular Justices within a Panel to cases, also under the case management rules, which combine the principle of the specialisation of certain Panels with the principle of regular rotation. Three specialised Panels work in the Criminal Division: one (No 8) considers cases heard under Act No 218/2003 on Juvenile Justice, as amended, one (No 5) specialises in economic and property crime and one (No 11) specialises in drug crime and cases concerning international judicial cooperation in criminal cases. The Criminal Division's Panels usually decide in private, i.e. the accused, the defence counsel and the public prosecutor are not present; they decide in open court, where the parties are present, only in certain cases. In addition to decisions handed down by Panels of three Justices in criminal cases, the Criminal Division also has a Grand Panel of nine Justices.

Primary legislation (specified below) empowers the Justices of the Supreme Court's Criminal Division to decide in the following areas ('agendas') in Panels that are usually composed of the Presiding Judge and two Justices:

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

Tcu
– Decision on motions for entering the particulars of the conviction of a Czech national by a foreign court into the records of the Criminal Records (Section 4(2) and Section 4a(3) of Act No 269/1994 on Criminal Records, as amended);
– Decisions on motions under Act No 104/2013 on International Judicial Cooperation in Criminal Matters, as amended (e.g., on motions for remanding a person being transferred into transit custody for the time of transit through the Czech Republic under Section 143(4) of this Act);
– Decisions on motions for decisions on whether a person is excluded from the powers of criminal proceedings authorities (Section 10(2) CrPR);

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

Td
– Decisions on disputes over jurisdiction between lower courts (Section 24 CrPR);
– Decisions on motions for the removal and delegation of a case (Section 25 CrPR);
– Decisions on complaints against decisions on recusal of judges (Section 31 CrPR);

Tvo
– Decisions on complaints against High Courts' decisions on custody extension under Section 74 CrPR and against other decisions of High Courts made in the capacity of courts of first instance (e.g. on complaints against decisions recusing High Court judges from criminal proceedings under Sections 30 and 31 CrPR);

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

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

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

2.2.2 Unifying activity of the Supreme Court's Criminal Division

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

2.2.2.1 Decisions on extraordinary remedies

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

An appeal on a point of law is an extraordinary remedy that can be used to challenge final decisions on the merits delivered by courts of second instance (Section 265a CrPR), but solely with reference to one of the grounds for appealing on a point of law; such grounds are exhaustively set out in Section 265b(1) and (2) CrPR. The subject matter of proceedings on appeals on points of law is not reviewing the facts but solely examining questions of law in the challenged decision or in proceedings preceding the decision. The Attorney General has the right to file appeals on points of law – for the inaccuracy of any ruling in a court decision and both in favour and in disfavour of the accused, and the accused persons have this right as well – for the inaccuracy of the ruling in a court decision, which directly concerns the accused. Accused persons can only file appeals on points of law through their defence counsels; an accused person's submission filed otherwise than through his defence counsel is not regarded as an appeal on a point of law and is, if applicable, treated in some other manner depending on its content. An appeal on a point of law has to be filed with the court that has decided on the merits of the case at the level of first instance, specifically within two months from the service of the decision against which the appeal on points of law is directed. The presiding judge of the first instant court delivers a copy of the accused person's appeal on a point of law to the Attorney General, and the copy of the Attorney General's appeal on a point of law to the accused person's defence counsel and to the accused person, advising them that they can submit their written observations on the appeal on a point of law and agree with the *in camera* hearing of the appeal on a point of law. As soon as the time limits for filing an appeal on points of law end for all the persons entitled to do so, the first instance court delivers the file to the Supreme Court. The Supreme Court dismisses appeals on points of law on the grounds exhaustively set out in Section 265i(1) CrPR, in particular when some formal conditions have not been met or if in his appeal on a point of law the appellant repeats the arguments with which lower courts have dealt completely, and correctly in terms of substance; in such cases, in the reasoning of its dismissing order the Supreme Court only briefly mentions the grounds for dismissing the appeal on a point of law by way of reference to the circumstances related to the statutory grounds for the dismissal. The Supreme Court rejects appeals on points of law when it finds that they are unfounded (Section 265j CrPR). If the Supreme Court does not dismiss or reject an appeal on a point of law, it reviews the challenged decision and the preceding proceedings, but solely in the scope of and on the grounds specified in the appeal on a point of law. Following this review the Supreme Court reverses the challenged decision or a part thereof and, if needed, also the defective proceedings preceding the decision if it finds that the appeal on a point of law is well founded. Where a new decision on the matter has to be made following the reversal of the challenged decision or any of its rulings, the Supreme Court orders the court, usually the one whose decision is in question, to hear the case again in the required scope and to decide (Section 265k CrPR). The court or another criminal proceedings authority to which the case was remanded for a new hearing and decision is bound by the Supreme Court's legal opinion (Section 265s(1) CrPR). Where the

challenged decision was only reversed due to an appeal on a point of law filed in favour of the accused, a decision in disfavour of the accused must not be made in the new proceedings (Section 265s(2) CrPR). However, when quashing the challenged decision, the Supreme Court itself can decide on the merits by its own judgment (Section 265m CrPR).

The other extraordinary remedy heard by the Supreme Court is the **complaint about a violation of the law** ('SPZ complaint'). Only the Minister of Justice is entitled to file this extraordinary remedy, specifically against a court's or a public prosecutor's final decision whereby the law was violated or which was made on the basis of a defective course of action in the proceedings, or if the sentence is evidently disproportionate to the nature and gravity of the crime or to the perpetrator's personal situation, or if the type of the sentence is obviously contrary to the purpose of punishment (Section 266(1) and (2) CrPR). A complaint about a violation of the law in disfavour of the accused person against a court's final decision cannot be filed only when the court proceeded in line with Section 259(4), Section 264(2), Section 273 or Section 289(b) CrPR. In the event of an SPZ complaint filed not in favour of the accused and following the finding that the law was violated, but not in disfavour of the accused, only an 'academic ruling' can be achieved but the challenged decision or the preceding proceedings whereby the law was violated cannot be quashed. The Supreme Court rejects SPZ complaints if they are inadmissible or unfounded (Section 268(1) CrPR). Where the Supreme Court finds that the law was violated, it holds so in its judgment (Section 268(2) CrPR). If the law was violated in disfavour of the accused the Supreme Court quashes, simultaneously with holding as above under Section 268(2) CrPR, the challenged decision or a part thereof and potentially also the defective proceedings preceding the decision. If only one of the rulings in the challenged decision is unlawful and if such ruling can be severed from the other rulings the Supreme Court quashes only that ruling (Section 269 CrPR). Where a new decision has to be made following the reversal of the challenged decision or any of its rulings, the Supreme Court orders the body, usually the one whose decision is in question, to hear the case again in the required scope and decide. The body to which the case is remanded is bound by the Supreme Court's legal opinion (Section 270 CrPR). When quashing the challenged decision, the Supreme Court itself can decide on the merits if a decision can be made on the basis of the facts that were correctly established in the challenged decision (Section 271 CrPR). Where the Supreme Court holds that the law was violated in disfavour of the accused, in the new proceedings the decision must not be changed in disfavour of the accused (Section 273 CrPR).

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

The fact that all decisions of the Supreme Court are, anonymised, posted on the Supreme Court's website (www.nsoud.cz) also helps to unify the adjudicating practice in criminal matters.

2.2.2.2 The Grand Panel of the Criminal Division of the Supreme Court

In addition to decisions delivered by three-member Panels, the powers of the Grand Panel of the Supreme Court's Criminal Division are also exercised in some cases. To wit, where in its decision-making a three-member Panel has arrived at a legal opinion **different from the opinion already expressed** in any of the Supreme Court's earlier decisions the Panel, justifying its different legal opinion, refers the case to the Criminal Division's Grand Panel for decision (Section 20 of Act No 6/2002 on Courts and Judges, as amended).

The above procedure can be used for referring a case to the Criminal Division's Grand Panel in particular where the contentious issue concerns **substantive law.** Where a legal opinion on adjectival law is at issue, the three-member Panel may only refer the case to the Criminal Division's Grand Panel if it has concluded unanimously (by votes of all Panel members) that the procedural question at issue is of a fundamental importance as to the law. However, referring a case to the Criminal Division's Grand Panel is ruled out where the contentious issue has already been resolved in an opinion of a Division or the plenum of the Supreme Court. The Criminal Division's Grand Panel decides on the merits of the case at all times, i.e. on the extraordinary remedy filed, unless it exceptionally concludes that no reason for referring the case to the Criminal Division's Grand Panel existed; in such cases, it remands the case to the Panel that (groundlessly) referred the case to it, and without deciding on the merits. It is a question whether this practice should be preserved. To wit, an alternative to this practice is the opinion that the Criminal Division's Grand Panel should decide only on the solution to the currently submitted question as to the law and the relevant three-member Panel that was originally assigned to the case at hand would subsequently decide on the merits accordingly.

All decisions of the Grand Panel of the Supreme Court's Criminal Division are also anonymised and posted on the Supreme Court's website.

2.2.2.3 Opinions of the Criminal Division of the Supreme Court

Another important tool for unifying the practice of lower courts and other criminal proceedings authorities is the adoption of the Supreme Court's opinions on **court decisions on matters of certain types** (Section 14(3) of Act No 6/2002 on Courts and Judges). Debate on an opinion in the Criminal Division is preceded by the drafting of the opinion by the mandated member(s) of the Criminal Division; then follows a commenting procedure to collect comments on the draft opinion from the commenting entities, which include regional and high courts, the Supreme Public Prosecutor's Office, universities' law schools, the Czech Bar Association, the Ministry of Justice and potentially, depending on the nature and importance of the questions being addressed, other bodies and institutions. The draft opinion is then considered and approved at

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

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

2.2.2.4 The Reports Panel of the Criminal Division

The Supreme Court's Criminal Division also has a Reports Panel composed of its Presiding Judge and another eight Justices of the Criminal Division. At its meetings, the Reports Panel considers proposals for those decisions of the Panels of the Supreme Court's Criminal Division and decisions of lower courts in criminal cases, which have been recommended for generalisation and for approval, at a Criminal Division meeting, of their publication in the Reports of Cases and Opinions. The Reports Panel decides on which of the decisions considered by it will **qualify for the further approval process,** i.e. distributed for comments to the competent bodies and institutions and then laid before a Criminal Division meeting. Upon a motion of the Head of the Criminal Division or the Presiding Judge of the Reports Panel, the Criminal Division's Reports Panel also considers other papers, in particular suggestions to the Criminal Division to adopt an opinion.

2.2.2.5 Reports of Cases and Opinions

In terms of information about the Supreme Court's unifying activity and also for promoting legal awareness of both experts and laymen, an important activity of the Supreme Court is publishing the Reports of Cases and Opinions (Section 24(1) of Act No 6/2002 on Courts and Judges). These are the **only official reports of cases and opinions** concerning matters falling within courts' powers in civil and criminal proceedings. The Reports contain opinions of the Supreme Court's Criminal Division, selected and approved decisions of the various Panels of the Criminal Division (including its Grand Panel) and also selected and approved decisions of lower courts.

Once the decisions selected for potential publication in the Reports of Cases and Opinions have passed through assessment in the Reports Panel of the Supreme Court's Criminal Division, they are distributed to the commenting entities, i.e. regional and high courts, universities' law schools, the Czech Bar Association, the Ministry of Justice, the Supreme Public Prosecutor'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 the Supreme Court's Criminal Division meeting, which is quorate if attended by a simple majority of all members of the Criminal Division. At the Criminal Division meeting the proposed decisions may be adjusted, and then all Criminal Division Justices attending the meeting vote to approve them for publication. A simple majority of votes of all Criminal Division Justices is required to approve a decision for publication in the Reports of Cases and Opinions.

The Reports of Cases and Opinions are published in separate issues appearing ten times a year, and the content of each of the Reports issues is also available on the Supreme Court's website.

2.2.3 Statistical data

2.2.3.1 Numbers of cases assigned to the Criminal Division in 2016

Agenda	Pending from earlier periods	New cases received	Decided	Pending
Tdo	219	1,804	1,760	263
Tcu	23	57	70	10
Tz	5	73	69	9
Td	3	78	70	11
Tvo	3	40	39	4
Tul	-	1	1	-
Zp	-	-	-	-
Pzo	4	18	20	2

2.2.4 Some of the important decisions of the Criminal Division published in 2016

2.2.4.1 Some of the important decisions of the Criminal Division published in the Reports of Cases and Opinions

The following are some of the notable decisions that were published in the criminal section of the Reports of Cases and Opinions ('Cr S Reports') in the period under review:

Supreme Court Order of 29 July 2015, File No **3 Tdo 821/2015,** published under 1/2016 Cr S Reports, in which the Supreme Court concludes that the **joinder** of the offence of the frustration of the execution of an official decision and banishment under Section 337(3)(a) Criminal Code with the offence of misappropriation under Section 206 Criminal Code is not precluded. Thus, it is possible in specific cases that the perpetrator has both misappropriated an item entrusted to him as well as frustrated or substantially impeded, by his conduct, the execution of a court's or another public authority's decision by removing the item that such decision concerns.

Supreme Court Order of 16 September 2015, File No **3 Tdo 1115/2015,** published under 2/2016 Cr S Reports, concerns the **question of fault in cases of attempts** at crimes involving qualified facts of the case. The Supreme Court concludes that for a completed crime, negligent fault under Section 17(a) and (b) of the Criminal Code is enough to view the circumstances as especially aggravating circumstances, unless the law

lays down otherwise. On the other hand, as regards attempts at crimes, the perpetrator's intent (Section 15 Criminal Code) must also relate to the statutory features of the qualified facts of the crime, i.e. to especially aggravating circumstances.

Supreme Court Order of 16 July 2014, File No **8 Tdo 109/2014,** published under 5/2016 Cr S Reports. In this decision the Supreme Court holds that the **interception and recording of telecommunications traffic** is a securing institute, the nature of which is akin to that of covert surveillance techniques under Section 158b et seq. CrPR, and in the broader sense it therefore serves for preventing, detecting and clarifying criminal activities and for searching for hiding perpetrators, missing persons and tangible evidence. It can be regarded as a basis for continuing criminal proceedings; it is only in continued criminal proceedings that the facts recorded in the interception are checked and clarified. The use of recordings of telecommunications traffic as **evidence in a different criminal case** (third sentence of Section 88(6) CrPR) is not prevented by the fact that in the proceedings in which the interception and recording of telecommunications traffic was carried out (Section 88(1) CrPR) are no longer running (for example, prosecution was not even started), or that the legal classification of the act, which under Section 88(1) CrPR led to the warrant for telecommunications traffic tapping and recording, was not proved later in further proceedings and the accused was not found guilty of such a crime.

Supreme Court Order of 24 June 2015, File No **8 Tdo 575/2015,** published under 6/2016 Cr S Reports. The Supreme Court concludes that where the court of appeal decides that a case under Section 257(1)(b) CrPR should be referred to a different body, which may view the accused person's act as a minor offence or a disciplinary offence (Section 222(2) CrPR), the accused or the public prosecutor can file an appeal on points of law against such decision under Section 265b(1)(f) CrPR. Therefore, before the time limit for filing an appeal on a point of law under Section 265e(1) CrPR ends for the entitled persons, or pending the decision of the court hearing the appeal on points of law, criminal proceedings continue to be conducted under Section 12(10) CrPR, and their **duration is not counted towards the time limit for the hearing of the minor offence** (see Section 20(2) Act No 200/1990 on Minor Offences, as amended; since the effect of Act No 209/2015 amending Act No 200/1990 on Minor Offences, as amended, Act No 269/1994 on Criminal Records, as amended, and certain other laws, i.e. since 1 October 2015 as regards the relevant part, reference to Section 20(4) Act No 200/1990 on Minor Offences, as amended, has been applicable). For this reason, the first instance court can, following the decision of the court of appeal on the referral of the case to another body under 257(1)(b) CrPR, refer the case to that body, together with the case file, only when the time limit for filing an appeal on a point of law ends for the entitled persons or only once the court hearing the appeal on a point of law has decided on the appeal on a point of law. Likewise, where the decision on the referral of the case to another body has become final already before the first instance court, this court can only refer the case, together with the case file, to the other body after the time limit for appeal has ended for all entitled persons.

Supreme Court Order of 13 May 2015, File No **8 Tdo 469/2015,** published under 9/2016 Cr S Reports, concerns a court decision in an ancillary proceeding as regards the **duty to rule on damages.** This order suggests that the court must decide on a victim's claim that was raised in a timely and proper manner under Section 43(3) CrPR at all times under Section 228 or 229 CrPR in the ruling in the judgment. The court does not have to hand down such a ruling only if it has delivered an order under Section 206(3) and (4) CrPR (or using these provisions per *analogiam*), wherein it notes that it does not admit a certain person claiming the victim's rights to the trial hearing or that the victim is not allowed to raise his claim in criminal proceedings. The non-existence of a ruling whereby the court was obliged to decide on the raised claim of the victim cannot be compensated for by an explanation in the reasoning of the judgment only; where the court does so anyway, this implies that its decision lacks a ruling within the meaning of grounds for appeals on points of law under Section 265b(1)(k) CrPR.

Supreme Court Order of 15 July 2015, File No **5 Tdo 335/2015,** published under 11/2016 Cr S Reports, is dedicated to the issue of punishment by the forfeiture of a surrogate item of property. The Supreme Court concludes that the **forfeiture of a surrogate item of property** under Section 71(1) Criminal Code is not tied to the existence of a relationship between the items subjected to forfeiture and the committed crime, which [i.e. the relationship] is required when the punishment of the forfeiture of a property item is being imposed under Section 70(1) Criminal Code. Forfeiture of a surrogate item of property under Section 71(1) Criminal Code can only be imposed in relation to items that are the exclusive property of the perpetrator of the crime (*cf. mutatis mutandis* decisions under 46/1967-II. and 12/1969-II. Cr S Reports).

Supreme Court Order of 2 December 2015, File No **3 Tdo 1253/2015,** published under 12/2016 Cr S Reports, concerns the **withdrawal of consent already granted by the victim to the prosecution** of the accused for an act that was originally regarded as one of the crimes listed in Section 163(1) CrPR. The Supreme Court considers that the withdrawal of the victim's consent does not prevent the criminal proceedings authority from examining and assessing whether or not, with regard to ongoing evidence, the outcome of evidence may potentially warrant a legal reclassification of the act in question on the basis of the provisions on such a criminal offence the prosecution for which is not contingent on the victim's consent. Where the criminal proceedings authority arrives at this conclusion and proceeds under Section 160(6) CrPR (or under Section 190(2) CrPR or Section 225(2) CrPR), prosecution for this act can be continued despite the withdrawal of the victim's consent.

Supreme Court Order of 31 March 2015, File No **4 Tdo 350/2015,** published under 14/2016 Cr S Reports. The Supreme Court examines the statutory feature of 'the overcoming of a barrier the purpose of which is to prevent persons from entry into other persons' dwelling', which must exist for an act to be classed as the lesser offence of **forcible entry of dwelling** under Section 178(2) Criminal Code. The Supreme Court notes that the conduct of the perpetrator who entered another person's dwelling to which he did not have the right of dwelling, using the key that the perpetrator had earlier received from the entitled

person – although legally, but subsequently this other person prohibited the perpetrator from entering the dwelling and the perpetrator thereby breached such prohibition – constitutes the above statutory feature of the lesser offence of forcible entry of dwelling under Section 178(2) Criminal Code.

Supreme Court Order of 17 March 2015, File No **8 Tdo 235/2015,** published under 16/2016 Cr S Reports, addresses the issue of the satisfaction of the conditions in Section 211(2)(a) CrPR as to a witness who is a foreign national, resides abroad and was heard in a foreign country in the manner provided for by that country's law and whose testimony is the only or the decisive piece of convicting evidence. The Supreme Court notes that in lieu of hearing such witness it is, in principle, only allowed to **read out a report on his testimony** in the trial hearing, subject to the conditions in Section 211(2)(a) CrPR, if the accused or his defence counsel were given, during the criminal proceedings, at least one opportunity to put questions to such witness either at the time of his testimony or at a later stage. Failure to comply with this requirement may cause such witness's testimony to be contrary to Article 6(3)(d) of the Convention for the Protection of Human Rights and Fundamental Freedoms (published under 209/1992) and that the report on such testimony will not be allowed as evidence of the accused person's guilt. Where the court finds this defect during a preliminary consideration of the indictment, it can be grounds for remanding the case to the public prosecutor for completing investigation under Section 188(1)(e) CrPR. Procedure under Section 211(2)(a) CrPR cannot be occasioned by the circumstance that such witness – living in a Council of Europe member state – failed to appear for the trial hearing although summons to appear in court was repeatedly served on him through the international 'red-stripe envelope' if the court simultaneously failed to follow Article 10 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (published under 550/1992) and did not ask the requested party to summon the witness, alerting the requested party that the witness's personal appearance was regarded as particularly important, and primarily failed to use the opportunity to have the witness heard by the foreign country's authorities under Articles 3 and 4 of the Convention, even in the presence of the accused.

Supreme Court Order of 23 April 2014, File No **8 Tdo 388/2014,** published under 18/2016 Cr S Reports, in which the Supreme Court addresses the **culpability of an accomplice** (Section 24 of the Criminal Code) in a situation where the prosecution of the main perpetrator was conditionally discontinued under Section 307 CrPR. The Supreme Court holds that when prosecution of the main perpetrator is conditionally discontinued (Section 307 CrPR), this is no impediment to the culpability of the accomplice. A conditional discontinuation of prosecution, as a special method for ending prosecution, constitutes a procedural resolution of questions related to the criminal liability of the main perpetrator, and it therefore does not prevent a conclusion on the accomplice's criminal liability and a decision on his guilt in a convicting judgment.

Supreme Court Order of 12 March 2014, File No **11 Tdo 1406/2013,** published under 19/2016 Cr S Reports. The Supreme Court examines

one element of the **crime of fraud** under Section 209(1) Criminal Code, consisting in 'causing damage to third-party property' in the case of **community property of spouses.** According to the Supreme Court, neither of the spouses can fulfil this element by fraudulent reduction in the assets held in community property of spouses, because as regards the crime of fraud, the term 'third-party property' has to be understood as assets that do not belong to the perpetrator, or do not exclusively belong to the perpetrator only, providing that in the light of the nature of the institute of community property of spouses, each of the spouses is a full owner of such property in entirety. However, it is not ruled out to view the fraudulent conduct by one of the spouses to this property, consisting in the spouse withholding from the other spouse the fact that the former has, together with another person, created a fictitious obligation, supported by nothing, in order to wilfully impair the value of the assets held in the community property, having done so in connection with expected divorce proceedings and the distribution of the community property, such conduct being intended to cause a consequence intended to materialise only upon the divorce and distribution of community property, as an attempt at a crime of fraud under Sections 21(1) and 209 Criminal Code. Asset stripping from community property using this method was only an intermediate stage arising from the legal situation existing at the time of the fraudulent conduct, where the perpetrator's ultimate goal was to acquire a larger portion of the community property in the event of the distribution thereof than he would have acquired without such fraudulent conduct.

Supreme Court Order of 24 June 2015, File No **5 Tdo 523/2015,** published under 20/2016 Cr S Reports. The Supreme Court examines a court's duty to hand down a negative ruling that a **protective measure is not imposed.** In doing so, the Supreme Court differentiates between two basic procedural situations. In this context the Supreme Court notes that if in the trial hearing the first instance court does not reserve, using the procedure under Section 230(2) or (3) CrPR, the decision on a protective measure (e.g., on the public prosecutor's motion for seizure of an item) for an open court sitting, a negative ruling, i.e. that the protective measure is not imposed or, as applicable, that the public prosecutor's motion for the imposition thereof is rejected, is not part of that court's decision (judgment). However, in the reasoning of its decision the court must outline the considerations prompting it to reject the motion for imposing a protective measure. A different situation arises where the court reserves, in a trial hearing under Section 230(2) or (3) CrPR, the decision on the protective measure for an open court sitting; then, following the completion of evidence in open court, the court must also make, if relevant, a negative ruling, i.e. that the protective measure is not imposed or that the public prosecutor's motion for the imposition thereof is rejected if the conditions for the imposition thereof have not been met.

Supreme Court Order of 24 November 2015, File No **8 Tdo 627/2015,** published under 23/2016 Cr S Reports, is one of the very first decisions concerning criminal liability of and proceedings against juristic persons. This specific case entailed **criminal liability of a juristic person** (a private limited company) **for the lesser offence of frustrating the execution of an**

official decision and banishment under Section 337(1)(a) Criminal Code. Here, the Supreme Court examines several major issues concerning, in particular, the attributability of crimes to juristic persons and the conditions for holding a trial hearing against such juristic person when the persons who carry out acts for the juristic person are absent. The Supreme Court notes that an illegal act has been committed in the interest of a juristic person under Section 8(1) of Act No 418/2011 on Criminal Liability of and Proceedings against Juristic Persons, as amended ('Act 418') if the juristic person derives property-related gain or any intangible gain from the act, or if it obtains any other advantage from the act. The above-outlined feature must be construed as follows: the nature of the gain or advantage that flows to the juristic person from the committed crime via the benefits achieved through this crime by the juristic person's employees or members must be such that the gain or advantage for the juristic person itself is contingent on the benefit for the juristic person's employees or members. Thus if, e.g., the sole member of a juristic person, a private limited company, was driving the company's motor vehicle to take trips solely for his own personal purposes and his own personal benefit despite the fact that a final and enforceable court decision had punished him by barring him from an activity, specifically motor vehicle driving, this act was not committed in the interest of the juristic person, and the juristic person therefore could not commit, through such act, the crime of the frustration of the execution of an official decision and banishment under Section 337(1)(a) Criminal Code. **The juristic person's fault** in relation to one or more of the crimes specified in Section 7 of Act 418 should be derived from the fault of the natural person who was, when committing the crime, acting on behalf, in the interest or as part of the activities of the juristic person under Section 8(1) of Act 418 rather than from the fault of a natural person authorised to carry out acts for the juristic person during the proceedings, if these are two different natural persons. The conditions under which the trial hearing can be held in the absence of the persons who carry out acts for the juristic person are listed in Section 34(7) of Act 418, which is a special provision related to Section 202(2), (4) and (5) CrPR (see Section 1(2) of Act 418). Under Section 34(7) of Act 418, if the person specified in Section 34(1) of Act 418, or an agent of the accused juristic person, or a guardian, fails to appear at the trial hearing without a good excuse, the court can hold the trial hearing in their absence provided that the indictment was duly served on the accused juristic person, which was summoned to the trial hearing in a timely and proper manner, and that the provisions on bringing prosecution were complied with and the accused juristic person was advised of the opportunity to study the case file and to file motions for supplementing investigation. If the company director, as the governing body of the private limited company, was a **witness** in the criminal case being considered, **he was not in a position to carry out acts for the company** in the proceedings, and not only during the trial hearing in which he was heard as a witness but also at any time in the future from the moment when the criminal proceedings authority summoned him as a witness.

Supreme Court Order of 23 September 2015, File No **6 Tdo 1014/2015,** published under 25/2016 Cr S Reports. The Supreme Court examines criminal liability for the lesser offence of **damage to another person's thing** under Section 228(1) Criminal Code in a situation where the perpetrator killed **another person's animal.** The Supreme Court has had to deal with the legal nature of a living animal in terms of criminal law in relation to the relevant provisions of the New Civil Code on 'things'. The Supreme Court notes here that this lesser offence can also be committed on living animals. In the interpretation of the statutory feature called "another person's thing", Section 134 Criminal Code is used; under this section, Criminal Code provisions on things also apply to living animals. Section 494 of Act No 89/2012, Civil Code, is not to be used here, because Section 134 Criminal Code does not collide with it, because the latter section does not deem 'a thing' in the legal sense and 'a living animal' to be identical and only sets out that the relevant provisions of the Criminal Code must also be applied to living animals.

Supreme Court Order of 13 January 2016, File No **8 Tdo 1449/2015,** published under 27/2016 Cr S Reports, examines the statutory feature of **'assault on another person'** in respect of the lesser offence of **breach of the peace** under Section 358(1) Criminal Code. In the Supreme Court's opinion, this feature does not consist only in a physical attack against a person's bodily integrity but also in vulgar verbal attacks against another person etc. This feature can therefore also come into existence when the perpetrator's physical attack has not left any injuries on the victim's body, or only left an insignificant injury that does not constitute bodily harm under Section 122(1) Criminal Code. The facts found in this particular case indicate the following: having boarded a bus in which four passengers were travelling, the perpetrator opened the door of the driver's cabin and, uttering vulgar and abusive words, repeatedly hit the bus driver with his fist on the head, the nape of his neck and on his right shoulder; the victim did not suffer any injuries.

Supreme Court Order of 27 January 2016, File No **8 Tdo 1627/2015,** published under 33/2016 Cr S Reports, concerns the lesser offence of **neglect of compulsory maintenance** under Section 196(1) Criminal Code. The Supreme Court puts forth its opinion on the issue of fault and other preconditions for criminal liability for this lesser offence, noting that the above subsection contains two autonomous sets of the basic facts of the offence, which differ by whether the fault was wilful or negligent. This suggests the duty for the court to explicitly specify in the convicting judgment, in 'the gist of *ratio decidendi*', the form of the fault and also to sufficiently express – in the recapitulation of the facts established – the relevant circumstances that determine the form, and not by quoting the text of the law which expresses the form of the fault but by the specific material facts from which the court deduces the form. In this context the Supreme Court also considers whether the unfavourable financial standing of the accused can preclude his criminal liability for this lesser offence. The Supreme Court notes that the circumstance that despite the welfare benefits granted to and other income of the perpetrator, who has the statutory duty to support another person, the perpetrator has reached the minimum sustenance or existence level (see Sections 2 and 5(1) of Act No 110/2006 on Minimum Sustenance and Existence Limits, as amended), per se does not preclude criminal liability for failure to perform this duty.

Supreme Court Order of 27 January 2016, File No **5 Tdo 1226/2015,** published under 34/2016 Cr S Reports, in which the Supreme Court examines some statutory features of the facts of the lesser offence of **distorting disclosures of results and assets and liabilities** under Section 254(1), first unnumbered paragraph, of the Criminal Code, expressing its legal opinion that wilful failure to perform the duty to restore lost, stolen, destroyed or damaged books of account of a commercial company without undue delay may constitute facts of the above lesser offence if this causes a risk to another person's property rights or to a timely and proper tax assessment. Failure to keep books of account, records or other documents serving to provide a view of finances and assets is also understood to be a breach of Section 35(6) of Act No 563/1991 on Accounting, as amended.

Supreme Court Order of 25 February 2016, File No **8 Tdo 90/2016,** published under 36/2016 Cr S Reports, in which the Supreme Court considers the possibility that the lesser offence of **grievous bodily harm due to negligence** under Section 147(2) Criminal Code has been committed through a breach of an important duty arising from employment, vocation, position or office of the perpetrator or incumbent on the perpetrator under the law. The above was committed by a **domestic animal keeper** in connection with his conduct as a road user. The Supreme Court also regards the conduct of the perpetrator, owner or keeper of a domestic animal (e.g. a dog), who failed to prevent the animal from running around freely on a road by being connected to the animal firmly enough to be able to control the animal (for example, holding it on a leash), which resulted in the animal's collision with another road user, who thus suffered grievous bodily harm (Section 122(2) Criminal Code), as a breach of an important duty within the meaning of Section 147(2). The cause of the emergence of this consequence consisted in a breach of the duty specified in Section 60(11) of Act No 361/2000 on Road Traffic and Amending Certain Laws (the Highway Code), as amended, and of the road user's duty arising from Section 4(a) Highway Code, because the perpetrator as a pedestrian (Section 2(a) and (j) Highway Code) on the road was obliged to behave in a considerate and disciplined manner to prevent causing risk to the life, health or property of other persons by his conduct, since these duties are intended to prevent the uncontrollable behaviour of animals, which constitute unforeseeable obstacles to road traffic that usually cause grave consequences.

Supreme Court Order of 20 January 2016, File No **7 Tdo 1626/2015,** published under 37/2016 Cr S Reports. The Supreme Court observes on the criminal liability for the lesser offence of **grievous bodily harm due to negligence** under Section 147(1) and (2) Criminal Code, which the perpetrator committed in connection with **illegal sale of pyrotechnic products.** The Supreme Court notes that the features of this lesser offence can also be displayed by the conduct of the perpetrator who sold the victim a pyrotechnic product, a firecracker falling within category 3 of entertainment pyrotechnic products, without finding, at variance with Section 14(1)(c) of Act No 156/2000 on the Validation of Firearms and Ammunition as in force at the time of the offence (it is now Section 5(1)(c) and Section 24(1)(d) of Act No 206/2015 on Pyrotechnic Products and the Handling Thereof and Amending Certain

Laws (the pyrotechnic law), and the corresponding category is now F3 entertainment pyrotechnic products), whether the victim had reached the statutory age, although it must have been obvious to the perpetrator at first sight that the victim's age was below the threshold, because the firecracker subsequently exploded in the victim's hands during careless handling and the victim suffered an injury having the nature of grievous bodily harm. Although in this case the causes of the damage to the victim's health included at least two cascading circumstances – the illegal sale of the pyrotechnic product by the perpetrator and the victim's incorrect handling of this product, the Supreme Court concludes that in the light of the principle of the **but-for test of causation** this does not relieve the perpetrator, as the vendor, of criminal liability. To wit, in such a situation, selling a pyrotechnic product contrary to legislation can be regarded as a cause sufficiently strong to cause a consequence (an effect) to the victim in the form of grievous bodily harm. The victim's subsequent incorrect handling of the purchased product usually does not have the nature of the sole cause of bodily harm to him.

Supreme Court Order of 29 September 2015, File No **5 Tdo 960/2015,** published under 39/2016 Cr S Reports, deals with the **differentiation of the lesser offence of insult between soldiers** under Section 378(1)(a) Criminal Code from a similar disciplinary infraction. The Supreme Court emphasises in this decision that the Criminal Code does not contain any quantitative criteria differentiating the lesser offence of insult between soldiers under Section 378(1)(a) Criminal Code from a similar disciplinary infraction (for example, under Section 50(1) of Act No 361/2003 on the Service of Security Corps Members, as amended). Thus, if an insult between soldiers is to be classified as a crime, then – with regard to the principle of the **subsidiarity of penal repression** under Section 12(2) Criminal Code – the nature and intensity of the insult, the circumstances under which the insult was made and possibly other characteristics of the insult or its perpetrator causing a higher social harmfulness of the particular case (for example, repeated insulting expressions, the perpetrator's recidivism, a gross breach of military discipline or discipline in a security corps etc.) must correspond to this. Therefore the fact that the accused, as a lower ranking soldier committing an isolated vulgar statement against a higher ranking soldier, cannot be automatically viewed as a lesser offence of insult between soldiers if the nature and intensity of the insult and other circumstance do not make it apparent that it is not enough for an effective punishment of the one who has committed the insult to only invoke his disciplinary accountability within armed forces or the security corps.

Supreme Court Order of 10 February 2016, File No **8 Tdo 1515/2015,** published under 42/2016 Cr S Reports, concerns, first, the jurisdiction of a juvenile court and, second, the conditions for **conducting joint proceedings against an accused juvenile and an accused adult.** On the first issue the Supreme Court notes that the accused adult's objection that a juvenile court decided in his case although an ordinary court should have done so [Section 2(2)(e) of the Juvenile Justice Act ('JJA')] is an objection that corresponds to a ground for appealing on points of law under Section 265b(1)(a) CrPR. Under Section 2(2)(d) and Section 4 JJA, the administration of juvenile justice is vested in juvenile courts. These and also some other JJA provisions (see, e.g., Sections 36 and

41(2) JJA) therefore suggest a special nature of juvenile courts, which are intended to consider illegal acts of young people, and these provisions can therefore be understood as an expression of a specific in rem jurisdiction of a court (*cf.* also decision under 16/2006 Cr S Reports). On the second issue the Supreme Court notes that joint proceedings against the accused juvenile and adult can be conducted only exceptionally if this is necessary for an all-round and objective clarification of the matter and provided it is not to the detriment of the juvenile (Section 38(2) JJA). However, when assessing whether or not the above conditions have been met account cannot be taken of the impact that the joint proceedings will have on the accused adult, because in this respect the law does not reflect his interests in any way.

Supreme Court Order of 20 July 2016, File No **3 Tdo 813/2016,** published under 46/2016 Cr S Reports, addresses the issue of the **completion of the lesser offence of illegally procuring, forging and altering payment instruments** under Section 234(1) Criminal Code. The Supreme Court concludes that if the perpetrator has procured a payment instrument (a non-transferable payment card) through theft, then viewing this lesser offence as completed is not prevented by the circumstance that the stolen payment instrument was protected against abuse by unauthorised persons, for example, by the PIN code, which the accused did not know. In this case it was found inter alia that the stolen payment card was valid, and in the hands of the authorised holder it was fit for use as a payment instrument or for cash withdrawal.

Supreme Court Order of 13 April 2016, File No **8 Tdo 267/2016,** published under 49/2016 Cr S Reports, in which the Supreme Court espouses its legal opinion on the crime of **misappropriation committed by a solicitor.** The Supreme Court considers that if the solicitor committed the crime of misappropriation under Section 206(1) Criminal Code through misappropriating another person's funds that he had accepted for safekeeping under a custody agreement under Section 747(1) and (2) Old Civil Code (Sections 2402 to 2408 New Civil Code), he committed this act as a person **subject to a particular obligation to protect the interest of the victim** under Section 206 (4)(b) Criminal Code, since the custody agreement establishes a specific scope of the obligation to keep the item placed in his custody and its primary content is the obligation to treat the deposited item so as to prevent damage to or destruction of the item; this obligation also arises from Section 56a of Act No 85/1996 on Legal Services, as amended, under which solicitors are obliged to deposit specified items accepted for management (i.e. including safekeeping) in a separate account.

Supreme Court Judgment of 20 July 2016, File No **5 Tz 29/2016,** published under 50/2016 Cr S Reports. Its conclusions suggest that when a customs authority is, upon the damaged party's request, checking – under Sections 29 to 30a of Act No 191/1999 on Measures Concerning the Import, Export and Re-export of Goods Infringing Certain Intellectual Property Rights, as amended and as in force until 31 December 2012 (now under Act No 355/2014 on the Competences of the Bodies of the Customs Administration of the Czech Republic in Connection with the Enforcement of Intellectual Property Rights),

and Section 23(6) of Act No 634/1992 on Consumer Protection, as amended – the veracity of the facts specified by the applicant in the application for supervision over compliance with the duties laid down in Section 5(2) of the consumer protection law, **the results of the check are usable as evidence** not only in administrative proceedings but also in any criminal proceedings (*cf., mutatis mutandis,* the decision under 34/2014 Cr S Reports). This course of action cannot be regarded as an impermissible circumvention of the conditions for carrying out a search of other spaces and land under Sections 82(2) and 83a CrPR, in particular when before the check the customs body is not aware of criminal activity having been committed, nor do any other properly verified facts indicate a justified suspicion that criminal activities are being committed in the checked operation.

Supreme Court Order of 12 May 2016, File No **4 Tdo 205/2016,** published under 51/2016 Cr S Reports. The Supreme Court arrives at a legal conclusion that the certificate of the operability of a gaming machine, as well as an excerpt from such certificate, issued under Act No 202/1990 on Lotteries and Other Similar Games, as amended (now under Sections 109 and 110 of Act No 186/2016 on Gambling Games), has the nature of a **public document** under Section 131(1) Criminal Code.

2.2.4.2 Opinions of the Supreme Court's Criminal Division published in the Reports of Cases and Opinions

In order to address some contentious issues and to unify lower courts' decision-making, the Supreme Court's Criminal Division has delivered the following opinion, which has been published in the Reports of Cases and Opinions.

Opinion of the Criminal Division of the Supreme Court of 27 April 2016, File No **Tpjn 305/2014,** published under 30/2016 Cr S Reports, on the course of action to be followed when **protective education [placement in a secure children's home] imposed on an under-15 child** for an act that is otherwise criminal under Chapter III of Act No 218/2003 on Juvenile Justice, as amended, has met its purpose, and on the question of whether and how it can be **transformed into institutional education [placement in various types of institutions].** The Supreme Court arrives at a number of major conclusions. First, the nature of proceedings under Chapter III of Act No 218/2003, as amended, which does not contain any special provisions on the transformation of protective education into institutional education (when no criminal proceedings are entailed) rules out the *per analogiam* use of Section 23(1) JJA in the case of an under-15 child subjected, for an otherwise criminal act, to protective education under Section 93(1)(f) JJA. This is why protective education imposed under Section 93(1)(f) JJA cannot be transformed into institutional education. The Supreme Court also notes that when protective education imposed under Section 93(1)(f) JJA has already met its purpose, the juvenile court must lift it (Section 93(11), second sentence, JJA, and Section 24(1)(e) of Act No 109/2002 on Institutional Education or Protective Education in Educational Facilities and on Preventive Educational Care in Educational Facilities and Amending Certain Laws, as amended). Another conclusion of the Supreme Court contained in this opinion notes that the court deciding on the lifting of

protective education imposed under Section 93(1)(f) JJA is also the court competent in matters of care for minors under Section 2(t) of the Special Court Proceedings Act (SCPA) and its local jurisdiction is governed by Section 467 SCPA. Finally, the Supreme Court also notes that if in connection with decision-making on the lifting of protective education the conditions for imposing institutional education under Section 971(1) of Act No 89/2012 Civil Code have been met, taking into account the situation of the under-15 child, the decision to lift protective education can be associated with a decision to impose institutional education (Section 466(n) SCPA), delivered by the competent juvenile court upon a motion filed by, e.g., the principal of the educational institution (Section 24(1)(e) of Act No 109/2002), or the public prosecutor (Section 8(1)(b) and (2) SCPA), or even without a motion under Section 13(1) SCPA (*cf., a contrario,* Section 468(1) and (2) SCPA). As regards the form of the decision, the Supreme Court notes that the juvenile court decides to lift protective education in its order under Section 93(11), second sentence, JJA; however, if this decision is associated with the imposition of institutional education the court must decide in a judgment under Section 471(1) SCPA.

2.2.4.3 A decision of the Grand Panel of the Supreme Court's Criminal Division

With a view to unifying courts' decisions, the Grand Panel of the Supreme Court's Criminal Division passed the following important order in the relevant period.

Supreme Court Grand Panel Order of 17 February 2016, File No **15 Tdo 944/2015,** published under 32/2016 Cr S Reports examines the feature of **breaching an important duty** arising from employment, vocation, position or office of the perpetrator or incumbent on the perpetrator under the law, which is contained in the qualified facts of the crime of negligent homicide under Section 143(2) Criminal Code. The Supreme Court sets forth its legal opinion that the breach of a specific duty regarded as important must be, in line with the principle of the but-for test of causation, the **essential cause of the emergence of the consequence** (effect). It notes that if concurrent causes (such as the conduct of the perpetrator and the victim) were at play in the emergence of the consequence, the particular consequences of the act must be examined at all times from the perspective of the nature of the 'breach of an important duty' (*cf.* assessment of practice under 36/1984 Cr S Reports) and the materiality and importance of each cause of the emergence of the consequence must be separately assessed. Where the decisive cause of the occasioned consequence of the death of the victim is, e.g., his **significant contributory fault** in a traffic accident, it usually cannot be inferred that the perpetrator has committed the crime of negligent homicide by breaching an important duty incumbent on him under the law. The above was the response by the Criminal Division's Grand Panel to, in particular, the argument that now (when the Criminal Code is in effect) it is no longer possible not to take into account the above circumstance—conditioning the use of a heavier sentence—that consists in the breach of an important duty imposed by the law, with reference to any similar provision such as Section 88(1) of Act No 140/1961 Criminal Code, as amended, had earlier been.

2.2.4.4 Some interesting decisions not published in the Reports of Cases and Opinions

In 2016, the Criminal Division's Panels also passed some other interesting decisions, which for various reasons were not published in the Reports of Cases and Opinions, such as the following.

Supreme Court Order of 25 May 2016, File No **8 Tdo 532/2016,** is interesting in that by this order, the competent Panel referred the case, under Section 20(1) of Act No 6/2002 on Courts and Judges, as amended, to the Grand Panel of the Supreme Court's Criminal Division for decision. The reason for the referral was the fact that from the ECHR's judgment in the case of Lucky Dev v Sweden of 27 November 2014, application no. 7356/10, and from the order of the Supreme Administrative Court's extended panel of 24 November 2015, File No 4 Afs 210/2015, the referring Panel inferred different conclusions on the nature of a **tax penalty** and the decision to impose such penalty than those that followed from Supreme Court Order of 2 July 2014, File No 5 Tdo 749/2014, in respect of an issue estoppel with *ne bis in idem* effects in relation to punishment for the crime of evading taxes, charges and similar mandatory payments under Section 240 Criminal Code. The Grand Panel of the Supreme Court's Criminal Division is to decide on this matter under File No 15 Tdo 832/2016 in early 2017.

Supreme Court Judgment of 12 April 2016, File No **4 Tdo 1402/2015,** is the first decision by a Criminal Division Panel dealing with the **conditions for and amount of compensation for non-pecuniary damage** under Section 2959 Civil Code in the case of the death of a person of kith and kin due to a crime committed by driving a motor vehicle. Here, in relation to Constitutional Court Judgment of 22 December 2015, File No I. ÚS 2844/14, the Supreme Court examines in great detail the criteria by which the specific amount of compensation for such damage should be calculated. However, the Criminal Division has not yet decided to publish this decision in the Reports of Cases and Opinions, because a constitutional appeal has been lodged against the decision and the Constitutional Court is still to decide on it under File No III. ÚS 2043/16.

2.3 Special Panel under Act No 131/2002 on Adjudicating Certain Competence Disputes

The Special Panel set up under Act No 131/2002 is composed of three Supreme Court Justices and three Supreme Administrative Court Judges. Presidents of these two courts appoint these six members and six alternate members for a term of three years. Presiding Judges rotate in mid-term at all times. One of the Supreme Court Justices serves as the Presiding Judge for one half of the term while a Supreme Administrative Court Judge presides over the Special Panel for the second half of the term.

The Special Panel adjudicates positive and negative competence disputes over the power or in rem jurisdiction to deliver a decision. The parties to such disputes are courts and local executive power bodies,

self-governing special-interest and professional organisations, courts operating in civil proceedings and courts in administrative judiciary.

In 2016, Mr Roman Fiala, Mr Pavel Pavlík and Mr Pavel Simon served on the Special Panel under Act No 131/2002. Mr Pavel Simon has presided over the Special Panel since 1 July 2016, when he took over from Mr Michal Mazanec from the Supreme Administrative Court under the rules for elections of the Special Panel Presiding Judge. For the Supreme Court, the appointed alternate judges were Mr Antonín Draštík, Mr Karel Hasch and Mr Karel Havlík at the relevant time.

Statistics of the Special Panel's cases in 2015 and 2016:

	Caseload	Decided in that year	Percent of that year's caseload	Pending as at 1 January 2017
2015	35	39	111 %	1
2016	28	27	96 %	20
Total 2003-2016	1,110			21

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

2.4 Recognition for Supreme Court Justices

Mr Roman Fiala, Vice-President of the Supreme Court, a prominent expert in the law of succession, was pronounced *The Lawyer of the Year 2015* in the Civil Law category at a gala evening held at Bobycentrum in Brno on 29 January 2016. The *Lawyer of the Year* is a prestigious nationwide competition of lawyers organised by the Czech Bar Association together with EPRAVO.CZ, a Prague-based company. The competition was held under the aegis of Mr Bohuslav Sobotka, Prime Minister of the Czech Republic, and Mr Robert Pelikán, Justice Minister, who was also one of the expert jurors.

Ms Milada Šámalová, a Presiding Judge in the Supreme Court's Criminal Division, accepted the *Tribute to a Decision* award in mid-June 2016 at the 24th Karlovy Vary Juristic Days *[Karlsbader Juristentage]* conference; the award was conferred on Panel 8 of the Supreme Court's Criminal Division, composed of Ms Milada Šámalová (Presiding Judge), Ms Věra Kůrková and Mr Jan Bláha, for their decision of 26 February 2015 in the case under *File No 8 Tdo 1352/2014*. The decision concerns vexatious petitions for insolvency proceedings and together with the gist of the *ratio decidendi,* it is available on the Supreme Court's website at www.nsoud.cz. It was also published in its Reports of Cases and Opinions under 49/2015 Cr S Reports. The *Tribute to a Decision* is awarded on the basis of the results of polling juristic circles. Almost 200 experts vote on this occasion.

2.5 Additional activities of Justices of the Supreme Court

In addition to the adjudicating and unifying efforts of the Supreme Court, its Justices were also involved in other specialist activities in 2016 again, in particular those of law-making, training and publishing.

2.5.1 Law-making

In line with the Government's legislative rules the Supreme Court actively contributes to comments on the bills that provide for its operation or concern matters falling within its remit. The Justices also helped to draw up some bills and amendments to laws directly, as the authors or co-authors of the respective bill.

2.5.2 Training

Under Act No 6/2002 on Courts and Judges, as amended, Justices of the Supreme Court help to train and educate judges, public prosecutors, trainee judges and other justice employees as part of events organised mainly by the Judicial Academy of the Czech Republic, the Ministry of Justice, courts, and even public prosecutors' offices. The Supreme Court Justices also take part in the training of solicitors and articling lawyers organised by the Czech Bar Association. Some of the Justices also work as external members of the Judicial Academy of the Slovak Republic.

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

2.5.3 Publishing

Justices of the Supreme Court were also engaged in publishing activities; in particular, they contributed legal papers to journals and proceedings, commentaries and textbooks; some of them are members of editorial boards of scientific journals.

3 DOMESTIC AND INTERNATIONAL RELATIONS

3.1 Report on activities under the ECLI project (European Case Law Identifier), and Building on ECLI ("BO-ECLI") in 2016

The objective of the ECLI project is, according to the Council conclusions on ECLI (2011/C 127/01), in particular the following:

- Dissemination of information about legal systems within the EU, including the functioning of the case law of national courts following EU law (in the context of the preliminary ruling procedure, the preceding procedure and the course of action followed thereafter)
- Tackling problems with the lack of uniform identifiers for case law in individual States
- Unification of rules for the creation of metadata used for describing case law (a minimum set of uniform metadata)
- Common system for the identification, citation and metadata of case law
- Creation of a standard identifier

The main objective of the ECLI project is to create metadata from documents produced by courts at all levels of the judiciary. After gathering the metadata, records of their location are created and made available to the European Commission. The Commission then incorporates them in its search engine. At the Supreme Court, metadata have been generated since 2014. The BO-ECLI project is the European Commission's project that follows up on the ECLI project and its objective is to develop certain aspects of the original project.

In 2016, the consortium members received a document concerning the legal framework on the publication of case law in the EU Member States and a request concerning the selection of the version of the BO-ECLI website, which would best represent the project's needs. Subsequently, the Supreme Court received a draft document – Linking data: analysis and existing problems, i.e. a document on the current situation and the general issue of mutual references in case law. Another important activity in 2016 was a discussion on the content of the "mutual references in case law" document. The Supreme Court addressed the status of the project with regard to the following outputs:

- Participation of ten regional/high courts (or their decisions) in the project;
- Submission of 3,500 pieces of case law by regional and high courts

At present, the database contains approximately 4,000 court decisions and they are being progressively implemented for the purposes of the project. Every month, new decisions are entered into the database.

In 2016, we began generating metadata from high and regional courts' decisions provided to us by those courts. We have also resolved the problem of generating ECLI identifiers at the Supreme Court for CPJN and TPJN opinions. After that, metadata started to be generated automatically and, as in the case of decisions of high and regional courts, since 2016 the ECLI search engine also sees these documents. According to the specification of a problem in the ECLI Technical analysis report and implementation model guideline, point 4.1.1.3.3 Delete a document, our internal Lotus Notes system was programmed to generate relevant data in case of changes made to documents or in case the document as a whole is deleted. The most important tasks for the coming years include providing access to documents of other courts and to the remaining documents of high and regional courts and then modifying the metadata generator in the internal Lotus Notes system of the Supreme Court so that it is also capable of handling these documents.

3.2 Activities of the Department of Analytics and Comparative Law

Since its very beginning, the Department of Analytics and Comparative Law has been engaged, in particular, in analytical work for the needs of the Supreme Court and lower courts, mainly in the field of European and comparative law. This activity primarily includes the drawing up of analyses for decision making regarding the case law of the Court of Justice of the European Union and the European Court of Human Rights, and also the legislative and decision-making practice in other EU member states and non-EU countries. The department also pursues other than analytical work; its activities encompass a broad-ranging agenda related to international issues, legal assistance and close contacts with foreign courts.

Last year, the Department of Analytics and Comparative Law went through some staffing changes, mainly due to educational and family reasons. Despite these changes, the department is continuously developing in terms of its expertise and is capable of fulfilling its tasks better than ever before. Its staff members concentrate on building their knowledge in the key areas of their work on an ongoing basis with a view to being able to provide the most relevant information within the department's remits, and so pursue its mission efficiently.

3.2.1 The Comparative Law Liaisons group

The Supreme Court, as the highest body in the system of ordinary courts in the Czech Republic, is a member of a number of international groups that facilitate the effective performance of its role of the Supreme Court in an EU member state.

In the first place, we should mention the Network of the Presidents of the Supreme Judicial Courts of the Member States of the European Union, which forms a well-functioning platform for promoting cooperation amongst the supreme courts in the European Union and for generally beneficial exchanges of information and experience from judicial practice.

Within the Network, the Comparative Law Liaisons group has been set up; the Supreme Court of the Czech Republic is a member of the group through its Department of Analytics and Comparative Law. Other members of this exclusive international group include the supreme courts of Germany, France, the UK, Belgium, the Netherlands and Finland.

The aim of the Comparative Law Liaisons group is to facilitate cooperation in exchanging legal information, in particular information about the content of legislation and case law concerning issues subject to the decision-making of any of the supreme courts. The outcome of the process is an analytical document that presents to supreme courts' judges the way in which specific legal issues are addressed in the case law of the cooperating supreme courts.

Last year, the Department of Analytics and Comparative Law answered, within the Comparative Law Liaisons group, questions from foreign colleagues on drug trafficking, illegal immigration, prosecution for the crimes of HIV spreading, sexual abuse of children via the internet and the selection of an arbitrator by a third party. The other areas of the group's interest last year included more efficient work with case files (case management), the interpretation of the Convention on the Contract of International Carriage of Goods by Road (the CMR Convention), the relationship between the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) and EU Regulation on air carrier liability in the event of accidents, the interpretation of Article 220 of the UN Convention on the Law of the Sea, etc.

From 30 August 2016 to 2 September 2016, a third meeting of the Comparative Law Liaisons Group took place at the Supreme Court of Finland in Helsinki. The Supreme Court was represented by Mr Aleš Pavel, Mr Dušan Sulitka and Mr Libor Havelka at that meeting. The meeting focused on the current issues related to the activities of the Comparative Law Liaisons group and on some problems of the national decision-making practice in specific areas. The participants considered the group's analytical results and the internal functioning of the communication platform itself, which facilitates the cooperation.

Some of the particular issues that were discussed more thoroughly included the Convention on the Rights of the Child and Article 24 of the Charter of Fundamental Rights of the European Union read in

conjunction with the subsequent case law at the national level. The meeting also considered in more detail terrorist crimes, both at the legislative level and at the practical level, i.e. courts' decision-making practice and current proceedings related to this issue. Last but not least, the meeting, while providing room for discussion on purely professional issues, also offered an opportunity for boosting personal ties among the participants, which will certainly evolve into even more efficient cooperation in the future.

3.2.2 Lecture tour

Last year, the Department of Analytics and Comparative Law arranged a fourth road show of specialised lectures on the application of EU law by Czech courts. Mr Aleš Pavel, Ms Alžbeta Králová, Mr Libor Havelka and Ms Ivona Večerková visited regional and high courts to deliver a lecture on EU Law in the Decision-making Practice of Czech Courts; the lecture relied on a long-term mapping of the influence of EU law on Czech courts' decision-making practice.

Through its Department of Analytics and Comparative Law, the Supreme Court has been systematically monitoring Czech courts' decision-making practice when applying EU law for a long time. Thus, the content of the lecture was based on the collection and subsequent analysis of hundreds of decisions involving a European aspect, which were provided by lower courts. It mainly focused on the most frequent application problems, in particular in the domain of consumer law, the determination of international jurisdiction, certain problems of family law with an international/cross-border dimension, and topics such as service of documents and insolvency.

3.2.3 Analytical activities

The core activity of the Department of Analytics and Comparative Law is the preparation of underlying documents, research papers and analyses in connection with the Supreme Court's decision-making. The department's analyses focus, in particular, on the interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms, including the correct application of the relevant case law of the European Court of Human Rights, and on certain problems of EU law together with the case law of the Court of Justice of the European Union.

In 2016, the analytics department produced studies on criminal law issues, concentrating on the prohibition of self-incrimination in the case law of the European Court of Human Rights, a comparative study on the criminal nature of translations of speeches and other works and thoughts of Nazi ideologists, and also an analysis of selected issues related to the right of computer software dissemination.

The department also had an opportunity to compile an overview of the case law of the European Court of Human Rights on house searches in premises where lawyers conduct their practice, and to grasp the problem of the liability of children and young people for illegal activities from the comparative perspective.

In connection with the interpretation of the provisions of the New Civil Code the department prepared a comparative analysis discussing the possibility of assigning claims for compensation for non-pecuniary damage.

Another issue examined by the department was arbitration, in respect of which the Department of Analytics and Comparative Law focused on the way in which a third party selects an arbitrator and on the application of the principle *exequatur sur exequatur ne vaut,* and also the issue of discrimination, where the department concentrated on labour relationships.

What is certainly also worth mentioning is an analysis concerning judges' freedom of expression and a comparison of regulations on proceedings on appeals on points of law in France, Germany and Austria.

3.2.4 ECHR decisions – a digest

The Department of Analytics and Comparative Law helps to contribute – by translating decisions of the European Court of Human Rights – to the process of developing the Digest of Important Decisions of the European Court of Human Rights for Judicial Practice from the Perspective of the Supreme Court ('the blue reports') as a supplement to the Reports of Cases and Opinions on a long-term basis.

The blue reports contain translations of the important decisions of the European Court of Human Rights which the Supreme Court believes can also be beneficial for decision-making at the national level in the Czech Republic. Recently, the department has, for example, contributed to the translation of the ECHR's judgment [GC] in the case of *Avotiņš v. Latvia,* application no. 17502/07.

3.2.5 The Green Paper on Justice

Last year, the Department of Analytics and Comparative Law helped to produce 'the green paper on justice', mainly through its comparative analytical work. The green paper on justice is a document contributing to a rational debate on the viable forms of the planned justice reforms to be carried out based on cooperation among judicial institutions and the Ministry of Justice. The paper discusses certain critical topics such as judicial maps and the issue of establishing a body serving as the Supreme Judiciary Council. It highlights various models in other countries, which can be inspiring for the reform of the Czech judiciary system.

3.2.6 Annotations of the ECHR case law

The staff of the Department of Analytics and Comparative Law contribute, together with the Office of the Government Agent of the Czech Republic to the European Court of Human Rights and with the analytical units of the Constitutional Court, the Supreme Administrative Court and the Office of the Ombudsman to the preparations of annotations of the ECHR's decisions, which are posted on the website of the Ministry of Justice at *eslp.justice.cz.*

Through this effort, the Supreme Court contributes to the gradual filling of the publicly accessible database of selected ECHR decisions; the database now holds more than 800 annotations, thereby helping to popularise and raise the public's awareness of the ECHR case law.

3.2.7 The Bulletin

The Bulletin of the Department of Analytics and Comparative Law, appearing in electronic form four times per year, also helps to provide the public with regular information about the latest developments in the area of EU law, most notably as regards the case law of the Court of Justice of the European Union, the European Court of Human Rights, and supreme national courts.

Through its Bulletin, the Department of Analytics and Comparative Law has been providing regular information about news in EU law for seven years. In a slightly redesigned graphic layout now, *The Bulletin* provides an overview of new legislation in the *acquis*, and the case law of the Court of Justice of the European Union and the European Court of Human Rights, plus a digest of the most interesting decisions of the supreme courts of other European countries that apply EU law. The quarterly also reports on, naturally, the Supreme Court's decisions with a European dimension in addition to the current affairs from international and foreign courts.

3.2.8 Raising awareness of EU law and a network of contact persons

An essential part of the department's operation is, and it has become a tradition, organising seminars on issues related to the topical questions of EU law. In 2016, Mr Aleš Pavel, Ms Alžbeta Králová, Mr Libor Havelka and Ms Ivona Večerková arranged for a series of lectures at the Supreme Court and at some regional courts, focused on the application of EU law by Czech courts and the usual problems inherent therein. The events met with a favourable response on the part of the addressees and therefore have certainly helped to popularise the correct application of EU law and also to promote the department, which is open to courts on all levels through its services.

It should also be noted that the Department of Analytics and Comparative Law continues to maintain a network of contact persons at regional and high courts, with a view to facilitating opportunities for consultations and providing technical assistance in the areas of EU law and comparative law.

3.2.9 Other international cooperation

The Supreme Court also participates in the activities of other international groups such as the European Association of Labour Court Judges, which brings together judges of the relevant specialisation, and the European Law Institute, established primarily to engage in scientific

and research activities with practical impacts, make recommendations, etc.

The European Law Institute covers all branches of the law. It is also involved in advice for the European Commission and the European Parliament for the needs of the development of EU laws and national laws. The ELI also maintains contacts with similar groups in other parts of the world. Evidence of this includes its cooperation with the Philadelphia-based American Law Institute and UNIDROIT, the Rome-based International Institute for the Unification of Private Law. The ELI Council selects the issues to be tackled at the European Law Institute, and these projects are carried out in close collaboration with experts, both academics and practitioners. Subject to approval by the Council and the General Assembly, outputs from the projects are then published as official statements or, alternatively, as responses to latest developments (ELI Statements). The ELI's ultimate and primary objective is to enhance EU and national legislations and their application.

3.2.10 Annual Conference of the European Law Institute in Ferrara

On 7 to 9 September 2016, the Faculty of Law of the University of Ferrara hosted an ELI Annual Conference. The event was attended by 350 jurists from the whole of Europe, including judges of the highest European courts and also pre-eminent legal academics. Mr Dušan Sulitka, head of the Department of Analytics and Comparative Law, represented the Supreme Court at the conference.

The keynote speakers at the conference included Ms Marta Cartabia, Vice-President of the Italian Constitutional Court, and Mr Koen Lenaerts, President of the Court of Justice of the European Union. During ten panel sessions the delegates could hear about projects in the preparation of which the European Law Institute is participating. The projects specifically focus on issues such as preventing and resolving conflict of international jurisdiction in criminal law, the development of the European civil procedure and digital instruments in the service of justice.

In her keynote speech, Ms Marta Cartabia outlined the cooperation between the Italian Constitutional Court and the Court of Justice of the European Union. In the context of the debate on Multi-level Governance, and referring to numerous European academics, she expressed the opinion "forget Kelsen and all the pyramidal frameworks", questioning "the myth of the final authority". She said that the current situation where a large number of institutions coexist without any specifically defined hierarchy is resulting in the fact that an exact ranking of pieces of legislation cannot be identified in the current system of EU and national law. Laws are therefore developed more through cooperation, collaboration and dialogues between the key players.

In his keynote speech, Mr Koen Lenaerts described the method that the Court of Justice of the European Union employs to deliver and

substantiate its decisions on matters in respect of which consensus among EU member states is non-existent due to their moral, religious or ethical sensitivity. Specific examples included cases of surrogate motherhood, wearing religious symbols (in particular Muslim scarves), same-sex marriages and the question of the beginning of human life. Mr Lenaerts emphasised that whenever this court decides on such issues, it formulates answers to requests for preliminary rulings so as to make it clear that the articulated approach cannot be regarded as final and generally applicable. It is always an interpretation delivered solely in the context of the terms used by the particular directive or regulation and cannot be applied to the whole set of like cases.

3.3 Participation of the Supreme Court President and Vice-President in conferences in the Czech Republic and abroad

The specialist working duties of the Supreme Court President and Vice-President traditionally include trips to other countries intended to forge cross-border relationships between the Supreme Court and courts in other countries and with other important institutions and to exchange professional information. In this respect, primarily the Network of the Presidents of the Supreme Judicial Courts of the European Union colloquium was extremely important; but the Supreme Court's senior officers also paid attention to other events as well.

3.3.1 The President

The Network of the Presidents of the Supreme Judicial Courts of the European Union colloquium took place in Madrid on 20 and 21 October 2016. Its President, Mr Pavel Šámal, attended the colloquium for the Supreme Court of the Czech Republic.

The objective of the Network of the Presidents of the Supreme Judicial Courts of the European Union is, in particular, to promote networking, cooperation and exchanges of useful information between its members, which are the supreme courts of all EU member states. Presidents of the supreme courts of Liechtenstein, Norway and Montenegro have been admitted as observers.

The purpose of the last summit of the EU member states' highest judicial instances was primarily expert discussion on certain issues of legal practice in Alternative Dispute Resolution and The Role of the Supreme Courts in the Development of the Law, and, last but not least, informal exchanges of information and promoting the friendly relationships between the various justice representatives.

In the official stream of the programme, the section dedicated to ADR and introduced by Ms Bettina Limperg, President of the Federal Supreme Court of Germany, in her Introductory Report, Mr Pavel Šámal, President of the Czech Supreme Court, delivered his contribution on ADR and mediation primarily in criminal proceedings. He highlighted the fact that although mediation is often perceived largely in the context of civil law,

in this respect Czech legislation has taken a rather pioneering approach to mediation as an institution of criminal law. This can mainly be seen in the innovative inclusion of mediation in the law on the probation and mediation service still before legislating on mediation in civil disputes. Mr Šámal also noted that the opportunity to use mediation in the realm of the criminal law has already become an important part of restorative justice in the interest of settling the relationship between offenders and their victims, and as such has a potential for broad-ranging use in addressing the consequences of crime.

The other mainstay of the technical programme was The Role of the Supreme Courts in the Development of the Law. Mr Maarten Feteris, President of the Supreme Court of the Netherlands, delivered the Introductory Report on this theme. In this context Mr Šámal noted that although the limits of the Supreme Court's lawmaking initiatives are delineated by the mission of the judiciary power in the system of the division of powers and also by the fact that the Czech Republic is a part of the continental legal system, decision-making practice must continuously evolve. As part of such evolution, decision-making practice can influence case law, or change the application of law, even when legislation is not changed by the legislature. However, any change in decision-making practice must be effected rather sensitively at all times, which the Supreme Court does to prevent undesirable interferences with the foreseeability of courts' decision-making. The other delegates to the colloquium also expressed their view that in general, supreme courts' influence on the continuous formation of law in their countries is growing.

3.3.2 The Vice-President

Last year Mr Roman Fiala, Vice-President of the Supreme Court, participated in three official trips abroad. These trips included events of purely professional nature and also those having a representative nature to some extent. They were a meeting on the current application experience with probate proceedings in Slovakia, a conference of supreme court presidents in Montenegro and a meeting of the Justices of the Civil Divisions of the Czech and Slovak Supreme Courts in Slovakia.

The meeting on probate law took place in Omšení, Trenčianské Teplice, Slovakia, on 8 and 9 February 2016. The international event was attended by prominent experts in this area of law and it brought a valuable opportunity to exchange views and experience. The event offered a forum for an erudite discussion on this issue, which is extremely topical now in the Czech Republic, mainly in the context of the recent partial reform of the civil procedure in probate proceedings and it was also a welcome opportunity for an informal meeting of probate law experts.

Between 16 and 22 September 2016 Mr Fiala, in his capacity as deputy to the Supreme Court President, participated in the international *Conference of Supreme Courts of the Member States of the European Union and EU Candidate Countries,* subtitled 'the necessary reform processes that must take place as part of the judicial system reform on the path to accession to the EU and experience with the ten-year anniversary of Montenegro's renewed independence', held in Budva.

The event was organised by the Supreme Court of Montenegro in cooperation with the US embassy. The conference focused first of all on supreme courts' tasks and on promoting public confidence in the judiciary system, in particular through the lens of comparative law covering the Balkan countries. Representatives of the supreme judicial institutions of the EU member states and candidate countries attended the event. Nevertheless, because of the participation of judges from the US the conference also touched upon the US judiciary system. The conference was held on the basis of Montenegro's effort to join the EU. It submitted its application in 2008, became a candidate country in 2010, and accession talks have been under way since 2012. In this respect, one of the key problems is the relatively high level of corruption in Montenegro, and anti-corruption issues were therefore also accentuated at the conference.

Between 10 and 12 October 2016, Mr Fiala attended a joint working meeting of the Civil and Commercial Division of the Czech Supreme Court and the Civil Division of the Slovak Supreme Court, organised as part of a meeting at Štrbské pleso, Slovakia. For the Supreme Court, Mr Petr Vojtek, Mr Pavel Horák and Mr Zdeněk Krčmář delivered their papers there. This traditional international gathering focuses on the two courts' professional cooperation and also on boosting the steadily friendly bilateral relationships. In his introductory address Mr Fiala mainly noted that despite the division of Czechoslovakia into the Czech Republic and Slovakia, the last ten years have not seen any dramatic changes in their legislations and exchanges of experience therefore continue to feature a considerable value. The delegates have described the meeting as highly enriching in professional terms and there is no question that the meeting has also helped to bolster the ties between the Justices of the Czech and Slovak Supreme Courts. The good international cooperation in this area is also borne out by the entering into an agreement on judicial cooperation between the Czech Republic and the Slovak Republic.

3.4 Justices' official visits abroad

In 2016, the Supreme Court's Justices also attended a number of seminars, conferences and working meetings abroad; these offered unique opportunities for exchanging information and experience and for hearing about the latest developments in criminal and civil law in the international context. The Supreme Court officers also actively participated in major international conferences abroad as speakers and contributed to their success through sharing their experience at these forums.

Mr Jindřich Urbánek, Presiding Judge, Civil and Commercial Division, attended the 11th international symposium organised by the University of Passau in April 2016. The issues discussed there included online business models and opportunities to use them in enterprises, Big Data, assessment of data as an economic good, personal data provision to third countries and data protection in the EU and the US. Prominent specialists from Germany, Austria and Switzerland appeared among the speakers.

The European Judicial Training Network organised the first seminar on sports law in May 2016. It was attended by Mr Michal Králík, Presiding Judge, Civil and Commercial Division. The purpose of the seminar was to highlight, in the basic areas of civil law, some problematic relations between sport and law, which are becoming increasingly visible in the European context. Sports law has been a neglected area of law for a long time and the exchanges of experience amongst the delegates from the various countries were therefore very beneficial for Czech judicial practice.

Mr František Púry, Head of the Criminal Division, and Ms Blanka Roušalová, Mr Antonín Draštík, Mr Robert Waltr and Mr Petr Vojtek, Presiding Judges in the Civil and Commercial Division, and other Supreme Court officers and Czech Justice Academy teachers went on an official visit to Italy in May 2016; the programme included a meeting with the President and judges of the country's *Corte Suprema di Cassazione* and the prosecutors of the Milan Public Prosecutor's Office. The principal benefit of this visit was receipt of the latest information about economic crime, insolvency crimes, issues related to property seizing and the diversion of proceeds from criminal activities, and court decisions on compensation for non-pecuniary damage related to damage to health.

In June 2016, the *Pontificia Accademia delle Scienze Sociali* organised an international meeting of judges from all over the world in June 2016. It was held at Casina Pio IV, Vatican City. The Czech delegation was composed of Mr Michal Mikláš, Presiding Judge, Criminal Division of the Supreme Court, Mr Jaroslav Fenyk, Vice President of the Constitutional Court, and Mr Pavel Vošalík, the Czech ambassador to the Holy See. The gathering was attended by more than 80 judges from all over the world, public prosecutors/state attorneys from European countries, Japan, the US and South American countries, and also members of the diplomatic corps in the Vatican. The purpose of this major event was to share experience with issues such as human trafficking and organised crime precipitated by the increasing trend of modern slavery. Pope Francis himself delivered an address on the issues at hand, emphasising that human trafficking and new forms of slavery such as forced labour, prostitution, and trafficking in human organs are true crimes against humanity and that they need to be recognised as such and punished by national and international legislation. Czech representatives gave an interview for Vatican Radio, expressing their great appreciation for His Holiness convening such an unusual meeting. The two-day summit was concluded by the signing of a Declaration.

In June 2016, Mr Michal Mikláš also attended the meeting of the Council's Working Party on e-Justice as a court practitioner. The primary objective of this platform is to implement electronic communications in cross-border matters too and their further development. The e-Justice Portal, accessible for all courts in EU member states, is to serve this end. The other important e-Justice activities include pilot projects usable for courts' work and also for making justice accessible to citizens in both civil matters (Civil Law Pilots) and criminal matters (Criminal Law Pilots). At this working party meeting the Supreme Court's representative received interesting information about the latest progress in the digitisation of justice in the EU and about further goals in this area.

In June 2016, Mr Jindřich Urbánek, Presiding Judge, Civil and Commercial Division, was delegated to represent the Supreme Court at the VI Conference of Chief Justices of Central and Eastern Europe in Belgrade. The conference was held with a view to promoting cooperation between supreme courts and its mainstay theme was the quality of justice, which is an important element of the policy of rule of law and observation of human rights. The conference also discussed Protocol No. 16 to the Convention on the Protection of Human Rights and Fundamental Freedoms and the education of judges and judicial assistants in the various countries.

The annual congress of members of the European Association of Labour Court Judges, regularly attended by Mr Lubomír Ptáček, Presiding Judge,

Civil and Commercial Division, was held in Amsterdam in June 2016. It centred on the protection of working conditions. The three technical sessions of the congress discussed general health & safety issues, issues of employee age with regard to health and safety and the working environment, and older employees' place in the labour market.

September 2016 saw a conference on European international civil procedure in Zagreb, which was actively attended by Ms Miroslava Jirmanová, Presiding Judge, Civil and Commercial Division. Supreme Court judges from several EU countries discussed the option of creating a database containing the key decisions in this area. In their interventions, the speakers discussed the recognition and enforcement of foreign decisions, *ordre public* (public policy), further development of international private law, and the potential consequences of Brexit in this area.

Mr František Púry, Head of the Criminal Division of the Supreme Court, spoke at the *Československé právnické dny* [Czechoslovak Juristic Days] conference on the principle of justice in criminal and administrative court proceedings, organised by the Justice Academy of the Slovak Republic in September 2016.

3.5 VIP visits to the Supreme Court

In March 2016, the Supreme Court received a Slovak delegation headed by Ms Daniela Švecová, President of the Supreme Court of the Slovak Republic. The delegation arrived in the Czech Republic upon invitation by Mr Pavel Šámal, the Supreme Court President.

The Czech Supreme Court received interesting information about the Slovak anti-terrorist legislation that has caused fundamental changes to a number of laws and regulations, including the Constitution. In connection with the adoption of new Slovak legislation providing for Grand Panels at the Supreme Court, the Slovak delegation was interested to hear about the Czech Supreme Court's experience concerning the competences of Grand Panels and Divisions. Mr Roman Fiala, Vice-President of the Czech Supreme Court, provided the Slovak side with detailed information about the methodology for determining

compensation for non-pecuniary damage; it has been developed by the Supreme Court's Civil and Commercial Division and become a major aid for courts across the Czech Republic.

During discussion on this issue, Mr Ján Šikuta, member of the Civil Division of the Slovak Supreme Court, pointed out that determining the adequate amount of compensation is a problem in the whole of Europe and expressed a positive view of the steps taken by the Czech Supreme Court. This working meeting of representatives of the highest judicial instances in the Czech and Slovak Republics was a unique opportunity for exchanging experience; both sides view it as inspirational and highly beneficial for the further development of the discussed issues in their national legislations and judicial practice.

On 5 December 2016, Ms Dariya Prodanova, Vice-President of the Supreme Court of Cassation, Bulgaria, accompanied by other judges of this highest Bulgarian judicial institution, visited the Supreme Court. The Bulgarian Supreme Court of Cassation is analogous to the Supreme Court; it operates through three colleges: the Penal College, the Civil College and the Commercial College. Ms Dariya Prodanova heads the Commercial College. On behalf of the Supreme Court its Vice-President, Mr Roman Fiala, and Mr Vladimír Kůrka, Head of the Commercial Division, Mr František Púry, Head of the Criminal Division, and Mr Petr Gemmel, Chairman of the Justices Council, held talks with the Bulgarian guests. The guests were also interested in the determination of compensation for non-pecuniary damage, and received this information from Petr Vojtek, Presiding Judge, the Civil and Commercial Division, and Ms Petra Polišenská, head of the Czech Case Law and Analytics Department.

4 PROFESSIONAL TRAINING OF JUSTICES, THEIR ASSISTANTS AND STAFF MEMBERS

4.1 Seminar on the influence of EU law on the application practice

On 4 May 2016, the Supreme Court organised a seminar on The International and EU Impacts on the Application of Czech Criminal Law, focused on the highly topical issue of the impacts of the case law of the Court of Justice of the European Union and the European Court of Human Rights on the Czech application practice in the domain of criminal law. The seminar was attended by more than a hundred participants, including Justices from the Supreme Court's Criminal Division and representatives of other high-level judiciary institutions, public prosecutors' offices and the Office of the Ombudsman. Mr Pavel Šámal, President of the Supreme Court, and Mr František Púry, Head of the Supreme Court's Criminal Division, delivered the introductory addresses. Mr Tomáš Gřivna, a solicitor who also teaches at the Department of Criminal Law of Charles University's Faculty of Law, Mr Lukáš Starý, the National Member for the Czech Republic in Eurojust, Mr Martin Smolek, the Government Agent of the Czech Republic to the Court of Justice of the European Union, and Mr Vít A Schorm, the Government Agent of the Czech Republic to the European Court of Human Rights also delivered their contributions.

4.2 Other legal, economic and general seminars

In addition to the above seminar on The International and EU Impacts on the Application of Czech Criminal Law, organised by the Supreme Court President in cooperation with the Justice Academy, in 2016 the Vice-President's Section and the Justice Academy organised 24 seminars in Kroměříž; the seminars covered legal, economic and general themes.

Legal seminars

28 January 2016	Receipt of electronic submissions
23 February 2016	Methodology of compensation for pain and loss of amenities under the New Civil Code
17 March 2016	The Land Registry and the Cadastre Act
19 April 2016	Enforcement of decisions, distraint
11 May 2016	Domestic violence
22 to 24 June 2016	Seminar on the law of succession 2016 – cooperation with seminar organisers

23 June 2016	The law on free access to information
22 September 2016	Defects in civil proceedings
28 November 2016	Psychology of interviewing/hearing adults

Economic seminars

16 February 2016	Identification of natural persons' income for the purposes of guardianship
8 March 2016	Basics and impacts of the New Civil Code on income tax and on accounting
26 April 2016	Sole proprietorships from the tax perspective
24 May 2016	Public contracts and licences
31 May 2016	Credit, financial and cyber crime
11 October 2016	Construction work and the deficiencies and prices thereof
8 November 2016	Typology of loans
15 November 2016	The new public procurement law

General seminars

18 February 2016	Seminar on the LOTUS NOTES information system
19 February 2016	Seminar on the LOTUS NOTES information system
18 May 2016	Seminar on the LOTUS NOTES information system
5 October 2016	Seminar on the LOTUS NOTES information system
3 November 2016	Videoconferences in the justice sector
25 November 2016	MS WORD 2010 for intermediate level users
2 December 2016	MS WORD 2010 for intermediate level users

5 FINANCIAL MANAGEMENT

Most of the Supreme Court's budgetary expenditure is comprised of salaries for Justices and employees. Funds for salaries account for some 90% of expenditure.

The Supreme Court uses its operating funds mainly for repairing its building, which is listed as a heritage building. Due to a shortage of working space in the building the Supreme Court is compelled to rent outside offices; rent payments of about CZK 1.3 million are also a major item in the budget.

In 2016, the Supreme Court channelled increased investments into the replacement of its IT, which had reached the end of its service life. For the court's budget, the CZK 4.1 million spent on this upgrade was one of the most important items. As regards providing for the professional competence of Justices and employees, one of the major items is expenses on procuring reference literature for the Supreme Court's library, which also operates as a specialised public library offering legal literature to jurists.

The Supreme Court's financial management consistently follows the key principles of economy, effectiveness and efficacy when spending funds from the national budget. Internal management controls, ensuring checks and approvals from the preparation of operations to their full approval and execution, including an evaluation of their results and of the accuracy of financial management, have been implemented into the process of the Supreme Court's financial operations.

	2014	2015	2016
Approved budget	219,417	214,445	219,967
Adjusted budget	293,573	297,229	324,065
Actual	263,155	331,312	307,156

(The figures are in thousands of CZK)

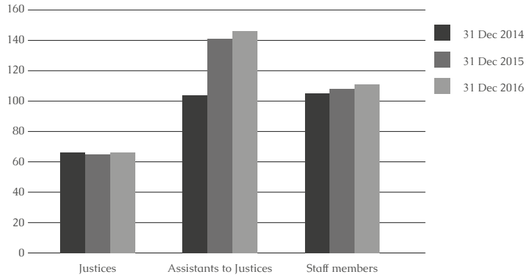
6 THE PERSONNEL DEPARTMENT

In 2016, the Supreme Court continued to increase the number of assistants; they help to handle the continuously swelling agenda of the two Divisions. Compared with the preceding period, the number of the court's other employees also increased slightly.

Table: Number of Justices, assistants and employees of the Supreme Court between 2014 and 2016:

	31 Dec 2014	31 Dec 2015	31 Dec 2016
Justices	66	65	66
Assistants to Justices	104	141	146
Employees	105	108	111

Mr Jindřich Urbánek, Presiding Judge in the Criminal Division, who had served as a Supreme Court Justice since 1995, died on 26 December 2016.



On 1 February 2016, Mr Vít Bičák joined the Supreme Court as a Justice in the Civil and Commercial Division. On 1 October 2016, Mr Bohumil Dvořák became a Justice in the Civil and Commercial Division; between October 2015 and September 2016, he worked as a visiting judge at the Supreme Court.

7 THE PUBLIC RELATIONS DEPARTMENT AND INFORMATION PROVISION

7.1 Information office

In 2016, the PR Department, which provides the parties and their counsels and also journalists with basic information about progress in proceedings, handled 60 to 80 questions asked over the telephone, in writing or in person every day. Since 1 March 2016, two desk officers have been providing this information; the information office has been reinforced.

The information office is competent to disclose information about progress in proceedings, i.e. whether or not a decision has been made in particular proceedings, progress in the preparation of the reasoning of decisions, or whether the decision was, together with the file, already sent to the court of first instance. The information office does not provide information about results of proceedings. But for exceptions, the parties and their counsels obtain information about results of proceedings through the court of first instance. Journalists receive such information from the press spokesman once the decisions have been duly served on all parties.

The information office is not competent to provide legal advice; in such cases it refers enquirers to solicitors registered with the Czech Bar Association.

7.2 Press spokesman

The press spokesman, Mr Petr Tomíček, also heads the PR Department of the Supreme Court. The spokesman's core responsibilities include communication with the media and supervision over the content of the Supreme Court's website; he edits the content of the Supreme Court's Twitter and LinkedIn profiles set up in 2016 and is responsible for the extensive agenda of requests for information under Act No 106/1999 on free access to information.

In 2016, the spokesman released 37 press statements; the PR Department organised two press conferences on the Supreme Court's unification effort targeted at lower courts (a press conference on the need to unify the procedures of registering courts to reflect an amendment to the Civil Code and one on more frequent motions for and imposition of pecuniary penalties in criminal proceedings). The spokesman also answered more

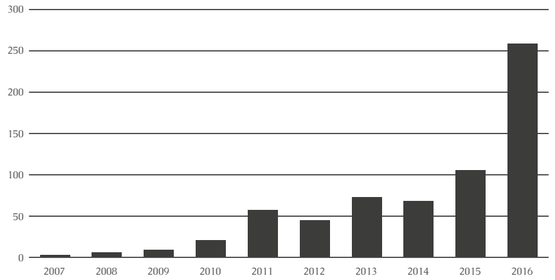
than 2,000 different questions from journalists and the public on cases covered by the media, and handled 259 requests for information under Act No 106/1999.

7.2.1 Information under Act No 106/1999 on Free Access to Information

Between 1 January and 31 December 2016, the Supreme Court received 259 written requests for information provision under the free information law. Of those, 238 requests were from natural persons and 21 from juristic persons. Compared with 2015 this agenda increased to 247%. The statistics were significantly affected by 62 identical requests sent in late 2016, individually by 62 different natural persons demanding the same information.

In one case of the 259 requests the enquirer withdrew his request, and in respect of two requests the enquirers did not respond to the obliged entity's invitation to clarify their original requests and these requests were therefore dismissed at the end of the statutory time limit. Information, or a decision to dismiss or partly dismiss the request, or a notice that the request was set aside, was sent to all other enquirers (256) within the statutory time limit for request handling or setting aside.

Five requests were set aside as a whole; four requests were aside in part. In one of these cases, the obliged entity then received a complaint on the basis of which it reconsidered its original steps and provided the requested information as part of this self-review without the need to refer this complaint to the superior authority for decision.



Number of requests for information by the 1 Jan – 31 Dec 2016 period

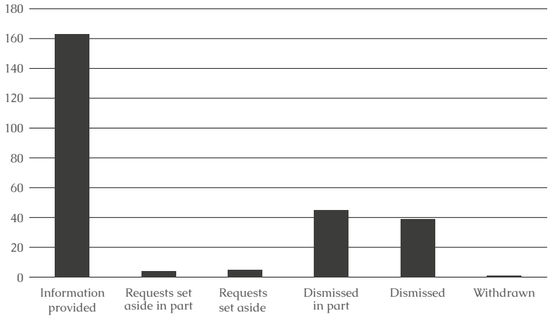
The most frequent reason for setting requests aside was, under Section 2(1) of the free information law, requesting information unrelated to the remit of the obliged entity; in other cases, the enquirers did not respond to the invitation to pay the costs quantified as the necessary costs incurred in an extremely extensive search for the information. One of the enquirers is currently inveighing against the specified payment for information provision, the amount of which has also been confirmed by the superior authority in proceedings on the complaint, through an administrative action brought before the Regional Court in Brno.

Sixty-five enquirers complained about the way in which their request for information was handled, or about the form, content or scope of provided information, in 2016. In 62 cases, i.e. all of the above requests having the same content, the superior authority confirmed the course of action followed by the first instance body of the obliged entity and described the complaints as unfounded. It also did the same in one other case. The superior authority assessed one complaint as impermissible. The appeal body partly granted one complaint due to a procedural mistake of the first instance body although otherwise, it agreed with that body's conclusions. The first instance body of the obliged entity promptly remedied this procedural mistake by delivering a decision on the matter.

Besides the above two dismissed unspecified requests, the obliged entity dismissed another 39 requests in full and 45 requests in part. The most frequent reason for dismissing requests in full was Section 2(4) of the free information law, because the enquirers frequently demanded legal advice or opinions from the obliged entity. There also were a number of dismissals under Section 11(4)(b) when the enquirers demanded information about the court's decision-making. The most frequent reason for dismissing requests in part was the fact that under Act No 101/2000 on Personal Data Protection and Amending Certain Laws, as amended, the obliged entity protected personal data of parties to proceedings, dismissing parts of the requests for information to the extent of such personal data.

Nine appeals were filed against decisions to dismiss requests or a part thereof. The superior authority of the second instance of the obliged entity rejected six of those appeals; in three cases, it reversed the original decision and ordered the first instance body to consider the matter again.

Under Section 5(4) of the free information law the Supreme Court posted, within the time limit, all answers to requests for information on its website at www.nsoud.cz, i.e. in a manner enabling remote access. It posted most of the information in an anonymised but unabridged form. However, for some more voluminous answers it also used the statutory option of notifying of provided information by posting accompanying information expressing the content thereof.



8 HANDLING OF COMPLAINTS UNDER ACT NO 6/2002

Under Act No 6/2002 on Courts, Judges, Lay Judges and State Administration of Courts, as amended, natural and juristic persons can resort to authorities of the state administration of courts with complaints about delays in proceedings, misconduct of judiciary personnel, or impairment of the decorum of proceedings in court.

In 2016, the Supreme Court received 12 complaints, of which 11 concerned alleged delays in proceedings. Of these, nine were considered unfounded and one founded in part. One of the complaints about delays in proceedings was sent to the Supreme Court, which, however, did not have jurisdiction in rem in this case, and therefore referred the complaint to another authority of state administration. One complaint was filed for misconduct of judiciary personnel, but it was assessed as unfounded. None of the complainants objected to the disposal of the complaints.

Despite the almost unchanging number of Justices and the caseload swelling continuously, the Supreme Court seeks to meet all the conditions of fair trial, including the duration thereof.

9 THE CZECH CASE LAW AND ANALYTICS DEPARTMENT

In 2016, the Czech Case Law and Analytics Department prepared the following materials, analyses and compilations [outputs] in both civil and criminal law in addition to its everyday work, which is outside the scope of this annual report:

Outputs related to analyses of decisions delivered in ancillary proceedings on claims to compensation for non-pecuniary damage caused by criminal activities.

Preparation of input materials for and production of volumes of district, regional and high courts' decisions published in the ASPI database, from the Case Law perspective (*Corpus of Decisions of Lower Courts of the Czech Republic under the Civil Code and the Business Corporations Act;* Volumes 1, 2, 3 and 4)

Compilation of case law under the Civil Code: Co-ownership

The Constitutional Court's Case Law on the Principle of the Right to a Lawful Judge in Relation to the Method of Assigning Judges to Particular Cases, a compilation

The Issue of Consumer Credit in the Supreme Court's Current Case Law, an analysis

Compilation of case law under the Civil Code: Natural Persons

Analysis of Case Law on the Principle of the State as the Ultimate Debtor under Act No 82/1998 on Liability for Damage Caused in the Exercise of Public Authority by a Decision or Incorrect Official Procedure and Amending Czech National Council Act No 358/1992 on Notaries

Compilation of case law under the Civil Code: Juristic Persons

Compilation of case law under the Civil Code: Obligations from Delicts

Initial outputs from an analysis of how Czech courts impose pecuniary penalties and use 'procedural alternatives'

10 THE IT DEPARTMENT

The staffing of the information and communication technology department was changed in 2016 and also reinforced by one employee. The department has four employees, who are responsible for the everyday operation of the computer network, systems, telephones and IT in general at the Supreme Court. On the basis of the possibilities given by the funds allocated from the national budget, the department also seeks to replace and upgrade both hardware and software on an ongoing basis.

Major renewals of hardware were made in 2016; PCs and notebooks were replaced and printers were added for smaller workgroups. The procurement of these printers was a Ministry of Justice pilot project. The outcome, mainly information from the operation and utilisation of the devices, has also become the basis for a tendering procedure to source printers for the entire justice sector.

The year 2016 also saw the virtualisation of some parts of the information system. Hardware could also be partly optimised in connection with this process. A disk array was also replaced. This has helped to significantly expand the capacity for the smooth processing of the continuously rising amount of data, mainly in respect of the larger number of the Supreme Court's employees.

The past period also saw the Justice Ministry's Implementing Videoconferencing in the Justice Sector project carried out. Thanks to modern technology, this project will help to expedite court hearings, support concealed witnesses' anonymity and cut the overall costs of court hearings across the justice sector. Videoconferencing serves for both domestic and international communication. The finance for this project comes from the Norwegian Funds.

It should also be noted that further to an instruction issued by the Ministry of Justice and concerning information security in the ITC environment in the justice sector, new measures have been adopted, mainly as regards the secure running of information systems. These measures include those that require everyday checks and also downstream operations, which are periodically revised by exactly set milestones.

11 THE SUPREME COURT LIBRARY

The Supreme Court's library serves primarily the Justices, assistants, advisers and other employees of the Supreme Court. Information and on-site loans are also provided to outside experts, and therefore since 2002 the Supreme Court's library has been registered with the Czech Ministry of Culture as a specialist public library. Its catalogue is posted on the Supreme Court's website (www.nsoud.cz).

In addition to the library's catalogue, specialised databases containing juristic literature such as the ASPI, Beck on-line and other juristic databases available online are also used for answering users' questions.

The library stock currently contains some 30,000 volumes: books, bound annual volumes of journals, and other printed matter. Most of them are specialist juristic literature and case law, but publications in philosophy, psychology, political science, history etc. are also available, albeit in limited numbers.

In 2016, the stock was extended to include almost 500 new publications and documents. The number of library visitors also increased. Almost 1,800 readers used its services, and the librarians answered almost 1,000 questions.

POSTSCRIPT BY THE SUPREME COURT VICE-PRESIDENT

A word or two to conclude…

The yearbook that you are reading now constitutes a summation of all of the Supreme Court's major activities in 2016; its purpose is to offer a clear and coherent set of information about this institution's operation.

The content of this publication should clearly mirror the Supreme Court's position as the highest authority of Czech justice in matters falling within courts' remit in civil and criminal proceedings.

Our wish is that the publication and its various sections make it evident that the steps taken by the Supreme Court are animated by its effort to perform the tasks incumbent on it under the Constitution and the Act on Courts and Judges, and the tasks ensuing from its role to unify Czech courts' decisions and ensure that they are lawful.

Roman Fiala
Vice-President
The Supreme Court

Mr Roman Fiala
Vice-President of the Supreme Court of the Czech Republic

The Supreme Court Yearbook

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