# The Supreme Court Yearbook

2017

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# TABLE OF CONTENTS

# FOREWORD FROM THE PRESIDENT OF THE SUPREME COURT

Dear Readers,

This Yearbook lucidly reviews the Supreme Court's activities in 2017, a year in which we faced many tasks and challenges. The overall assessment presented to you by the Supreme Court here in this Yearbook 2017 shows that, on balance, we dealt with those daunting challenges successfully.

As expected, Justices from the Supreme Court's Civil and Commercial Division reported a further rise in the number of appeals lodged on points of law. Although there was a slight drop in the Criminal Division's case-load compared to what had been a quite exceptional previous year, the agenda here also followed the established pattern and continued to broaden. As a result, the Supreme Court handed down 9,000 decisions in a single calendar year for the first time ever. Besides their decision-making, all Supreme Court Justices also kept up with the many other duties linked to their office. The priorities in this respect are to unify case-law, requiring the Justices, within the Supreme Court's Divisions, to consult and approve decisions for publication in the Reports of Cases and Opinions, and to comment on bills. Many of them sit on examination boards for numerous examinations and contribute to the training of new experts by lecturing and publishing. Some of them work for international judicial bodies or organisations. Together with Justices of the Supreme Administrative Court, they also hear cases in disciplinary panels or a special chamber that adjudicates on competence-related disputes.

Naturally, however, it is the Supreme Court's jurisprudence-related activities that remain of paramount importance. In the very first few days of 2017, the Supreme Court's Plenum approved a fundamental unifying opinion on electronic submissions and on the court service of electronically executed documents through a public data network. Put simply, this opinion governs the rules of electronic communication between courts and parties to proceedings. An important and highly anticipated decision of the Supreme Court's Civil and Commercial Division was clearly the unifying opinion that, in proceedings on the limitation of legal capacity, a court is also entitled to decide whether a person under assessment is limited in their legal capacity to exercise suffrage. The legal capacity of a person under assessment to exercise suffrage may be limited only by the operative part of a court decision. Decisions handed down by the Supreme Court's civil chambers in the field of insurance will be widely applicable. Under Resolution 23 Cdo 2221/2015, for example, the Supreme Court assessed the scope of indemnification that an insurance company is required to provide to travel agency clients who have not received a refund for a holiday cancelled due to the travel agency's bankruptcy, and





also considered whether the amount of insurance coverage is restricted to the limit agreed on the sum insured. The Supreme Court found that the limit of indemnity agreed in an insurance contract between a travel agency and an insurer to cover the travel agency's bankruptcy cannot restrict the right of consumers who have entered into a holiday contract with the travel agency under Act No 159/1999 to reimbursement of the entire amount paid for the holiday from the insurance company. You can read more about these and other fundamental decisions in the Yearbook 2017, along with decisions by the Criminal Division's chambers. One such decision meriting particular attention is Resolution 15 Tdo 832/2016 of the Grand Chamber of the Criminal Division, which unifies case-law in parallel tax and criminal proceedings where a criminal sanction for the crime of evading tax, charges and similar obligatory payments under Section 240 of the Criminal Code is impeded if a case has been settled with "ne bis in idem" effect following the imposition of a tax penalty. An important resolution rendered under number 8 Tdo 820/2016 deals with the criminal liability of parents for the offence of neglecting an alimony or maintenance obligation in relation to a major child. According to the headnote, anyone committing the offence of neglecting an alimony or maintenance obligation pursuant to Section 196(1) of the Criminal Code is criminally liable where this concerns the parental maintenance of a child even if the child has reached maturity and is making systematic efforts to train for a future profession by studying. If such training is not continuous and a child has changed school or interrupted their studies, in each such situation it is necessary to examine how each period of study connects up timewise and to consider why the studies have been interrupted. In all cases, it is necessary to assess whether there are fundamental grounds to award maintenance and whether eligible children are able to support themselves, taking into account the restrictive principles of morality. I also consider it important to recall, for example, the resolution handed down in Case 6 Tdo 1179/2016, where the Supreme Court found that a court could order forfeiture as a separate punishment for the fulfilment of two cumulatively set conditions in Section 72 of the Criminal Code.

The Supreme Court was also active in international cooperation last year. In particular, in June 2017 it organised a three-day international conference on the *Binding Effect of Judicial Decisions*. This was easily the most important judicial event of the year, held to mark the Czech presidency of the Committee of Ministers of the Council of Europe. I am delighted that, during those three days in Brno, we were able to personally welcome the Secretary General of the Council of Europe, Thorbjørn Jagland, the President of the European Court of Human Rights, Guido Raimondi, and the President of the European Court of Justice, Koen Lenaerts. Other speakers included Catherine Barnard, Professor of European Union Law at the Faculty of Law, University of Cambridge, and Jörg Polakiewicz, Director of Legal Advice and Public International Law of the Council of Europe. The conference was also attended by a number of presidents of supreme courts, constitutional courts and other acclaimed figures of the European judiciary. All delegates considered the conference to be enormously successful and beneficial for the whole of Europe. In this context, I will borrow the words used by Jan Passer, a judge of the European Court of Justice, to describe the event: *"Czech public opinion tends to be rather sceptical about the role we can play in the Union, perceiving our country more as an object of regulation that is taking place elsewhere. This conference clearly*

*proves that this is not the case. By holding this conference, the Supreme Court has demonstrated that not only can we be at the heart of the action, but that we can also help to shape themes that are fundamental to the EU and that are debated so that we can persuade others of our arguments."*

This conference is just one of numerous factors that have proved instrumental in enhancing the Supreme Court's public image. Other new aspects include the more frequent hosting of press conferences, where the Supreme Court informs the public of its important decisions and other recent activities, the regular use of social media and, not least, AEQUITAS, an electronic quarterly periodical that attempts to portray the Supreme Court Justices and employees as ordinary people, with ordinary hobbies, joys and worries. The Supreme Court is well represented by award-winning Justices, such as Vladimír Kůrka, Head of the Civil Division, who was awarded the Antonín Randa Silver Medal for his lifelong contribution to legal theory and practice, and the Civil Division chamber comprising Filip Cileček, Petr Šuk and Jiří Zavázal, which won a best-ruling award at the Karlovy Vary Juristic Days *(Karlsbader Juristentage)*. Still at Karlovy Vary, three Justices received special mentions for their personal contributions to lawmaking and awareness of the law, and Michal Králík came equal second in the Author's Prize category. In early 2017, my predecessor, Iva Brožová, was inducted into the prestigious Law Hall of Fame for her extraordinary lifelong contribution to Czech law, and Zdeněk Novotný, a presiding judge in the Civil and Commercial Division, was named Lawyer of the Year 2017 in the Civil Law category. I take sincere pleasure in all of these awards. If Justices, their assistants and other employees are to work well, besides personal, professional and moral qualities they also need the right facilities. I am highly appreciative, therefore, of the approach taken by the Ministry of Justice, with whose support, after almost twenty years of effort, we finally succeeded in starting the construction of a new office building right next door to the Supreme Court's current seat. I look forward to its opening, due to take place in late 2018. While I admit that some of our activities initially caused conflicting reactions among sections of the public, I think that we have defended the stances we have adopted by maintaining an open approach and by patiently explaining the steps we are taking. I am referring in particular to the creation of rules for the appointment of new Supreme Court Justices from the ranks both of career judges and of experts from other legal professions. In the future, these rules should ensure that we are able to choose from a broad range of people who are truly the best, recognised for their professional, moral and human qualities. Moral integrity, independence of thought, sound judgement, humility, decisiveness, and objectivity in decision-making are prerequisites for Supreme Court Justices. They must also have the ability to foster respect and trust on the one hand and, on the other, the ability to approach everyone, regardless of their background, with sensitivity and respect. It was only after we had called a press conference, giving us the opportunity to explain everything, that we were able to quell rumours stoked by certain media outlets which had lambasted our plans – perhaps because of their ignorance of the issue and failure to compare the similar approach adopted in developed European countries. There was also criticism – sporadic yet, in my view, excessive – in connection with a statement made by the highest Czech judicial officials in response to interventions made in the judiciary in Poland. In a democracy, the judiciary must be kept clearly separate from the executive and shielded from





political influence. In a situation where this principle was under threat in Poland, we could not remain silent. Besides, Bettina Limperg, the President of the German Federal Court of Justice, also spoke out publicly, and spent much of the lecture she delivered during a visit to the Supreme Court in Brno in October dissecting the threat to judicial independence in Poland. The same subject was also widely discussed at the autumn meeting of the Network of Presidents of the Supreme Courts of the Member States of the European Union in Tallinn, Estonia.

It has been gratifying to see that some of the Supreme Court's visions have enjoyed the backing of professionals and the general public from the outset. I am thinking in particular of the efforts by the Supreme Court and the Supreme Prosecutor's Office to push for the more frequent use of alternative criminal sanctions, especially financial penalties. I am glad to note that, on the strength of jointly organised expert seminars and our publicly proclaimed interest in increasing the proportion of financial penalties, the number of such sanctions almost tripled in 2017 compared to previous years. Bearing in mind the jointly prepared legislative proposal we submitted to the Ministry of Justice, there is potential for further growth in the number of penalties imposed in this way. Consequently, we are in a position to align ourselves more closely to the practices in place for financial penalisation in countries such as Austria and the Netherlands. Activities like these and their positive results motivate us to continue these efforts aimed at reducing the number of people given custodial sentences.

All of the activities I have briefly summed up here show that it makes sense to cultivate the Supreme Court as a modern open institution of a European type, to avoid shutting ourselves away, and to draw inspiration from those who have something to offer us. At the same time, we need to work with those who have a sincere interest in helping to shape a trustworthy and fair judiciary. We want to keep moving forward along this path in the coming 2018.

Pavel Šámal
President of the Supreme Court

# 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.

From 1 September 2017, after the entry into force of amended Act No 158/2006 Coll., on Conflicts of Interests, the Supreme Court is responsible for receiving and recording notifications concerning the activities, assets, income, gifts and obligations of all the judges of the Czech Republic entered in the Central Register of notifications (see Section 7 of Act No 159/2006), as well as with archiving and monitoring the completeness of the information in these notifications.

## 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 work plan is updated each month. 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.

Since 1 January 2013, the Director of the President of the Supreme Court, responsible for the work of the Section of the President of the Supreme Court, has been Mr. Aleš Pavel.

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. Since 1 January 2011, Mr Roman Fiala has been Vice-President of the Supreme Court. The Vice-President oversees the handling of complaints, in particular complaints 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 Judicial Academy, sponsors training courses for assistances, advisers and employees of the Supreme Court.

The Section of the Vice-President of the Supreme Court, which has been headed since 1 January 2011by Ms Blanka Laničková, and it also includes the Czech Case Law and Analytics Department.

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. Mr Vladimír Kůrka has been Head of the Civil and Commercial Division since 1 January 2016, Mr František Púry has been Head of the Criminal Division since 1 January 2016 and was appointed to run the Division on 1 September 2015. The Divisions adopt opinions on courts' decision-making practice, monitor and evaluate their final decisions and generalise the findings. They initiate proposals for opinions on courts' decision-making, submitting their suggestions to the President of the Supreme Court. Upon proposals by the President of the Supreme Court, Heads of Divisions and Heads of Grand Panels, the Divisions adopt opinions, and select and decide to include seminal decisions in the Reports of Cases 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 any matter referred to it by 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 the opinion 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 five-member 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. The last elections to the Assembly of Justices were held on 29 November 2017.

## 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.

Given the limited capacity of the main building and the growing numbers of Justices and, in particular, their assistants and employees, an annex is leased on a yearly basis for the use of the Supreme Court, offices in the neighbourhood. The Supreme Court has been trying to increase the size of its office space since 2000. Finally, after a meeting between the President of the Supreme Court, Prof. JUDr. Pavel Šámal, Ph.D. and Minister of Justice, Robert Pelikán, a decision was taken in 2015 to finance the construction of an annex to the main building, at Bayerova Street 3. Building works began in mid-2017.

### 1. 2. 1. Annex to the seat of the Supreme Court in Bayerova Street no. 573/3, Schedule of Works

Since 2017, Zlínstav a.s. has been developing a new extension on the site of a former tenement house adjacent to one of the wings of the seat of the Supreme Court, which will soon house around one hundred office spaces, mainly for assistant Justices. The Supreme Court library will be relocated here, and the construction of a multi-purpose court room and over twenty underground parking places are also planned. One underground floor will be used for the archives.

The original completion date of 31 August. 2018 was extended by 72 days during the first months of construction work, due to complications which had not previously been foreseen. The need arose for the disinfestation of the old tenement house in Bayerova Street and, although it had been approved for demolition, an unused gas pipeline located in





the immediate vicinity of the building site, had to be removed, a search for explosives had to be carried out, because an unexploded 2nd World War aerial bomb had been discovered not far from the building site and witnesses claimed that others might be present in that area. The utilities managers requested that part of the old water pipeline in the immediate area be removed to prevent the water supply system cracking under the weight of the construction machinery.

When in 1993 the Supreme Court returned to its historical home in Brno, a total of 25 Justices and 53 staff members were working in the original General Pension Institute. The first significant increase in the number of Justices occurred in 1996, when the Supreme Court became the only court that could decide on appeals and complaints for violation of the law on the basis of an amendment to the Act on Courts and Judges. Until this time, the Supreme Court in Prague most frequently ruled on extraordinary appeals. As at 31 December 2017, there are 68 Justices permanently assigned to the Supreme Court, 12 trainees and 268 staff members, which also includes Assistants to the Justices. Justice assistants form part of the staff. They assist the Justices in managing the constantly increasing workload of the Supreme Court', which has multiplied since 1993 (see chapters on decision-making in the civil and criminal divisions). Each judge usually has 2 or 3 assistants The building has therefore for some time now had insufficient capacity to meet the needs of the Court. A temporary solution was to lease detached workplaces or offices created in flats close to the Court.

Important dates for the project to build an extension in Bayerova no. 573/3:

8 February 2016 - 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

18 April 2016 - Contract with ARCH DESIGN, s.r.o. to review the original 2006 project

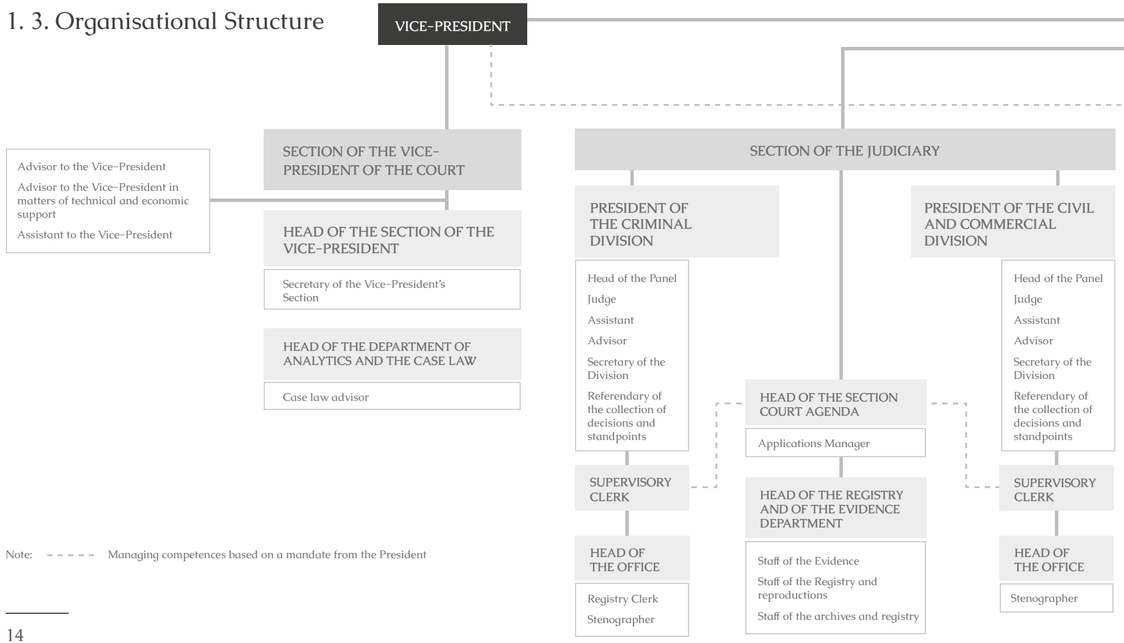
16 February 2017 - Opening of envelopes containing bid prices as part of the tender for a contractor

16 May 2017 - ZLÍNSTAV, a. s. announced as the winner

28 June 2017 - Start of work with the handover of the building site

18 November 2018 - Assumed date of completion of work, updated to take account of an initial delay of 72 days (see previous text)

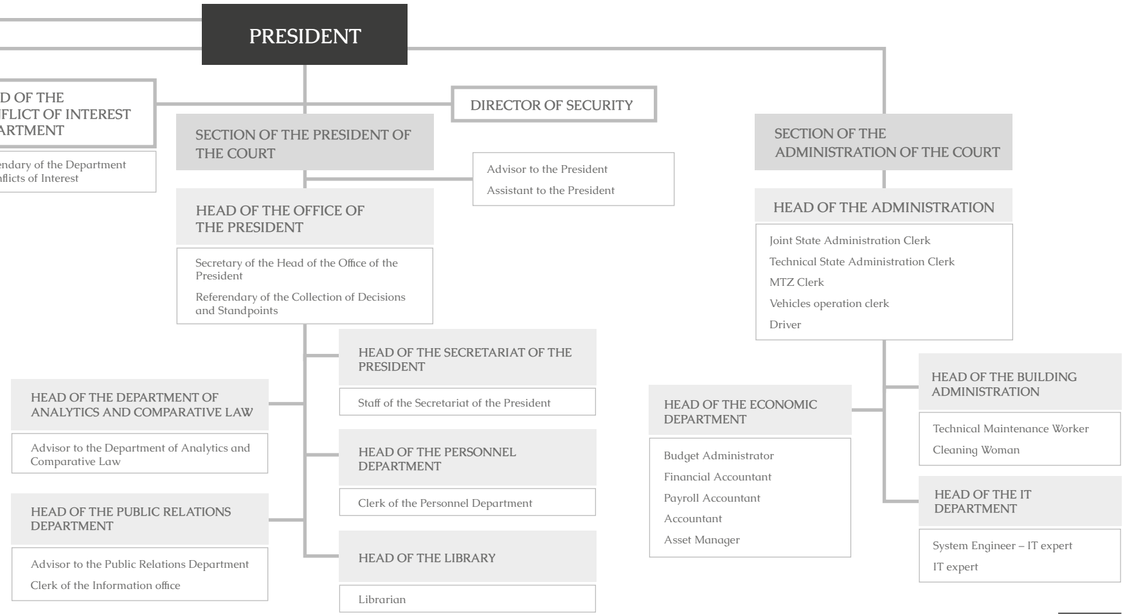
# 1. 3. Organisational Structure




Note: - - - - - Managing competences based on a mandate from the President







## 1. 4. Supreme Court Justices in 2017

Criminal Division

*JUDr. Petr Angyalossy, Ph.D.*
*JUDr. Jan Bláha*
*JUDr. Antonín Draštík*
*JUDr. Jan Engelmann*
*JUDr. Karel Hasch*
*JUDr. František Hrabec*
*JUDr. Petr Hrachovec*
*JUDr. Vladimír Jurka*
*JUDr. Ivo Kouřil*
*JUDr. Věra Kůrková*
*JUDr. Michal Mikláš*
*JUDr. Danuše Novotná* (end of the judicial tenure on 31 December)
*JUDr. Jiří Pácal*
*JUDr. František Púry, Ph.D.*
*JUDr. Stanislav Rizman*
*JUDr. Blanka Roušalová*
*JUDr. Bc. Jiří Říha, Ph.D.*
*JUDr. Petr Šabata*
*prof. JUDr. Pavel Šámal, Ph.D.*
*JUDr. Milada Šámalová*
*JUDr. Pavel Šilhavecký*
*JUDr. Eduard Teschler* (end of the judicial tenure on 30 April)
*JUDr. Vladimír Veselý*

Občanskoprávní a obchodní kolegium

*Mgr. Vít Bičák*
*JUDr. Pavlína Brzobohatá*
*JUDr. Filip Cileček*
*JUDr. Zdeněk Des*
*JUDr. Marek Doležal*
*JUDr. Jiří Doležílek*
*JUDr. Ljubomír Drápal* (on 1 February transferred to the Regional Court in Prague)
*JUDr. Václav Duda*
*JUDr. Bohumil Dvořák, Ph.D., LL.M.*
*JUDr. Jitka Dýšková*
*JUDr. Jan Eliáš, Ph.D.*
*JUDr. Miroslav Ferák*
*JUDr. Roman Fiala*
*JUDr. Hana Gajdzioková*
*JUDr. Miroslav Gallus*
*JUDr. Petr Gemmel*
*Mgr. David Havlík*
*JUDr. Ing. Pavel Horák, Ph.D.*
*JUDr. Kateřina Hornochová*
*JUDr. František Ištvánek*
*JUDr. Miroslava Jirmanová, Ph.D.*
*Mgr. Michal Králík, Ph.D.*
*Mgr. Petr Kraus*
*JUDr. Pavel Krbek*





*JUDr. Zdeněk Krčmář*
*JUDr. Vladimír Kůrka*
*JUDr. Blanka Moudrá*
*JUDr. Zdeněk Novotný* (end of the judicial tenure on 31 December)
*JUDr. Pavel Pavlík*
*Mgr. Miloš Pól* (on 1 January 2018 transferred to the Regional Court in České Budějovice)
*Mgr. Milan Polášek*
*JUDr. Zbyněk Poledna*
*JUDr. Pavel Příhoda*
*JUDr. Lubomír Ptáček, Ph.D.*
*JUDr. Olga Puškinová*
*JUDr. Mojmír Putna*
*Mgr. Zdeněk Sajdl*
*JUDr. Pavel Simon*
*JUDr. Jiří Spáčil, CSc.*
*JUDr. Karel Svoboda, Ph.D.*
*JUDr. Marta Škárová*
*JUDr. Petr Šuk*
*JUDr. Petr Vojtek*
*JUDr. Pavel Vrcha*
*JUDr. Robert Waltr*
*JUDr. Jiří Zavázal*
*JUDr. Ivana Zlatohlávková*

### 1. 4. 1. Visiting judges at the Supreme Court during the course of the 2017 calendar year

Criminal Division

*JUDr. Josef Mazák*
*JUDr. Marta Ondrušová*

The Civil and Commercial Division

*Mgr. Tomáš Braun*
*JUDr. Jiří Handlar, Ph.D.*
*JUDr. Ivana Kudrnová*
*JUDr. Pavel Malý*
*Mgr. Jiří Němec*
*JUDr. Tomáš Novosad*
*JUDr. Michael Pažitný, Ph.D.*
*JUDr. Vítězslava Pekárková*
*JUDr. Hana Tichá*
*JUDr. Ivana Tomková*
*JUDr. Monika Vacková*
*Mgr. Hynek Zoubek*

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

***JUDr. Petr Angyalossy, Ph.D. (∗1964)***
Justice of the Criminal Court Division, Supreme Court judge from 1 April 2017

Mr Angyalossy graduated from the Faculty of Law of Masaryk University in Brno. He served as a Presiding Judge at the Olomouc District Court from 1996 and from 1999 as Presiding Judge of the Regional Court in Ostrava, Olomouc branch. He served at the High Court in Olomouc from 2004, first as a judge and later as Presiding Judge.

***JUDr. Marek Doležal (∗1976)***
Presiding Judge in the Criminal Court Division, Supreme Court judge from 1 January 2017

Mr Doležal graduated from Charles University Faculty of Law in 1999. Between 1997 and 2001 he worked in law firms before being appointed judicial trainee. From 2003 to 2009 he served as a judge at the Prague 10 District Court. After 2009 he was appointed as judge to the Prague Municipal Court, where he served as Presiding Judge from 2013.

***JUDr. Bc. Jiří Říha, Ph.D. (∗1977)***
Presiding Judge of the Criminal Court Division, Supreme Court judge from 1 January 2017

Mr Říha graduated from the Charles University Faculty of Law in 2002, passing the rigorous exam in 2006. From 2006–2012, as Presiding Judge at the Prague 2 District Court, he was also appointed to represent the Vice-President of the Court for criminal matters during the period from 2009 – 2011 and served as Presiding Judge of the Municipal Court in Prague from 2013 – 2016.

***Mgr. Zdeněk Sajdl (∗1974)***
Presiding Judge in the Civil and Commercial Division, Supreme Court judge from 1 April 2017

Mr Saidl graduated from Prague's Charles University Faculty of Law. He served as a judge at the District Court in Semily from 2000 and in 2002 was temporarily seconded to the Regional Court in Hradec Králové, where he subsequently served as judge. Between 2012 and 2013 he was temporarily assigned to the Supreme Court.

***JUDr. Karel Svoboda, Ph.D. (∗1973)***
Justice in the Civil and Commercial Division, Supreme Court judge from 1 January 2017

He graduated from Charles University Faculty of Law in 1996, completing his doctoral studies in 2010 at the Faculty of Law of the West-Bohemian University in Pilsen. Between 2000 and 2012 he served as judge at the District Court in central Pilsen, from 2008 he has acted as its Vice-President and from September 2012 to the end of 2016 he served as judge at the Regional Court in Pilsen.





# 2. DECISION MAKING

## 2. 1. Supreme Court Plenary Session

The Plenary Session, composed of the President of the Supreme Court, the Vice-President of the Supreme Court, Heads of Divisions, Presiding Judges and other Supreme Court Justices, is the most important collective body of the Supreme Court. Two Plenary Sessions were convened in 2017.

### 2. 1. 1. Supreme Court Plenary Session convened on 5 January 2017

On Thursday, 5 January 2017 the Supreme Court Plenum approved the *Opinion on electronic submissions and the delivery of documents electronically produced by a court, effected through a public data network.*

The Supreme Court Plenum has first defined its legal opinion on the issue of service to court using data boxes, clarified the situation where an electronic signature is needed when electronic communications are used, and when this is not necessary. The adopted opinion also deals with how to deliver or receive submissions from persons who have multiple mailboxes, or from legal persons. All the material has been summarised in the recitals published below and has a major impact on the service and the effects of filing in court proceedings at all levels of the Czech judicial system.

Approved legal phrases:

*I. In civil proceedings, a motion may be submitted either in writing, or orally into the minutes, in electronic form through a public data network or telefax (Section 42 (1) CPR). Electronic submission means a document in the form of a data message in which a party in civil proceedings has expressed the will to exercise procedural rights, to comply with procedural obligations or other procedural consequences associated with this expression of will, or part of such a document, in which the participant's expression of will is involved. The same applies mutatis mutandis in criminal proceedings for submissions by parties or other entities having a similar status as the parties (Section 59 (1) of the Criminal Procedure Code).*

*An electronic carrier (referred to as an envelope or container) accompanying such a document is part of a submission within the afore-men-*

*tioned meaning, unless something other could be interpreted from the expressed will of the participant (party or other person).*

*II. If an electronic document containing a submission on the merits is sent from the data box of the person who is making the act or his legal representative to the court data box, it is considered to be a duly signed act within the meaning of Section 18 (2) of Act No 300/2008 Coll., as amended, even though such a submission or its attachments do not contain a recognized electronic signature. Therefore, it is no longer necessary to require that the filing of this submission be supplemented by presenting its original in a written form pursuant to Section 42 (2) CPR (see Article 42 (3) of the CPR).*

*If, for certain reasons, an electronic document in the form of a data message is not considered to be a signed for the purposes of Section 18 (2) of Act No. 300/2008 Coll., as amended (e.g. when sent from a foreign data mailbox) , it must – in view of the requirements of the provisions of Section 42 (3) of the Civil Procedure Code and Article 59 (1) of the Criminal Code – have a recognized electronic signature (Section 6 (1), (2) of Act No. 297/2016 Coll., formerly Section 11 (1), (3) of Act No. 227/2000 Coll., in the wording in force until 18 September 2016) from a natural person issuing the electronic document in the form of a data message containing the submission.*

*III. Where the electronic submission has been provided with a recognised electronic signature within the meaning of Section 6 (1), (2) of Act No. 297/2016 Coll. (formerly pursuant to Section 11 (1), (3) of Act No. 227/2000 Coll., in the wording in force until 18 September 2016), the so-called signature fiction, pursuant to Section 18 (2) of Act No. 300/2008 Coll., as amended, does not apply, even if it was done through a data box.*

*A procedural act, made via a data box, under the terms of Section 18 (2) of Act No. 300/2008 Coll., as amended by the person identified therein has the same effect as a procedural act done in writing and signed by the person for whom a data box has been established. If the person for whom a data box has been established, is a legal entity, this procedural act, made via a data box, has the same effect as a procedural act made on behalf of the legal entity in writing and signed by a person entitled to act on behalf of the legal entity according to the relevant procedural law regulation.*

*IV. The court shall deliver to the addressee a written copy of the decisions, other acts and other documents stipulated by the law, unless they have been served at the hearing (in another judicial year) or during the course of criminal proceedings, provided this is allowed given the nature of the document served. The assumption is that the addressee has access to his/her data mailbox, that the addressee has a physical person entitled or authorised to access his or her data mailbox, and that the mailbox has not been accessed (even retrospectively). If an addressee who is a legal entity proves that at the time of delivery of the document there was no person entitled or authorized to access his / her data box and that he / she did not do so, the delivery shall not be deemed to have effect.*





*The court shall deliver written copies of decisions, other acts and other documents to the data box only if it finds that the addressee has a data box established; if the information concerning the addressee does not allow such a finding, the court shall proceed to a different form of service. This applies similarly for the service of documents in criminal proceedings.*

*If a physical person has established multiple data boxes (e.g. a data box of a natural person and a data box of a natural person engaged in business, or a lawyer with a data box of a natural person engaged in business – lawyer, but also an insolvency trustee or a tax adviser), a written copy of the decisions, other acts and other documents must be delivered to the data box that corresponds to the nature of the document served. The effect of service of the document shall also occur by its delivery to another ("inappropriate") data box of the same natural person under the terms of Section 17, paragraph 3 of Act No. 300/2008 Coll., as amended.*

*The time limit referred to in Article 17 (4) of Act No. 300/2008 Coll., as amended, is a procedural time limit which, for the service of documents in civil court proceedings, is calculated in accordance with Section 57 (1) and (2) of the Civil Procedure Rules. and for the service of documents in criminal proceedings pursuant to Section 60 (1), (2) and (3) of the Criminal Code.*

## 2. 1. 2. Supreme Court Plenary Session convened on 29 November 2017

The main topic planned for the Plenary Session of the Supreme Court was a discussion of the amendment to the Rules of Procedure of the Supreme Court (Article 25). None of the 77 Judges at the Supreme Court or the visiting Judges had any changes to the proposed amendment, the amendment to the Rules of Procedure of the Supreme Court was therefore approved at the plenary session.

Exceptionally, the judges included in the agenda, under the "miscellaneous" item, a debate on the draft Civil Procedure Rules, which was published only a few days before the plenary session of the Ministry of Justice. The Supreme Court disagrees with the substantive intent and many of its points, which was again reflected in this discussion. The proceedings ended with the conclusion that the Presidents of the Divisions at first instance would draft a concise statement on the basic questions of the Civil Procedure Rules. These statements will then become the basis for wider professional argumentation.

## 2. 2. 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 both Divisions of the Supreme Court, selected and approved decisions of the various Panels of the Divisions (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 relevant Supreme Court 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, for criminal matters to 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 a meeting of the relevant Supreme Court Division, which is quorate if attended by a simple majority of its members. At the Division meeting the proposed decisions may be adjusted, and then all Division Justices attending the meeting vote to approve them for publication. A simple majority of votes of all Division Justices is required to approve a decision for publication in the Reports of Cases and Opinions.

The Reports of Cases and Opinions are published in separate issues appearing ten times a year. The contents of each of the Report's issues are also available on the Supreme Court's website www.nsoud.cz.

At the beginning of 2017, a new, user-friendly electronic form for the Reports of Cases and Opinions had been produced in collaboration with the Wolters Kluwer publishing house, available on sbirka.nsoud.cz, into which not only all the new decisions are included as they are issued, but the complete set of reports published since the beginning of the 1960s has also been incorporated respectively. Similarly, since 2017, so-called "blue reports", containing a selection of important rulings by the European Court of Human Rights, has also been available in electronic form on eslp.nsoud.cz. The Supreme Court also issues this collection in cooperation with the Wolters Kluwer publishing house. The creation of even more user-friendly access to both collections through mobile phones is planned for 2018.





## 2. 3. The Supreme Court Civil and Commercial Division in 2017

### 2. 3. 1. Summary of decisions of the Supreme Court's Civil and Commercial Division

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

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 Coll., which 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; while this second aim (the significant extension of the limits of the appeal review) has been achieved, the first one has not; the number of cases received (logically given the intentional expansion of the subject-matter of appeal review proceedings) has not only continued to increase, but has also extended into areas of decision-making, which had previously been closed to appeals.

The amendment to the Code of Civil Procedure, which was enacted by Act No. 296/2017 Coll. September 2017, which enacted the provisions of Article 238 of the CPR, stating the cases in which an appeal was not admissible, extended the decision of the appellate courts to sections relating to the statement of costs ruling on the application for exemption from court fees or on the duty of a court fee to decide on a party's application for the appointment of a representative, and - albeit conceptually significant - against decisions by which the court of appeals annulled the decision of the court of first instance and returned the case to the court of first instance for further proceedings.

At the end of 2017, the Civil and Commercial Division was composed of its Head and fifty-seven judges (eleven of whom were temporarily assigned) and arranged in eleven court departments, on the basis of a work plan set out by the President of the Supreme Court. 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 companies (department 27) or bills of exchange and, above all, insolvency (department 29).

Before 1 September 2016, when the Rules of Procedure of the Supreme Court were amended, the composition of each of the procedural (three-member) panels called upon to hear and decide a specific case that was assigned to the court department on the basis of the work plan was, in principle, handled by the "managing head" of the competent court department (who was also determined by the work plan); the managing 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 under Article 38 (1) of the Charter of Fundamental Rights and Freedoms The Justice assigned to the case prepares a draft decision, which is then put to vote in the panel configured as above.

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

The focal point of the decision-making of 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 has also significantly 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 or upheld the first instance court's decision, and it is also not necessary for the appeal on a point of law to be directed against a decision on the merits of the case as was the case under the previous regulations (the admissibility of an appeal against annulment decisions of the appellate courts was abolished under the aforementioned Act No 296/2017 Coll).

An appeal on 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 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 (although in the opinion of the Constitutional Court, this does not apply in situations of so-called "extreme contradiction" between what has been proved by the evidence and what has been stated as a factual finding by the court on this basis).

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 (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 this appeal on a point of law). If the defect in the appeal on a point of law is not removed, the court dealing with appeals on points of law dismisses the appeal on a point of law without being able to consider 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 will reject 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).

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

Although appeals on points of law are key for the Supreme Court and constitute the core of its operations, it also decides on other matters as the Civil Procedure Rules and other laws require it. It is worth mentioning that the Supreme Court decides disputes over jurisdiction of courts, both *in rem* jurisdiction (Section 104a CPR) and local jurisdiction (Section 104 (3) CPR), it decides what court has local jurisdiction if the case falls within Czech courts' competence but the circumstances determining local competence are missing or cannot be ascertained (Section 11 (3) CPR), and also 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), as well as on partiality pleas against judges of superior courts (first sentence of Section 16 (1) CPR) or on recusing its own Justices (by another panel,

under the second sentence of the same Section) and, finally, also acts in proceedings on a motion to determine the time limit for the execution of a procedural act pursuant to Section 174a of the Act on Courts and Judges. Under the provisions of Section 51 (2) of Act No 91/2012 Coll, the Supreme Court is called on to rule on the recognition of final and conclusive foreign judgements concerning matters of the dissolution of marriage, legal separation, the declaration of a marriage as invalid and the designation of whether or not a marriage exists where at least one of the participants in the proceedings is a citizen of the Czech Republic.

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 (see the provisions of Sections 19 and 20 of Act No 6/2002 Coll. on courts and judges) 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, 2016: 8 cases and 2017: also 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. 3. 1. 3. 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;





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

At the afore-mentioned extra-judicial level, the Division fulfils its unifying role by adopting decisions on decision-making by lower courts in specific types of cases (Section 14 (3) of Act No 6/2002 Coll., on Courts and Judges, as amended), on the basis of an assessment of final rulings where mutually conflicting legal opinions have been expressed. The same interest - in reinforcing unified decision-making - is also monitored by the Supreme Court through the publication in its Reports of Cases and Opinions of appropriate or otherwise important rulings (not only its own), on the basis of a decision by a majority of the judges in the relevant Division.

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. www.nsoud.cz.

### 2. 3. 3. 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, in some cases up to one or two years. Individual 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), while as at 31 December 2017 there were 26 pending cases older than two years; increased attention paid to the disposal of such cases by the courts and individual judges 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. It is also expected that these cases will be concluded in the very near future.

The purpose of involving assistants in Justices' activities is to reduce the length of proceedings, increase Justices' output in terms of quantity and to focus attention on decision-making as such; every Justice currently

has one to three assistances and at the end of 2017 the Civil and Commercial Division had a total of 112 assistants.

| | Pending from earlier periods | New cases received | Decided | Pending |
|---|---|---|---|---|
| Cdo | 2,930 | 6,105 | 6,151 | 2,884 |
| Cul | 0 | 10 | 9 | 1 |
| ICdo (ICm) | 117 | 185 | 119 | 183 |
| Ncu | 68 | 224 | 255 | 37 |
| Nd | 82 | 448 | 463 | 67 |
| NSČR (INS) | 152 | 204 | 201 | 155 |

(Summary of the number of cases assigned to the Civil and Commercial Division in 2017)

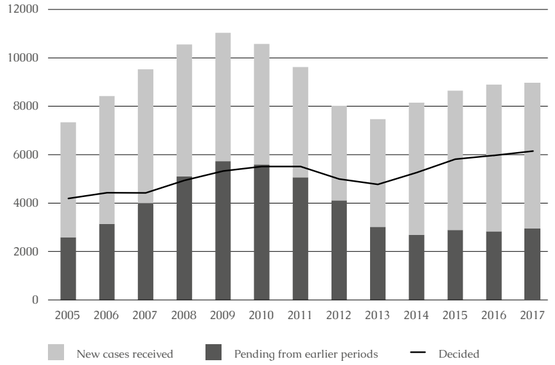
However, the statistical data clearly indicate that despite the efforts made and the undeniable progress achieved, the court is still unable to reduce significantly the remainder of pending cases as the following table shows (Cdo and the former Odo registers) for the period from 2005 to 2017:

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

(Cdo and the former Odo registers for the period from 2005 to 2017)








The obvious cause of this situation is the number of appeals filed, which has increased significantly in recent years; for example in 2015 it rose to 5.757 cases, and although the Justices of the Civil and Commercial Division decided on the historically highest number of cases (5.812), the number of pending cases still totalled 2,838; similarly, in 2016, the number of new cases received rose to 6,065 and, although even more cases were decided than in the previous year (5,971), the remaining pending cases rose to 2,930. It was true that in 2017, although an additional 40 cases were received, the balance of pending cases fell slightly - to 2,884.

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, the following year it was 2,789, in 2015 the figure was 3,168, in 2016 it was 3,132 cases and in 2017 3,034 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 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 2016 debate was started - in communication with the Ministry of Justice - on how to alleviate the heavy burden on the Supreme Court. This continued throughout the entire first half of 2017. 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, was submitted for parliamentary debate in 2017 and resulted in the adoption of Act No 296/2017 Coll., which became with effect from 30 September 2017, by which the above-mentioned aims were established in the legislation (see also point I above.). The actual application of this amendment to the Civil Procedure Rules is being monitored by the Supreme Court - for 2018 - with a clear expectation that the previous tendency (which was not always justified) for the decision-making burden to increase will be rectified.

## 2. 3. 4. Selection of important decisions of the Supreme Court's Civil and Commercial Division published in 2017

### 2. 3. 4. 1. Opinions adopted by the Supreme Court's Civil and Commercial Division

**Cpjn 23/2016**

Opinion of the Civil and Commercial Division of the Supreme Court approved on 15 February 2017, file no. Cpjn 23/2016, related to the





fundamental question of whether the court could restrict the legal capacity to exercise suffrage.

I. In proceedings on restrictions of legal capacity, the court is authorised to decide on the following whether the person in question is restricted in their legal capacity to exercise suffrage.

II. The person in question can only be restricted in their legal capacity to exercise suffrage by the (express) language of a court ruling.

**Cpjn 202/2016**

Opinion of the Civil and Commercial Division of the Supreme Court dated 8 March 2017 on the interpretation of Section 75c (4) of Act No 99/1963 Coll., 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.

1. The situation at the time of the issuance (promulgation) of the contested decision is decisive for the decision-making of the appeal court on an appeal against the first instance court's order concerning an interim injunction; this also applies to proceedings concerning interim injunctions falling under Act No 292/2013 Coll., on special judicial proceedings.

2. When ruling on an appeal against a first instance court's order concerning an interim injunction, the appeal court shall disregard the fact that the reasons for which the interim injunction have ceased to apply since the announcement (promulgation) of the order of the court of first instance, or that the court of first instance had subsequently terminated the interim injunction or it had legally expired.

### 2. 3. 4. 2. Decisions by the Grand Panel of the Supreme Court's Civil and Commercial Division

***Use of a registered trademark having the characteristics of unfair competition***

Contradictory jurisprudence on the question of whether the defendant's right to protect its trademark can prevent the applicant from exercising its right to a company even if the defendant had not been expressly required to refrain from using the trademark, but only to refrain from using a specific work, i.e. One element of the trademark, which had already been entered in the trade mark register at the date of the decision by the appeal court, the Grand Panel unified decision-making practice in its ruling of 8 March 2017, file no. **31 Cdo 3375/2015.** In the reasoning of its decision, it emphasised the fact that the right to a company cannot in itself be a reason for denying the rights conferred by a registered trademark; however this only applies on the assumption that the exercise of such a right is in accordance with commercial practices, good manners and rules of fair competition, in other words that it does not constitute unfair competition (compare Section 2976 (1) CC). If someone uses his trademark in a way that meets the definition of unfair competition, the person who is affected by such use must be

protected using the methods set out in the first sentence of Section 2988, CC., which means also imposing an obligation to refrain from using the registered trademark.

*The competency of government agencies in relation to a claim for damages caused by maladministration by the Police of the Czech Republic*

The question of which government agency is competent to act on behalf of the State in a case of compensation for damages caused by maladministration of the Czech Republic, which did not adequately care for the applicant's vehicle, which had been secured for the purposes of criminal proceedings, was addressed by the Supreme Court's Grand Panel in its judgment of 14 June 2017, file no. **31 Cdo 874/2015,** which concluded that as the Police of the Czech Republic is subordinated to the Ministry as a single armed security corps, in general cases its misconduct on behalf of the state in matters of compensation for damage fell under the jurisdiction of the Ministry of the Interior, but in cases of damage related to acts of the Czech Police in criminal proceedings, the Ministry of Justice will act on behalf of the State (the Grand Panel thereby followed on from its earlier judgment of 23 November 1999, file no. 25 Cdo 2527/1998).

*Price negotiation is not the essentiem of negotiating a contract for work*

The Grand Panel removed the inconsistency of assessments of the issue of whether price is an essential consideration of a contract for the repair and modification of a thing according to the Civil Code. in the version effective from 1 January 1992 – 31 December 2013 in its decision of 17 May 2017, file no. **31 Cdo 1717/2015,** concluding that, having regard to the wording of Section 634 (1) of the Civil Code, negotiations on the price for work was not a mandatory part of a contract for work; the contract would be valid without it provided agreement was reached on the subject-matter of the contract and on the fact that the contracting authority would provide the contractor with remuneration (payment) for carrying out the work, without having to specify a specific amount. If the price is not negotiated by the contract or laid down by special regulations, the price must be reasonable, that is, a price that is, at the time of conclusion of the contract, customary in the given place for a work of comparable type and given the complexity of the work, the length of time it took to carry out, etc.

*Compensation for damage caused by a civil servant*

The Grand Panel 's judgment of 12 April 2017, file no. **31 Cdo 2764/2016,** provided a response to the legal question of whether the State, as an employer (on behalf of which the government agency is acting, and assumes the rights and obligations arising from employment relationships) will be liable for damage for which it would be obliged to compensate the employee under Section 250 of the Labour Code, as a result of having paid a fine imposed on the relevant government agency, arising from a final decision made by another state body.

In the case under review - the applicant (a government agency) paid a fine imposed by decision of the Office for the Protection of Competition to the account of the Customs Authority for the South Moravian Region - the Grand Panel arrived at the conclusion that the State could only be liable for damage if state property as a whole was thereby reduced; given that by paying the fine the applicant paid the funds back to the state budget and money was only transferred within the State while the State's capital was not diminished by the transaction, the applicant (the State) as employer of the defendant was not liable for the damage claimed.

*Liability for damage caused by the operation of a vehicle - liability insurance and non-material damage*

The Supreme Court, in its judgment of 18 October 2017, file no. **31 Cdo 1704/2016,** addressed the issue of whether the concept of compensation for personal injuries or death under Section 6 (2) a) of Act No. 168/1999 Coll., on Motor Third Party Liability Insurance (hereinafter referred to as the "Liability Insurance Act"), could also apply to compensation for non-material damage in cash pursuant to Sections 11 and 13 of the Civil Code and noted that the current interpretation of Section 6 of the Act on Liability Insurance limiting the compulsory insurance covered by the Insured's civil liability for damages, even though the civil liability of the Insured is accepted, is in contradiction with European Union directives (in particular Council Directive 72/166/EEC of 24 April 1972, Council Directive 84/5/EEC of 30 December 1983, as well as Council Directive 90/232/EEC of 14 May 1990); it also referred to the judgment of the Court of Justice of 24 October 2013, C 22/12, in Case H). Compensation of non-material damage in cash pursuant to Sections 11 and 13 of the Civil Code may also be covered by compensation for personal injuries or death under Section 6 (2) a) of the Liability Insurance Act.

*Commencement of an objective limitation period in a special case of an unlawful decision*

In the present case, the applicant suffered damage caused by the decision to register her business in the Commercial Register. The Court's previous decision-making practice identified the commencement of the statutory limitation period as the moment when the injured party was served with (notified of) a decision that was later found illegal and resulted in the damage (see the Supreme Court judgment of 11 March 2010, file no. 30 Cdo 3266/2008 or the ruling of the Supreme Court of 9 January 2013, file no. 28 Cdo 1482/2012). However, as the legal opinion allowed a situation where the objective limitation period for the exercise of the right to compensation commenced, or had fully expired, before the damage even occurred, the Supreme Court averted these negative effects by applying a corrective of good morals, so that the statute of limitations cannot be invoked when the objective deadline has expired before an unlawful decision has been issued and, consequently, the damage has occurred (cf. Supreme Court judgment of 18 March 2014, file no. 30 Cdo 2014/2013). In the ruling of the Supreme Court dated 12 April 2017, file no. **31 Cdo 4835/2014,** it was confirmed that should the damage arise after delivery of an unlawful decision, the limitation period will begin to run from the moment the damage occurred.

*Enforcement order in favour of another – Section 107a, Section 256 o.*

The subject - matter of the appeal on a point of law in the Supreme Court 's judgment of 18 October 2017, file no. **31 Cdo 4427/2016,** was the issue of whether the court is bound by a previous decision, in accordance with the provisions of Section 107a CPR that another actor has lawfully entered into the enforcement proceedings in the place of the original beneficiary, when deciding on an application for a judicial enforcement order, as well as another related issue, namely the relationship between the "proof" of facts under this provision (Section 107a CPR), on the one hand, and the provisions of Section 256 (1) CPR, regulating the conditions of the enforcement order with respect to another actor, which is marked as obligatory in the decision being executed on the other hand, and finally, by what procedural means such proof can be obtained, namely whether standard evidence is provided during injunction proceedings, or whether the court decides only on the basis of relevant, qualified documents.

On the first question, it was determined that the court is bound by a decision under Section 107a CPR, in so far as the subsequent procedural participation by the entitled party is otherwise defined, but not in the sense that the resolution would ultimately have the effect of predetermining whether the entitled party so named would (positively) benefit from a decision on enforcement under the provisions of Section 256 (1), (2) CPR.

The Grand Panel also expressed the legal opinion that, when comparing the provisions of Section 107a (1) CPR, on the one hand, and the provisions of Section 256 (1) CPR, on the other, it is significant that the basis for a decision under the provisions of Section 256 (1) are documents issued or certified by a state authority or a notary (Section 256 (2) CPR), while the basis for deciding on the change of participants after commencement of the enforcement proceedings pursuant to the provisions of Section 107a CPR is not associated with any formalised requirement.

In a situation involving succession, which only arises after enforcement of the decision has been ordered, and in which a condition of "reasonableness" is applied to the decision-making under Section 107a CPR and Section 256 (1) (2); then the conditions of succession on the part of the entitled party under the appeal provisions of Section 107a CPR cannot be other (perhaps more strict) than those enshrined in the provisions of Section 256 (2) CPR as they apply to the enforcement order itself. Here too, the principle of formalizing the preconditions for such a decision is enforced and the court relies on the material contained in file, or on the documents submitted by the entitled party and decides, as a rule, without the obligatory hearing.

## 2. 3. 4. 3. Other selected decisions taken by the Civil and Commercial Division of the Supreme Court Commercial Court in 2017 to be published in the Reports of Cases and Opinions

*Maximum compensation under insolvency insurance for a travel company*

The Supreme Court ruling of 3 May 2016, file no. **23 Cdo 2221/2015** assessed the extent of the performance which the insurance undertaking is obliged to provide to a travel agency client who has not received a refund for an unused trip because the travel agency declared bankruptcy, and also whether the amount of the indemnity is limited by the agreed maximum amount insured. The court dealing with appeals on points of law followed the case law of the Constitutional Court (cf. Constitutional Court judgment of 16 July 2015, file no. III. ÚS 1996/13) and, in accordance with the principles of Euroconform interpretation, concluded that agreements between an insurance company and a travel agent, which restricts consumer's rights guaranteed by the EU legislation (in this case directives) are not effective, or are not binding against a consumer as an entity standing outside the contract concluded – by them. In other words, the maximum insurance compensation agreed in the insurance contract between the travel agent and the insurer in the event of bankruptcy of the travel agency can not restrict the consumer's right to enter into a tour contract with the travel agency under Act No. 159/1999 Coll., to compensation for the entire amount paid for a trip by the insurance company.

*Termination for failure to meet the prerequisites for performance of the agreed work*

The provisions of Section 52 f) of the Labour Code allow notice to be given to an employee , inter alia, because the employee does not meet the prerequisites prescribed by statutory provisions for performance of the agreed work. In its judgment of 14 July 2016, file no. **21 Cdo 3240/2015,** the Supreme Court expressed the view that employees can not be given notice on the basis of the above-mentioned provision if the employee does not fulfil these prerequisites only in relation to one of many agreed types of work. If, in accordance with the agreed working conditions stipulated in the employment contract, the employee is required to perform more than one type of work and if he/she does not meet the prerequisites prescribed by statutory provisions for performance of the agreed work in relation to any one of them, instead of the work, the performance of which does not meet the prerequisites prescribed by statutory provisions, the employer may allocate work that corresponds to the agreed type(s) of work which are not affected by the failure to meet the prerequisites.

*(Non) provision of midwifery care*

The Supreme Court, in its judgment of 15 June 2016, file no. **30 Cdo 3598/2014,** did not allow a claim for non-monetary damages caused by alleged maladministration by the State for failure to secure care by midwifery assistants for a home birth. A legal regulation cannot be adopted or not (legislative or normative activity) through an incorrect administrative procedure (see the Supreme Court judgment of 31 January 2007, file no. 25 Cdo 1124/2005), and a case of maladministration could only occur in a situation where the rule of law were no longer respected by the state authorities. Neither the national legislation, nor Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, nor Article 4 of Council Directive No 80/155/EEC lay an obligation on the State to provide pregnant women with midwifery care in their home environment.

*Assessing due care*

The Supreme Court expressed its opinion on due care in its judgment of 26 November 2016, file no. **29 Cdo 5036/2015.** First of all, it reiterated the fact that the executive of a limited liability company is responsible for the proper performance of his office – not for the results of his activity (cf. the Supreme Court judgment of 29 August 2013, file no. 29 Cdo 2869/2011, Supreme Court judgment of 28 November 2013, file no. 29 Cdo 663/2013; or the Supreme Court judgment of 29 April 2013, file no. 29 Cdo 2363/2011, published under number 75/2013 in the Reports of Cases and Opinions). In order to satisfy the requirement of due care and proper performance of his office, the executive of a limited liability company is obliged to act in the exercise of his/her function (inter alia) with the necessary knowledge and therefore also in an informed manner, i.e. to use reasonably accessible (factual and legal) sources of information for specific decisions and to use them as a basis for a careful consideration of the possible benefits as well as the disadvantages (identifiable risks) of existing variants of the business decision. However, an ex ante assessment obviously has to be made of compliance with this obligation, i.e. through the prism of the facts the executive could and should have known at the moment he/she made the business decision in question, while exercising the relevant standard of care (and using the available sources of information). Any such assessment by a court that failed to investigate the efforts made by the executive prior to the contested decision (i.e. whether he/she acted in an informed and knowledgeable manner) would be incomplete; in contrast, the consequences (or not) of his/her conduct cannot be assessed, because the executive of a limited liability company can only be held liable for the proper performance of his or her office. (This case was awarded the Pocta judikátu (Tribute to a Decision) during the 25th Karlovy Vary Jurist Days.)

*Reimbursement of the cost of care for a dependent person*

In its judgment of 30 September 2016, file no. **25 Cdo 786/2016,** the Supreme Court concluded that a person with permanent health disabilities is entitled to reimbursement of treatment costs (in a broader sense) within the meaning of Section 449 (1) CC in the amount of the money specifically spent on treatment or other necessary care; in the event that another person, i.e. a third party, incurs (pays for) such costs on behalf of the injured party, he/she is entitled to claim compensation from the wrongdoer (Article 449 (3) of the Civil Code). Should a third person, as next of kin, provide such necessary assistance through their own personal care for the injured party or his/her household, performing the housework needed due to the dependency of the injured party and providing general assistance exceeding the normal and standard scope of family cooperation and solidarity, the injured party him/herself shall be entitled to direct compensation, irrespective of whether he/she has in any way remunerated the assisting family members.

*Liability for damages – Ombudsman*

In its judgment of 27 September 2016, file no. **30 Cdo 4118/2015,** the Supreme Court expressed its opinion that the State is responsible for





any prejudice caused by the exercise of the Ombudsman's powers under Act No. 82/1998 Coll. Although it adhered to the opinion of the Supreme Administrative Court, that the Public Defender of Rights can not be considered a "standard" state body, as it does not act in the public administration, but oversees the exercise of public administration as an independent authority (cf. judgment of the Supreme Administrative Court of 19 February 2008, file no. 2 As 58/2007 or the judgment of the Supreme Administrative Court dated 9 January 2013, file no. 9 Aps 9/2012), it did accept that it plays a similar role, since its powers are intended to protect the interests of persons if these have been affected by the administrative authorities. The institution of the Ombudsman is thus subject to the State Responsibility for Damage Act, and the exercise of this authority can be qualified as an official procedure which may give rise to damages by the State.

*Deliberately shortening legal acts of the debtor in insolvency proceedings*

The relationship between the provisions of Section 240 (shortening legal acts done without adequate remuneration) and Section 242 (deliberately shortening legal acts) of the Insolvency Act was based on the decision of the Supreme Court dated 30 June 2016, file no. **29 ICdo 44/2014,** in proceedings to assess the possibility of defining certain legal acts of the debtor.. The provisions of Section 242 of the Insolvency Act contain separate provisions for the deliberate shortening of legal acts of the debtor and it is therefore insufficient to meet the general definition of an ineffective legal act pursuant to Section 235 (1) of the Insolvency Act; whether the debtor has made a deliberately shorter legal act (Section 242 (3) of the Insolvency Act) in the last 5 years before the commencement of the insolvency proceedings (Section 242 (3) of the Insolvency Act) does not depend on an examination of the assumptions contained in Section 240 of the Insolvency Act, which regulates the ineffectiveness of those shortened legal acts which the debtor made without adequate consideration. The precondition for the application of the provisions of Section 242 of the Insolvency Act to the debtor's legal act made within 5 years prior to the commencement of the insolvency proceedings is therefore not the requirement that it be a legal act which the debtor did when he was in bankruptcy or that it was a legal act that led to the debtor's bankruptcy.

*Entitlement to sue for annulment of an arbitration award*

The question of entitlement to sue for annulment of an arbitration award pursuant to Section 31 of Act No. 216/1994 Coll. on arbitration proceedings on enforcement of arbitration awards, was addressed by the Supreme Court in a judgment dated 23 August 2016, file no. **23 Cdo 5761/2015.** If the law explicitly refers to "any party" which is entitled to submit a proposal, this refers to the parties to the proceedings, that is, the parties to the main proceedings before the arbitrators; an extensive interpretation is not appropriate and therefore does not include third persons, including the spouse of the party to the arbitration proceedings, even when the arbitration proceedings have decided on a debt arising from a commitment entered into for the duration of the marriage of this party, which constitutes the joint property of the spouses.

*Change in the person of the payee*

On 30 June 2016, the Supreme Court published a decision under file no. **29 Cdo 3207/2013,** which pointed out that if a debt from a promissory note is taken over by a third party only on the basis of a contract concluded under Section 531 (1) of the Civil Code, there is no competence to change the person of the payee. The court dealing with appeals on points of law noted that the contractual assumption of debt from a bill of exchange is not permissible under the law of negotiable instruments (there is no competence to bring about a change in the person of the payee); that fact, however, may constitute a claim by the payee, who may be able to defend against his obligation to pay the promissory note.

*Suspension of cancellation of co-ownership due to a serious threat to the interests of a person close to the co-owner*

Pursuant to Section 1155 of the Civil Code, the court may, on the proposal of the co-owner, postpone the cancellation of co-ownership if this will prevent property loss or serious threat to the rightful interests of any of the co-owners and extend the duration of co-ownership for a maximum of two years. In its judgment of 29 June 2016, file no. **22 Cdo 4755/2015,** the Supreme Court adds that even a non-proprietary interest of a co-owner may be the legitimate interest of one of the co-owners, while, taking into account the right to respect for family and private life guaranteed in Article 10 of the Charter of Fundamental Rights and Freedoms and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, it must be acknowledged that the legitimate interests of the co-owner may also affect persons close to him (e.g. parents).

*Contract with alternative performance*

A contract with alternative performance was the subject of proceedings in the case of the Supreme Court ruling of 25 May 2016, file no. **33 Cdo 784/2015,** in a situation where one of two individualised performances is indefinite (i.e., there is no clear scope of performance to be provided by the borrower); then, if the remaining performance is sufficiently certain, the contract is partially invalid within the scope of the indefinite performance (Section 41 of the Civil Code), and the obligation becomes ipso facto a commitment with a single subject-matter for performance because the debtor can not validly make a choice. In such a case, however, the obligation under the first sentence of Section 576 of the Civil Code shall not arise in its entirety, its alternative nature is merely limited or the obligation becomes a simple one if only one type of performance remains.

*Concerning an action to allow necessary passage*

In its resolution of 15 November 2016, file no. **22 Cdo 3242/2015,** the Supreme Court addressed the question of applying Section 1032 (1) (b) CC in a case where a person acquires an immovable thing (building) in a tract of land belonging to another in the knowledge that he/she has no access to it, and concluded that the grossly negligent or deliberate behaviour of the owner of the immovable object requesting the necessary passage, which is the reason for dismissal of an action pursuant to Section 1032 (1) CC, may, depending on the circumstances of the case, consist not only in the removal of the existing connection with the public way, but also in the acquisition of immovable property without a secure connection with the public road. However, this does not automatically mean that the purchaser does not have the right to authorisation of the necessary passage, and therefore the rejection of the action can only be made on the basis of an examination of all the specific circumstances which will clearly lead to the conclusion that, in the given case, the purchaser of the property has acted in a grossly negligent or even deliberate manner , as a result of which it prevented the establishment or existence of access to its property.





*The nature of parking spaces marked P + R*

The subject-matter of the Supreme Court's assessment also included a car park operator's obligation to pay compensation for damage to the vehicle under the new civil law provisions (Section 2945); in accordance with the judgment of 20 October 2016, file no. **25 Cdo 5758/2015,** a car park marked and operated as a P + R (park and ride) facility is not a guarded garage or similar type of facility within the meaning of Section 2945 CC if its operator does not declare it as such or provide security and if the facilities of the car park do not provide qualified security for parked vehicles. It is obvious that these car parks are not normally designed as guarded car parks and that their very nature would indicate that the vehicle would need to be protected against damage, and even the presence of a mobile booth enabling attendants to be on site staff still does not indicate that there are staff guarding the vehicle. The operator of such a car park therefore has no objectively imposed strict duty (regardless of unlawfulness and fault) to cover the damage to the vehicle and its contents.

*Proceedings to grant a permanent residence permit in the context of Article 6 (1) of the Convention - Compensation*

The Supreme Court addressed the question of whether Article 6 (1) of the Convention applies to the procedure for granting a permanent residence permit, and whether the conclusions set out in the Supreme Court Opinion of 13 April 2011, file no. Cpjn 206/2010, published under No. 58/2011 of Reports of Cases and Opinions, are applicable to the assessment of the adequacy of the duration of that administrative procedure.in its judgment of 8 November 2016, file no. **30 Cdo 2928/2016,** in which it followed up on its previous judgment of 29 September 2015, file no. 30 Cdo 344/2014, in which it stated that the conclusion that the unjustified length of the administrative proceedings caused non-pecuniary damage to the parties is given if the administrative procedure under consideration is a dispute about a right or obligation which is genuine and serious and whose decision direct affects the existence, extent or manner of exercise of the right or obligation in question if that right or obligation has its basis in national law and where the right or the obligation in question is private in nature. If these assumptions are not met, then Article 6 (1) of the Convention fails to apply to the administrative procedure in question and, therefore, the aforementioned Opinion can not be applied. The Supreme Court therefore concluded

that the granting of a permanent residence permit is a matter for the public authority of a particular State and, therefore, it can not be affected by any private law provisions within the meaning of Article 6 (1) of the Convention, which it does not apply for this reason.

*Breach of trust in a lawyer*

The Supreme Court in its order of 24 October 2016, file no. **32 Cdo 1342/2016,** justified the conclusion that if a lawyer has been appointed by a court to represent a participant and that participant's subsequent behaviour towards that representative results in the fiduciary relationship between them being impaired, within the meaning of Section 20 (2) of the Act on the Legal Profession, the participant has no right to the appointment of another representative by the court. The Supreme Court thus followed the numerous case law of the Constitutional Court (resolution of 21 June 2010, file no. IV. ÚS 1184/10, dated 21 September 2010, file no. II. ÚS 1805/10, of 6 December 2012, file no. II. ÚS 627/12, and of 6 June 2013, file no. II. ÚS 64/13), which shows that if a lawyer was appointed by the court to represent a participant, the participant had a real opportunity to make full use of his legal assistance. If, however, his subsequent behaviour towards that representative resulted in the impairment of the fiduciary relationship between them, within the meaning of Section 20 (2) of the Act on the Legal Profession, and therefore the court has cancelled the appointment of the lawyer, then such a participant has not actually used the right to legal assistance granted by the court, or has surrendered this fundamental right through his culpable actions.

*Transparency of the arbitration tribunal established under the laws of the Slovak Republic by a legal entity*

In its resolution of 13 December 2016, file no. **20 Cdo 676/2016,** it was concluded that if an arbitration award was issued by an arbitration tribunal established pursuant to Section 12 of Act No. 244/2002 Collection of Laws of the Slovak Republic, the performance of such an arbitration award shall not be denied solely on the basis of the fact that it is not a steady court of arbitration within the meaning of Section 13 of the (Czech) Act on Arbitration. The Supreme Court has found that although the Arbitration Court in Košice is not a steady arbitration court established under Section 13 of the Act on Arbitration, it should not be overlooked that it was established as a steady arbitration court in accordance with Section 12 of Act No. 244/2002 Coll., which with effect to 29 December 2014 explicitly allowed a steady court of arbitration to be established by a legal entity, and at the same time set out the specific rules for the functioning of such a court (e.g. the obligation to issue statutes and rules of procedure, the obligation to publish these documents and all their amendments in the Commercial Bulletin, the list of arbitrators and its changes), which can see some guarantees of transparency of the arbitration proceedings and hence the guarantee of a fair trial.

*The tenant's right to terminate the lease of the flat he / she intends to use it*

The Supreme Court dealt with special reasons for termination of a tenancy in its judgment of 22 November 2016, file no. **26 Cdo 1454/2016,**





in which it concluded that in the case of an apartment used by the lessor, notice of termination based solely on the provisions of Section 2288 (2) a) CC is satisfactory; however, if the spouse of the lessor intends to leave the family household, the lessor must provide proof that a petition for divorce has been filed or the marriage has already been divorced.

*The court is not obliged to translate its decisions*

The Supreme Court approved for publication the judgment of the Municipal Court in Prague of 11 September 2013, file no. **19 Co 218/2013,** which stated that the provision of the second sentence of Section 18 (1) CPR can not impose an obligation on the court to ensure that the decision rendered by it is translated into a language understood by a participant who does not speak Czech. No law can imply an obligation on the court to send a judgment to a participant in proceedings in a language other than the one in which it was drawn up. This judgment further states that only a court decision in the Czech language, as a manifestation of the sovereignty of the Czech state authorities over the territory of the Czech Republic, is authentic and binding for all concerned entities. Section 18 of the Code of Civil Procedure, as well as obligations arising from the Charter of Fundamental Rights and Freedoms or international treaties, are primarily directed to a situation in which a hearing is ordered and a participant ignorant of the language of the case would not be able to react immediately to the conduct of the negotiations.

*Surrender payment for minors*

The Supreme Court addressed the option for parents to arrange to pay surrender money in lieu of maintenance for a minor child in a judgment of 19 January 2017, file no. **21 Cdo 2929/2016,** and expressed the legal conclusion that performance based on an absolutely invalid agreement for a one-off payment of maintenance due in the future to a minor child (surrender) represents unjust enrichment. The one-off element of the total maintenance payment, which would cover maintenance for the child until the day of his or her coming of age without change, is contrary to the provision of Section 99 (1) of the Family Act, because the possibility of future adjustments to maintenance payments based on changes to the situations of the beneficiary and the person obligated to pay maintenance can not be ruled out.

*Interference with the property right of a neighbouring landowner*

If a neighbour enters a tract of land for the purposes set out in Sections 1021 and 1022 CC, without the consent of the owner, without the authorisation of a public authority and in the absence of an emergency (Section 1037 CC in conjunction with Section 14 CC), he/she is unlawfully encroaching on the landowner's enjoyment of the property and proprietary rights. This conclusion was pronounced by the Supreme Court in its judgment of 25 January 2017, file no. **22 Cdo 3844/2016,** and explained the following statement: It does not follow from the provisions of Sections 1021 and 1022 that a neighbour who intends to maintain his land, including the building on it and to carry out con-

struction works or usual management activities, may enter a tract of land without the consent of its owner. First, the owner must ask for permission to enter and give reasons why he needs to enter his/her land, or use it in some other way and, in the cases specified in Section 1022 CC, agree to pay him/her reasonable compensation. If no agreement to allow access or the conditions for such access is reached, the person requesting access to a neighbouring tract of land or its use may apply for a ruling by a public authority, either to a court (Section 1021 et seq. CC in conjunction with Section 12 CC), or to the building authority (Section 141 of the Building Act). The decision granting entry must lay down the conditions of entry, in particular the time of entry, the area of the land and, if necessary, the machinery the applicant can bring onto the defendant's tract of land.

*An accounting document as the subject of a lien*

The subject of proceedings under file no. **21 Cdo 4172/2016** addressed the issue of whether a lien to retain possession of the debtor's accounting documents may be granted to a creditor to secure his claim against the debtor as a result of a contract relating to 'management of the company'. In its judgment of 9 March 2017 the Supreme Court expressed itself in the sense that the accounting document is not qualified to be the subject of a lien and therefore can not retained to secure the debt within the meaning of Section 1395 CC. In its detailed explanation it stated that the accounting document is not objectively capable of fulfilling the retention function of a lien because it has no utility value for anyone other than the owner of the accounting records of which the documents in question are a part, and can not be separately monetised, it cannot be retained to secure a debt within the meaning of Section 1395 and any retention of it against the owner does not give the creditor a lien in favour of his claim.

*A counterclaim is not the first act in a case under the Brussels I bis Regulation*

A counterclaim against a payment order can not be regarded as a defendant's participation in proceedings within the meaning of Article 26 (1) of the Brussels I bis Regulation, even if the defendant raises a defence in rem. This conclusion was noted in the ruling of the Supreme Court of 28 February 2017, file no. **30 Cdo 2784/2016,** which followed up on the previous decision of 21 March 1955, file no. Ncd 393/55, published in the Supreme Court's Reports of Cases and Opinions under No. 73/1955, according to which a counterclaim against a payment order is not the first procedural act of the defendant, in which the defendant would have to raise the objection of the court's lack of jurisdiction in order to do so in time, and the first procedural act of the defendant in that sense is his first procedural act, which he is entitled to in the proper proceedings, where the case was transferred as a result of his counterclaim.

*Complaint about defects in an excessively large thing*

The Supreme Court dealt with the question of the method of claiming a defect in respect of the requirement to allow expert judgment on its existence in its judgment of 22 March 2017, file no. **33 Cdo 2694/2016,** and stated that with regard to the handling of a complaint pursuant to Section 19 (3) of Act No. 634/1992 Coll. it is essential that the buyer allows the seller to decide on the claim, which can not be done without considering whether the subject matter of the purchase actually shows the defects claimed; however, it is not always necessary to present the matter in a place designated by the seller for such a judgment; having regard to the fact that, in the present case, it was a wooden bath of considerable weight and size, it was not reasonable to demand that the plaintiff (consumer) himself arrange the transport of the thing to the defendant's registered office for expert judgment on the alleged defect; even though he is entitled to reimbursement of the costs associated with the exercise of his rights arising from liability for defects (Section 598 of the Civil Code).





## 2. 4. The Supreme Court Criminal Division in 2017

### 2. 4. 1. Summary of decision making in the Criminal Division

In 2017, the Criminal Division of the Supreme Court was composed of the Head of the Division and another twenty-one Justices and from April 2017, of the Head of the Division and another twenty-two Justices; in addition two seconded Justices were working there. The Criminal Division Justices are posted in seven adjudicating Panels that constitute seven court departments. There is also a Grand Panel, a Reports Panel and a separate panel for appeals against decisions of the Supreme Audit Office's disciplinary chamber.

The Head of the Criminal Division assigns each of the criminal cases to the seven adjudicating Panels 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 pri-

vate, 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.

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. 4. 1. 1. Decisions on extraordinary remedies

The Supreme Court is the supreme body among the ordinary courts of the Czech Republic (Article 92 of the Constitution of the Czech Republic). It is therefore empowered to decide on the most important extraordinary remedies; in criminal proceedings, 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).

### 2. 4. 1. 2. Agendas of the Criminal Division of the Supreme Court: broken down by register

Primary legislation (specified above) 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:

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

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

**c) 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);

**d) 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);

**e) 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;





**f) 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);

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

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

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

The lower courts' adjudicating practice is 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.

A case will be referred to the Grand Panel when, 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, where the Panel's justified its different 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. 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.

In 2017, the Grand Panel of the Supreme Court's Criminal Division discussed and decided on **a total of four cases,** of which **three were heard on appeal in the agenda** held in the Tdo register, and **one fell under the agenda concerning disputes over jurisdiction** between lower courts (Section 24 CfPR) held in the Td register.

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

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. A simple majority of votes of all Criminal Division Justices is required to approve a decision for publication in the Reports of Cases and Opinions. A total of six meetings of the Supreme Court's Criminal Division were held in 2017. 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.

Another important tool for unifying the practice of lower courts and other criminal proceedings authorities is the adoption of the Supreme Court Criminal Division's opinions on court decisions on matters of certain types . 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 Supreme Court Reports of Cases and Opinions and is also posted in electronic form on the Supreme Court's website.



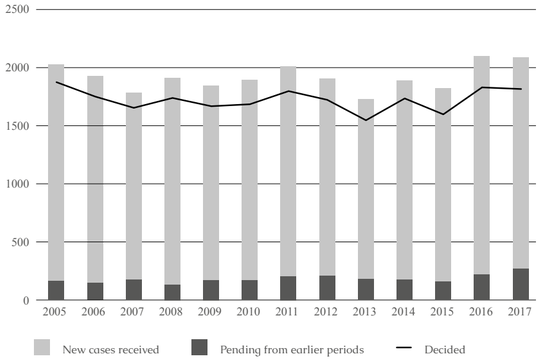


## 2. 4. 3. Statistical data on the activities of the Supreme Court Criminal Division

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

(Sum of the Tdo and Tz agendas 2005 – 2017)

The graph below illustrates the statistical development of cases received in all the Supreme Court's Criminal Division agendas over a relatively long period of time, 2005-2017 It is clear that the total number of cases received has been relatively stable, but at the same time the graph shows that the highest number of submissions to the Supreme Court's Criminal Division over the entire period under review were received in 2016 and 2017. It should be noted that the graph adds all the agendas together, while the complexity, workload and organisation of the different agendas is very different.



2. 4. 3. 1. Numbers of cases assigned to the Criminal Division in 2017

| Agenda | Pending from earlier periods | New cases received | Decided | Pending |
|---|---|---|---|---|
| Tdo | 263 | 1,624 | 1,713 | 174 |
| Tcu | 10 | 25 | 32 | 3 |
| Tz | 9 | 98 | 102 | 5 |
| Td | 11 | 64 | 69 | 6 |
| Tvo | 4 | 27 | 28 | 3 |
| Tul | – | 2 | 2 | – |
| Zp | – | – | – | – |
| Pzo | 2 | 7 | 6 | 3 |

## 2. 4. 4. Selection of important decisions of the Supreme Court Criminal Division published in 2017

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

With regard to addressing certain disputed issues, and in order to unify the decision-making activities of the lower courts, the Supreme Court Criminal Division has issued the following opinion, published in the criminal section of the Reports of Cases and Opinions.

***The injured party may be awarded compensation for costs associated with the appointment of an agent, even if the injured party has not yet paid that agent.***

Opinion of the Supreme Court Criminal Division of 26 October 2016, file no. **Tpjn 300/2016,** published under No. 2/2017 Cr S Reports, in which the Supreme Court found in favour of the question of whether it is possible, pursuant to Section 154 (1) CrPR, to impose on a convicted person an obligation to compensate the injured party for costs incurred through the appointment of an agent, in the form of remuneration for the legal assistance provided and monetary expenditure incurred, even if the injured party has not yet paid his/her agent, or after having already done so. Provided the conditions set out in the provision of Section 154, (1) CrPR are met the convicted person may be obliged to compensate the injured party for costs incurred by the appointment of an agent in the form of remuneration for the legal assistance provided and monetary expenses incurred, even if the injured party has not yet paid his/her agent.

2. 4. 4. 2. Decision by the Grand Panel of the Supreme Court's Criminal Division

The following Grand Chamber decision was published in 2017 in the Reports of Cases and Opinions.





***Determining the nature of a tax penalty as a criminal sanction; relationship between tax proceedings and criminal prosecution for the crime of evasion of taxes, fees and similar compulsory payments in terms of the identity of the dead; assessment of the effect of "ne bis in idem" as an impediment to deciding on a case***

Ruling by the Grand Panel of the Supreme Court of 4 January 2017, file no. **15 Tdo 832/2016,** published under No. 15/2017 Cr S Reports is significant in that it unifies the existing inconsistent jurisprudence in the field of parallel tax and criminal proceedings, where there is an impediment to a case decided with the effects of "ne bis in idem" in relation to criminal prosecution for the offence of evasion of taxes, fees and similar compulsory payments pursuant to Section 240 CrC in the event of the imposition of a tax penalty. A detailed analysis of this issue is made in the justification of the decision in line with the latest trends in the European Court of Human Rights decision-making. The Supreme Court concluded that the penalty under Section 251 of Act No. 280/2009 Coll., as amended, imposed in the tax proceedings for failure to meet an obligation made by final decision of an administrative authority is of the nature of a criminal sanction, although sui generis, therefore, the provisions of Article 4 (1) of Protocol No 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms should also apply. Tax proceedings and criminal prosecution for an act consisting of a failure to meet an obligation, which, in addition to a payment offence, significant in the area of administrative sentencing, also showing characteristics of the offence of evasion of taxes, fees and similar compulsory payments pursuant to Section 240 CrC, are proceedings for the same act. This applies in the situation when the subject of this crime and the tax entity is the same natural person (see Decision No. 51/1997 Cr S Reports). The Supreme Court also stated that the "ne bis in idem" impediment cited in the Convention does not prohibit proceedings in which penalties have been imposed being divided into different phases with different sanctions being imposed subsequently, successively or in parallel, for infringements of a criminal nature. According to the judgment of the Grand Chamber of the European Court of Human Rights in the case A and B v. Norway, of 15 November 2016, Complaints Nos 24130/11 and 29758/11 states are entitled to choose, within their legal systems, a legal solution that will respond to anti-social behaviour through various complementary procedures that form one coherent whole, subject to the condition that they do not place an excessive burden on the individual concerned. The Supreme Court therefore decided that a final decision to end one of parallel or successive tax and criminal proceedings which are criminal proceedings in the sense of the Engel Criteria does not create an impediment to the matter decided having the effects of ne bis in idem, if there is not only a close link between the tax and criminal proceedings but also a temporal link. The relevant factors for determining whether there is a sufficiently close substantive link are: whether the two separate proceedings pursue a mutually complementary objective and therefore whether they relate not only in abstracto but also in concreto to the various aspects of the given infringement; whether the combination of the procedures in question is the foreseeable consequence of the same conduct, both legally and factually; whether the relevant proceedings are conducted in such a way as to prevent

as much as possible any repetition in the collection and evaluation of evidence, in particular by means of appropriate mutual cooperation between the various competent authorities, thereby also making use of the proven facts also in the second proceedings; and, above all, whether the sanction imposed in the proceedings which ended first is taken into account in the proceedings which are the most recent proceedings in order to prevent the individual concerned from ultimately suffering from excessive burdens. This means that, in the context of individualising the setting of a criminal sanction, the sanction imposed in the tax procedure and its reimbursement must be taken into account. The court must therefore take account of the final decision of the tax authority on the obligation to pay a penalty for back tax and explain in the reasons for its decision how that factor has been taken into account when determining the nature of the offence and its assessment. The time span must be sufficiently tight to provide the person concerned with protection against uncertainty, delay and prolongation of the proceedings. The weaker the temporal continuity, the greater the need to clarify and justify delays in the organisation of the proceedings, for which the state can be held accountable.

### *2. 4. 4. 3. Other important decisions of the Supreme Court's 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:

***Review of the revision principle in complaints proceedings and its impact on the need to justify a complaint; particularities of the complaint in the recovery procedure***

Supreme Court ruling of 20 July 2016, file no. **8 Tz 25/2015,** published under No. 1/2017 Cr S Reports in which a decision was made on a complaint filed with the Minister of Justice against a decision by which the court dismissed a complaint against the decision to reject a petition for the permission of a new trial. Two legal opinions emerged from this decision. The first recital recalls that the complaints procedure under Section 147 (1) CrPR is subject to the revision principle while observing the limitation stated in Section 147 (2) CrPR. Therefore, it is not essential that the complaint be justified, as the superior authority is required to review the accuracy of all (even unsubstantiated) verdicts of the contested resolution, whether or not the complaints were contested, as well as the correctness of the proceedings that preceded the contested resolution [Section 147 (1) a), b) CrPR]. The second recital provides that, in proceedings relating to a petition for the permission of a new trial under Section 277 et seq. CrPR., the application of the right to complain, in particular the possibility of complaint directed against a decision or verdict concerning which a new trial is not permissible (Section 283 CrPR), relies on new facts and evidence, limited by the conditions of these proceedings. The use of Section 145 (2) CrPR in such a complaint must be restricted to the "new" relating to facts were already set out in the petition for the permission of a new trial, whose scope is defined in the conditions set out in Section 278 (1) CrPR. This conclusion is based on the substance of the decision to reopen the





proceedings, in which the court compares the results of the evidence in the main proceedings with the evidence examined in the context of the proceedings for the permission of a new trial on the basis of the petition submitted.

***Parents' criminal liability for the offence of failure to provide compulsory maintenance for a child who is of age, is studying, but has interrupted his/her studies or is engaged in casual work***

Supreme Court ruling of 27 July 2016, file no. **8 Tdo 842/2016,** published under No. 4/2017 Cr S Reports, concerning the criminal liability of parents for the offence of neglect of compulsory child maintenance. The legal recital of this decision makes clear that the criminal liability of the offender for the offence of failure to provide compulsory maintenance under Section 196 (1) of the Code, remains part of the parent's obligation to maintain and support their child (Section 910 (3) CC) provided the child is of age but attends continuous education to prepare him/her for a future profession. If this education is not continuous and the child has changed school or interrupted his/her studies, each case will have to be examined to find whether there is continuity between each period of education and the reasons why the studies were interrupted should be taken into account. It is always necessary to assess whether the fundamental condition for granting maintenance exists, whether the eligible child is unable to keep him/herself (Section 911), even within the limiting rule of good morals. Therefore, even if the child is earning money from casual work while studying, this will not be enough to maintain him/her and can not lead to the conclusion that the child was able to maintain him/herself. This factor taken in isolation is not sufficient to draw a conclusion of low social harm and is not a reason for not applying criminal liability within the meaning of Section 12 (2) CrC.

***Error of law for the perpetrator of the crime of unauthorised handling of protected wildlife and wild plants in connection with the importation of exotic animal specimens***

Supreme Court ruling of 30 September 2015, file no. **7 Tdo 1166/2015,** published under No. 5/2017 Cr S Reports, which concerns the existence of an error in law and the possibility that it could have been avoided in relation to the offence of unauthorised handling of protected wild fauna and flora. The Supreme Court expressed the legal opinion that - if the perpetrator, upon receiving the gift, was in the position of a person intending to import into the Czech Republic a specimen of an exotic animal (albeit inanimate, stuffed), then, as an importer he/she was obliged to consult the appropriate legislation concerning the import of such a thing. The conclusion that the act is not a criminal offence can not in this case be justified as an error of law by the perpetrator within the meaning of Section 19 (1) CrC., because even if he/she acted in error, it could have been avoided (Section 19 (2) CrC).

***Addressing the question of how a perpetrator's refusal to comply with his/her statutory obligation to make a statement of assets meets the***

***objective requirements of the offence of violating ones obligations to make a true statement of assets***

Supreme Court ruling of 25 May 2016, file no. **5 Tdo 340/2016,** published under No. 7/2017 Cr S Reports refers to the offence of a breach of duty to make a true declaration of property, specifically defining the object of this offence and how it can be committed in objective terms. The object of the offence of a breach of duty to make a true declaration of property under Section 227 CrC is primarily an interest in the proper functioning of public authorities so that they can properly ascertain the existence of the property and its possible scope for the purposes of judicial or other similar proceedings (e.g. tax) The objective aspect of this offence can be fulfilled by refusing to comply with the statutory obligation to make a declaration of property, avoidance of this obligation, or the inclusion of false or grossly distorted data in such a statement. Refusal in this sense means not only an express refusal to make a declaration of assets but also behaviour consisting merely of inaction on the part of a perpetrator who fails to provide the competent public authority with any information about his property or the property of a legal entity for which he is authorized to act after receiving a request to make a declaration. No additional request or any other activity by the competent public authority is required to establish criminal liability for the alleged offence.

***Interpretation of the concept of "relocation" as it applies to a security corps officer in relation to the crime of fraud, which was alleged to have been committed through the wrongful elicitation of travel expenses.***

Supreme Court ruling of 23 March 2016, file no. **3 Tdo 1489/2015,** published under No. 8/2017 Cr S Reports, which explains the concept of "relocation" within the meaning of Act No. 361/2003 Coll., on the employment relationship of security corps personnel, as amended, in relation to the crime of fraud. The Supreme Court Criminal Division agreed that the term "relocation" within the meaning of Section 149 (1) of the cited law is to be interpreted as a real change in the place of residence of a security officer. It is a manifestation of the intention of a security officer to live permanently at a specific address, which can be inferred from the concrete actions he takes to implement that intention. For example, the relocation of all of his/her belongings or at least a substantial part thereof, the relocation of other members of the family, re-registration at a general practitioner, etc. The purchase of an apartment near his/her place of deployment can not, in itself, be regarded as a "relocation" within the meaning of the above provision. Therefore, the accused's action, by obtaining an apartment near his place of deployment, failing to inform the competent duty officer of the fact, and presenting a claim for reimbursement of actual travel expenses, which were paid to him, does not fulfil the elements of the crime of fraud under Section 209 CrC.





***On the admissibility of a plea of necessary defence from an immobile injured party who elicited the attack by the perpetrator through his behaviour towards him***

Supreme Court ruling of 20 May 2015, file no. **4 Tdo 527/2015,** published under No. 9/2017 Cr S Reports, addresses the question of the admissibility of a claim of necessary defence on the part of the defendant against the actions of the injured party in the necessary defence. The Supreme Court has concluded that if an immobile injured party attempted, proportionally to his abilities, to avert an escalated attack on the part of the accused, who started, escalated and repeated the attack (his actions consisted of prolonged and graduated violence aimed at stealing his property, when, after threatening to kill and abusing the injured party in a vulgar manner, he proceeded to hold the injured party by his throat, removing the keys he was wearing on a string around his neck), additional violent behaviour from the accused towards the injured party, which was a reaction to a blow from a stick on the part of the injured party, can not characterised as necessary defence within the meaning of Section 29 CrC.

***The possibility of committing the offence of obstructing the enforcement of an executive decision and banishment by driving a motor vehicle during a period when the offender was under an unconditional sentence of imprisonment, while also being under sentence of prohibition of activity, consisting of a ban on driving a motor vehicle.***

Supreme Court ruling of 25 October 2016, file no. **6 Tdo 1402/2016,** published under No. 10/2017 Cr S Reports deals with the problem of whether an accused, who was driving a motor vehicle at the time he was released from serving a sentence of imprisonment, although another punishment had been imposed on him consisting of a ban on driving a motor vehicle, committed or did not commit the offence of obstructing the enforcement of an official decision and banishment pursuant to Section 337 (1) a) CrC. the Supreme Court reached the legal opinion that the accused has committed such a crime. The provisions of the first clause of Section 74 (1) of the Criminal Code, before the semi-colon, creates an obstacle for which the period of execution of a prohibition on activity is "suspended" during the period in which the offender is under an unconditional sentence of imprisonment, while only the effective period of imprisonment, i.e. the period during which the convicted person is physically located in one of the facilities intended for the execution of an unconditional sentence of imprisonment is not counted into the time of execution of a sentence of prohibition of activity. However, in the opinion of the Supreme Court, the effective execution of an unconditional sentence of imprisonment can not be regarded as the period during which the performance is interrupted or for which the convicted person is provisionally released, and this period is a contrario counted into the period of execution of a prohibition of activity.

***To meet the element of "in an amount larger than small" for the offence of possession of narcotic and psychotropic substances and poisons in terms of the perpetrator's culpability in relation to the amount of the active substance in the drugs in his possession***

Supreme Court ruling of 26 August 2015, file no. **11 Tdo 811/2015,** published under No. 12/2017 Cr S Reports refers to the offence of posses-

sion of narcotic and psychotropic substances and poisons under Section 284 (2) of the Criminal Code and the Supreme Court expressed its views on the issue of meeting the requirements for intentional incrimination in relation this criminal offence in relation to the statutory element "possesses for their own use ... another narcotic or psychotropic substance or a poison ...in an amount larger than small". According to the Supreme Court, the conclusion that the perpetrator's action deliberately achieved the aforementioned statutory element does not exclude the fact that the perpetrator has not verified the amount of active substance he / she may have for his own needs (e.g. by laboratory analysis). The Supreme Court expressed the view that the accused's defence, alleging that he could not verify the amount of active substance he could have for his own use, was a tactical attempt to misuse the interpretation of the Criminal Code provision, because such an interpretation would have argued that, without proper laboratory analysis, the person who buys a drug can never discover the quality of the purchased drug. A drug addict, if he decides to buy any narcotic or psychotropic substance, always runs a real risk of receiving poor quality drugs, i.e. so diluted that it is ultimately ineffective, but when assessing the subjective aspect of his behaviour, the main criteria must be the total amount of illicit substance being retained, the perpetrator's experience with its use, the circumstances of its acquisition and the usual quality of the substance acquired in this way.

***Interpretation of when the commission of the same or a more serious criminal act is a circumstance that will suspend the limitation period for criminal liability***

Supreme Court ruling of 15 July 2015, file no. 5 Tdo 1449/2014, published under No. 14/2017 Cr S Reports, which deals with the legal question of whether any circumstance exists that would interrupt the limitation period of criminal liability pursuant to Section 34 (4) b) of the Criminal Code. It is clear from the conclusion of the Supreme Court that the offender is not required to be convicted of the same criminal offence or a more serious criminal offence, but the deciding factor is only whether a new criminal offence has been committed within the limitation period. The question is then considered by the law enforcement authorities as a preliminary question within the meaning of Section 9 CrPR.

***Procedure for determining the damage caused and its amount in the crime of fraud through the sale of shares for an artificially inflated price; application of the claims of the injured party by the official receiver in criminal proceedings***

Supreme Court ruling of 27 April 2016, file no. **5 Tdo 407/2016,** published under No. 16/2017 Cr S Reports This extensive decision is divided into three parts. In the first part, the court dealing with appeals on points of law accepted the objection of the accused in the appeal and, unlike the lower courts, expressed the view as to the determination of the cause of the damage caused and its amount in the crime of fraud





through the sale of shares in a joint-stock company, that the amount of damage can not be determined solely by the mere difference between the total value of all the assets of the joint-stock company and the value of its receivables, which were subsequently duly registered in the voluntary bankruptcy proceedings for the company (when a number of other receivables were not filed, even though they should have been) because the real purchase price of the shares must be derived from the overall economic situation of the joint-stock company. This was because the accused did not sell the purchaser of the company the receivables of the joint-stock company in question, which he represented, but the shares of that joint-stock company. The actual value of the shares was also influenced by the amount and the real possibility of settling the claims, but it is obviously not possible to compare the amount of the (unsettled, irrecoverable or forfeited) receivables with the decrease in the value of the shares. Neither is it therefore possible in this case to determine the amount of damage caused the crime of fraud without determining the real value of the shares sold. This question was not addressed by the lower courts. In contrast, in the second part the court dealing with appeals on points of law did not find for the accused who claimed in his plea that his conduct could be regarded as a criminal act of entering false or grossly distorted data on the financial situation and assets under Section 254 (1) of the Criminal Code. The Supreme Court stressed that the objective aspect of the facts of the aforementioned crime had not been met in any of its versions. The substance of the accused's actions consisted in transferring the joint-stock company's receivables to entities which he knew were in economic difficulties and also extending the maturity of these claims, to make them appear to the purchaser of the company like passing on the claims of a joint stock company to entities of poor economic standing and, in addition, prolonging the maturity of those claims so that buyer companies would appear to be recoverable debts. Moreover, as is clear from the factual findings, the accused deliberately refrained from mentioning the aforementioned fact to the purchaser of the company.

In so doing, he tried to artificially increase the value of the joint-stock company's equity and hence of the shares, which he sold. It is therefore obvious that this is not a crime of entering false or grossly distorted data on the financial situation and assets, since the purpose of the accused's actions was not to change the information of the accounting records and relevant documentation, but the share price and to reach a higher amount for their sale. Such behaviour therefore fully corresponds to the crime of fraud under Section 209 CrC. The third part of the recital deals with the claims of the injured party in the criminal proceedings, where the court of first instance ruled on the claim by the injured company which, however, was in bankruptcy at the time of the criminal proceedings, so that the sole entity entitled to claim compensation was the official receiver representing this company. However, although the official receiver also filed a claim for damages, in a proper timely manner, the court of first instance ignored it, did not decide on it, did not read it in the main proceedings, nor did it deliver a copy of the judgment to the official receiver. The Court of Appeal therefore dismissed the claim for damages in the accused's appeal. This was the only change to the judgment of the court of first instance. The accused has, in his plea, also relied on the grounds for an appeal on a point of

law set out in Section 265b (1) k) CrPR, according to which an appeal on a point of law may be lodged if a certain verdict of the decision is missing or is incomplete, which he found in the fact that the Court of Appeal only ruled on the annulment of the claim for damages without expressly addressing the other statements of the judgment of the Court of First Instance. However, the court dealing with appeals on points of law considered the appeal court to be correct, both in its view that the sole subject entitled to damages was the official receiver, and in the decision-making process. If the court of appeal repealed the severable claim for damages pursuant to Section 258 (1) f), (2) CrPR, the subsequent situation would not allow it to decide on the rest of the appeal by suspending the prosecution pursuant to Section 256 CrPR, because the appeal by the accused constituted a single whole (one remedy). At the same time, the Supreme Court also welcomed the fact that the court of appeal did not add a sentence to the operative part of its decision, superfluously used by appellate courts such as *"Otherwise the contested judgment remains unchanged",* because such a "confirmatory statement" has no support in the law.

***Interpretation of the conditions for imposing a punishment of forfeiture as a separate sanction***

Supreme Court ruling of 8 September 2016, file no. **6 Tdo 1179/2016,** published under No. 18/2017 Cr S Reports, deals with the issue of punishment by forfeiture. Firstly, the Supreme Court stated that the punishment could be imposed by the court as a separate sentence provided two cumulative conditions stipulated in Section 72 CfC were met. One of them is that the Criminal Code enables the imposition of such sentence, i.e. that the punishment of forfeiture is explicitly mentioned in the relevant provision of the Criminal Code as a sanction for the offence the elements of which have been committed by the perpetrator. However, fulfilment of this condition can not replace the imposition of a protective measure in a given criminal case, in addition to the punishment of forfeiture. Furthermore, the Supreme Court concluded that by imposing the punishment of forfeiture as a separate punishment without the conditions of Section 72 of the Criminal Code being fulfilled, the grounds for the appeal on a point of law under Section 265b (1) h) CrCP would be met.

***Procedure for determining the amount of damage in the criminal offence of favouritism to a creditor if the favoured creditor did not obtain any of the assets when the debtor's bankruptcy had been settled***

Supreme Court ruling of 13 April 2016, file no. **5 Tdo 93/2016,** published under No. 20/2017 Cr S Reports, in which the Supreme Court responded to one of the defendants' appeals on a point of law concerning the amount of damages included in the decisions of the lower courts. The court dealing with appeals on a point of law (referring to the previous case-law) stated that damage as a statutory element to benefit a creditor represents the difference between the amount that would satisfy the beneficiary's claim and the amount that would have accrued to the creditor in a proportionate and even bankruptcy settlement, because this is precisely the amount that the other creditors have suffered. In this particular case, however, (as is apparent from its argumentation), the court of appeal failed to adopt this approach because, just as the court of first instance, it automatically considered the entire amount the accused (as executive of the company in bankruptcy) paid to preferential creditors to be the damages. However, the conclusion of the court of appeal on the amount of the consequential damages is ultimately correct, in the view of the Supreme Court, because the evidence produced showed that the company's bankruptcy settlement would not even result (at the time of the courts' decision-making in this criminal case insolvency proceedings for the company had not yet been completed) in the full settlement of claims against the assets within the meaning of Sections 168 and 169 of the Insolvency Act. Consequently, due to the lack of funds belonging to bankrupt's estate and the amount of preferential receivables, the preferential creditors would receive nothing from the bankruptcy settlement of the company. The court dealing with an appeal on a point of law therefore concluded that the damage caused by the offence to the preferential creditor under Section 223 of the Criminal Code is considered to be the entire amount paid to preferential creditors at the expense of the other creditors of the debtor only if the creditors would not receive any payment from the debtor's assets under the relevant provisions of the Insolvency Act. In such a case, the fact that the courts did not take into account the principle of equal and proportionate satisfaction would not effect the calculation of the amount of the damages (see Decision No. 6/2005-III. Cr S Reports).

***Determining the correct legal qualification in the crime of forgery and alteration of money, if the perpetrator himself forged or altered money with the intention of passing it off as genuine or valid or as having a higher value and actually passing it off as such***

Supreme Court ruling of 12 August 2015, file no. **5 Tdo 884/2015,** published under No. 22/2017 Cr S Reports In this case, the court dealing with an appeal on a point of law addressed the question how to assess the conduct of the accused in relation to the provision of Section 233 (2) of the Criminal Code. This provision is a so-called complex factual matter involving alternatively two different acts: a) the offender forges or alters money (intending to pass it off as true or valid or as money of a higher value) b) the offender passes off forged or altered money as valid or as money of a higher value). The Supreme Court stated that to accomplish the crime of forging and altering money under Section 233 (2) (1) of the Criminal Code, it is sufficient if the offender - with the intention of passing off forged or altered money as genuine - produces counterfeit money or alters real money. And the subsequent conduct of the perpetrator, by which this forged or altered money is passed off as genuine can not be assessed under Section 233 (2) (2) of the Criminal Code, because it merely implements the intention to pass it off as genuine, which the perpetrator already had at the time of the forgery or alteration. The legal qualification of this passing off as a criminal offence under Section 233 (2) (2) of the Criminal Code would only arise if the person who passes off the money is different from the person who forged or altered it. Therefore, the fact that the perpetrator subsequently handles the forged or altered money is not relevant in terms of his criminal liability, but can only be relevant for an assessment of the nature and gravity of his offence within the meaning of Section 39 (1)

and (2) of the Criminal Code, i.e. on the type and severity of the penalty imposed in response to the crime committed.

***Interpretation of when the possession of "ammunition in a larger amount" does not constitute the crime of unlicensed arming***

Supreme Court ruling of 21 April 2016, file no. **11 Tdo 1620/2015,** published under No. 24/2017 Cr S Reports. In its judgment, the Supreme Court (unlike the lower courts) took the view that a total of eight 6.35 mm cartridges (i.e. low-grade pistol ammunition) do not constitute "ammunition in a larger amount" Section 279 (1) CrC (the crime of unlicensed arming). The court of first instance and the court of appeal have dealt with this question in detail, but their reasoning was found by the court dealing with an appeal on a point of law to be incorrect and unconvincing. Given that the law does not define a specific limit for the amount of ammunition that can be considered "larger" within the meaning of Section 279 (1) CrC, these courts based their claims on the type, effectiveness and number of cartridges possessed, and on the basis of those characteristics they concluded that the ammunition was capable of posing a comparable degree of danger as a single firearm. The Supreme Court stated that although the criterion and the viewpoint are correct and based on expert literature, the Supreme Court itself did not agree with the assessment of this criterion from the aforementioned viewpoints. Above all, the fact that, in the case under review, the ammunition is for a handgun, which is generally less powerful than ammunition for long weapons, such as hunting rifles and military weapons in particular, such as grenade launchers, anti-tank weapons, etc., should be taken into account. In addition 6.35 mm calibre cartridges are among the less powerful handgun bullets. Given its low targeting efficacy, the professional literature on marksmanship considers this ammunition to be unsuitable for defensive purposes. The Supreme Court is therefore of the opinion that possession of eight rounds of that calibre of ammunition does not constitute ammunition in a larger amount. It was not capable of producing a comparable degree of danger as possession of a single firearm. As a consequence of a lack of elements of the crime, this offence can not be a criminal offence, but only a misdeanour under Section 76 (1) a) of Act No. 119/2002 Coll., as amended. The court of first instance should therefore have referred the matter to the competent authority for the purpose of hearing the act as a misdemeanour. If the court of first instance did not do so, this deficiency should have been corrected by the court of appeal.

***Interpretation of the legal requirements for the recognition and enforcement of foreign decisions in terms of the amount of pecuniary performance imposed for the commission of a crime***

Judgment of the Supreme Court of 18. October 2016, file no. **11 Tz 54/2016,** published under No. 25/2017 Cr S Reports, deals with the interpretation of the legal requirements for the recognition and enforcement of foreign decisions regulated in Section 5 (1), Section 266 (1) and Section 267 (1) e), (3) c) of the Act on International Cooperation on Judicial Matters. In this decision, the Supreme Court dealt with two fundamental legal issues, the solution of which was then reflected in two published legal recitals. The first question was whether, in the case





of the cumulation of grounds for recognition of a foreign decision, the limit laid down in Section 267 (1) f) of the AICJM (according to which the imposition of a pecuniary penalty or other performance can not be considered to be eligible if it is less than EUR 70) for each of the decisions concerned or whether the EUR 70 limit can be achieved by their mutual cumulation. The Supreme Court concluded that, in the case of a request from another Member State of the European Union to recognise and enforce a decision imposing a pecuniary sanction or other monetary benefit in the territory of the Czech Republic, such an application must be assessed in a comprehensive manner, where the option of excluding the trivial cases referred to in Section 267 (1) of the AICJM must be applied, although it is sufficient if the required limit of EUR 70 is met in at least one of the obligations imposed on the accused (this will be the case, for example, of the imposition of a financial penalty for an unlawful act and a subsequent decision to require that the costs of the proceedings be paid, or a decision to compensate the victim of the crime for which the person was charged with a financial penalty). In addition, the Supreme Court dealt with the assessment of whether the condition of reciprocal culpability of the act referred to in Section 268 (2) of the AICJM had been met, stating that the court is not limited solely to the facts of a judgment in another Member State but is obliged to rely on all obvious circumstances of the offence, irrespective of whether they appear in the operative part of the decision or in its statement of reasons.

***Proceedings on necessary defence do not require that the principle of "subsidiarity" by met, i.e. that the attack could otherwise have been averted. Therefore a victim who injured his attacker when escaping from a confined space in which his personal freedom had been unlawfully restricted is not guilty of the crime of bodily harm.***

Supreme Court ruling of 21 April 2016, file no. **4 Tdo 443/2016,** published under No. 26/2017 Cr S Reports deals with the assessment of the accused's conduct as an act carried out in necessary defence within the meaning of Section 29 CrC. The accused was found guilty by the court of first instance of an offence under Section 146 (1) of the Criminal Code, which he had committed following a mutual verbal argument in an area where there was a row of garages, when the injured party ran in front of the garage and held the garage door which the accused suddenly opened, hitting the latch of the door against the injured party's face, resulting in his injury, and when the injured party fell to the ground in front of the garage, the accused hit him with at least two punches into his face. In the appeal on a point of law, the Supreme Court took the opposite view when it came to the conclusion that the indisputable initiator of the conflict was the injured party, who, according to his statement, intended to inform the accused of certain facts concerning family relations arising from a previous communication. It was for that reason (despite the ingestion of at least five twelve-degree beers), that he arrived by car at the accused's garage. In the end he ignored repetitive verbal warnings by the accused to stop his unlawful conduct and leave the garage which he had entered against the will of the accused, its owner. When the injured party realised that the accused had no interest in resolving the conflict by a physical skirmish, he shut the accused in the garage and forcefully prevented him from

leaving by holding the door closed, hoping to provoke him to fight. This was a clear attack by the injured party on interests protected by the Criminal Code when he disrupted the freedom of movement of the accused by shutting him in the garage, while at the same time threatening to cause damage to the accused's property, i.e. by burning his vehicle standing in front of the garage. The accused, in order to prevent the injured party from interfering with his freedom of movement and to protect his property, used approximately the same strength as the injured party in order to open the garage door as a counter-reaction his illegal imprisonment. His defence can not, therefore, be regarded as manifestly inappropriate, as the court of first instance has held, without justifying its conclusions, but on the contrary as adequate and at the same time using reasonable means. The Supreme Court rejected the conclusion of both the lower courts that the attack by the injured party at the moment the door was suddenly opened by the accused, died down and did not continue, and that the accused had used excessive force i.e. a deviation from the plea of necessary defence, as clearly wrong. The injured party knew that the accused was trying to get out of the garage, yet he still held the gate closed to prevent it. The injured party's behaviour was therefore unquestionably unlawful at the time he illegally restricted the personal freedom of the accused. The only possible way for the accused to get out of the garage, that could be considered in the given situation, was to quickly open the door, which the accused eventually did. If the injured party was preventing the accused from leaving the garage, he also had to assume that it he was standing behind the door with the latch, which the accused had broken, that logically the door could open and hit him in the face. The appeal court, beyond the legal requirements, restricted the conditions under which it was possible to act in necessary defence when it concluded that the conduct of the injured party did not entitle the accused to behave as he did as he could have waited for the injured party to leave. The requirement to comply with the so-called principle of subsidiarity - that is to say that the attack could otherwise have been averted - can not be demanded in a case of necessary defence, so the above mentioned conclusion of the Court of Appeal can be described as unfounded resulting in the creation of an error of law in the present case within the meaning of Section 265b (1) g) CrPR. It would be a misunderstanding of the need for the principle of necessary defence if a defender wishing to defend his interests was required to wait until the conclusion of an immediate or persistent threat of attack from an assailant. No one is obliged to retreat from an unauthorized attack on an interest protected by the Criminal Code Consequently, the court deciding on an appeal on a point of law found that the accused could not commit the offence of bodily harm under Section 146 (1) of the Criminal Code in the manner described in the recital to the statement of the judgment of conviction, since his conduct lacks the element of unlawfulness and social harm, given the fact that reasonable means were used to defend against the unlawful attack by the injured party, consisting of closing the accused in the garage by holding closed the doors (i.e. restricting his personal freedom, while at the same time threatening to damage his vehicle by burning him) to which the accused responded using a similar force to that used by the injured party, breaking down the door, which caused the injured party to be hit in the face and injured, without exceeding the limits of necessary defence within the meaning of Section 29 (1), (2)





CrC, as the attack by the injured party persisted and the defence by the accused was not clearly manifestly disproportionate to the method by which he was attacked by the injured party. Any exceeding of the conditions for necessary defence could only be considered in relation to the behaviour of the accused, who after opening the garage doors punched the injured party, who was lying on the ground, in the face with his fists, but this excess could still not qualify as the offence of bodily harm under Section 146 (1) CrC Because the injury had been caused to the injured party by the previous blow from the door.

***Interpretation of when an unlawful act by a natural person is and is not attributable to a legal entity in terms of their criminal liability***

Supreme Court ruling of 27 September 2016, file no. **8 Tdo 972/2016,** published under No. 29/2017 Cr S Reports the Supreme Court is dealing with some aspects of criminal liability of legal entities in this decision. Its first conclusion is that in order to establish the criminal liability of a legal person for a specific offence, it is not enough for the offence to be omitted from the exceptions listed in Section 7 of Act No. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against them (hereinafter referred to as "CLLEP") and that the unlawful act was committed by the natural person mentioned in Section 8 (1) of the CLLEP in the interest of a legal entity or within the scope of its activity, but only one of these alternatively established negotiating relations would suffice. Such an act must be attributable to a legal entity under Section 8 (2) of the CLLEP, which in addition to the above means that it concerns conduct by a natural person, which also comprises in its scope and purpose the outward conduct of a legal entity. Another conclusion is that a criminal act can not be attributed to a legal entity within the meaning of Section 8 (2) of the CLLEP if a natural person has committed an offence in the course of the activity of a legal entity but at the expense of that legal entity. In such a case, while it is true that a legal entity is generally responsible for the choice of natural persons authorized to act for it, if the legal entity has been misused in order for a natural person acting on its behalf to commit a criminal offence, it is generally not possible to infer that this legal entity has also committed the criminal offence.

***Possibility of reading reports on the testimony of defendants, witnesses and experts made in an earlier trial which will have to be retried***

Supreme Court ruling of 29 March 2017, file no. **7 Tdo 249/2017,** published under No. 30/2017 Cr S Reports, in which the Supreme Court expressed its views on the procedural issue of the applicability of the testimony of the accused, witnesses and experts made in the main trial, which was subject to a substantial organisational fault, which resulted in a retrial. The Supreme Court concluded that if the main trial had to be re-tried only because it had been presided over by a single judge, although it should, according to Section 314a (2) CrPR, have been held under a panel due to the need to impose a collective penalty in relation to the sentence imposed in the proceedings before a panel, earlier statements from the record of the main proceedings held before a single judge could be read through and used to decide on the case, provided the conditions set out in Section 207 (2), Section 211 (1), Sec-

tion 211 (2) a), Section 211 (3), Section 211 (4) and Section 211 (5) CrPR were met.

***On when it is not possible to infer the criminal liability of a legal entity for the conduct of a natural person whose identity has not been established***

Supreme Court ruling of 29 June 2016, file no. **5 Tdo 784/2016,** published under No. 34/2017 Cr S Reports, refers to the criminal liability of legal entities, namely the attribution of the act to a legal entity. The essence of the legal position expressed in this decision is that the criminal liability of a legal entity is not excluded even if it is clear that a natural person has committed an infringement, regardless of whether this has been established, provided there is an undisputed conclusion that such natural person acted in the interest of a legal entity or that he so acted within the course of its activity in a position required by Section 8 (1) a) to d) of Act No. 418/2011 Coll., on Criminal Liability of and Proceedings against Legal Entities, as amended ("CLLEP ") and that, therefore, the commission of a criminal offence can be attributed to a legal entity within the meaning of Section 8 (2) of the CLLEP. At the same time, however, the Supreme Court stated that these conditions would not be met if the lower courts made a factual finding that the act by which a certain natural person could establish the criminal liability of a legal entity was not proven, or if, in relation to such a natural person, the courts were not able to ascertain whether and how he acted.

***The crime of fraud can be committed by eliciting a price for a certain performance that includes value added tax, although the person providing the performance is not registered for this tax***

Supreme Court ruling of 15 February 2017, file no. **8 Tdo 1601/2016,** published under No. 38/2017 Cr S Reports In this case, the Supreme Court assessed the lower grade courts as the unlawful conduct of the accused who, knowing that his trading company for which he acted, was not a taxpayer of value added tax ('VAT'), the bearer was in error by charging them the cost of chartering the parking space plus VAT, and thus acted according to the rate laid down by law for a particular period. In order to enrich himself, the accused abused the instruments of tax law because, although he was not a VAT payer, he issued tax documents as if he were a payer (or as if the company represented were), in full accordance with the method laid down for actual payers. The accused alleged the non-existent fact that he was a VAT payer on invoices and other contractual or tax documents, which meant that the tenants paid a higher price for car park rental than the price without VAT. The accused has enriched the company he acted for through these actions. For these reasons, therefore, the accused who acted deliberately with the intent to produce the above-mentioned result fulfilled the subjective requirement of direct intention under Section 15 (1) a) CrC and the other features of the offence of fraud under Section 209 (1), (3) of the CrC. The amount corresponding to the value added tax charged by the perpetrator is to be considered as damage incurred. From the point of view of the occurrence and extent of the damage, it is irrelevant whether and with what result the injured parties, as taxpayers, applied





to their tax offices for deduction of the value added tax (although this finding was claimed by the accused), because the crime of fraud under Section 209 of the Criminal Code was completed at the time when the injured parties wrongly paid the price including the additional value added tax. The damage in each partial attack represents the amount expressed by the formulation "for the purposes of criminal proceedings" and is similarly determined for each of the attacks, with the assumption that it arose for each entity that concluded a lease agreement, i.e. for each specific injured party, at the time the price was set and subsequently paid, irrespective of whether the injured party was forced to refund the amount of VAT to the tax office as part of his tax liability. Therefore, it was not decisive whether at the time of the decision on this matter the injured parties declared VAT to the tax office in their tax returns and whether they were subsequently forced to repay VAT (as well as default interest). The damage arising to all the injured parties from the behaviour of the accused occurred on the day they paid the accused the price plus the VAT stated in the documents.

***On whether acts of individual spouses that affect their property held as joint property of the spouses resulting in only one of the spouses is a debtor constitutes the offence of causing harm to a creditor or causing harm to a foreign creditor***

Judgment of the Supreme Court of 22. March 2017, file no. **5 Tdo 1249/2016,** published under No. 40/2017 Cr S Reports By this decision, the Supreme Court found that a married couple had committed the crime of causing harm to a creditor under Section 256 (1) (a), (2) (a); a), paragraph 4 of Act No. 140/1961 Coll., the Criminal Code, as amended (hereinafter referred to as "CrC"), a crime accomplished and a crime attempted, pursuant to Section 8 (1) CrC, committed in complicity pursuant to Section 9 (2) CrC. the Supreme Court did so in contrast to the lower courts, which only assessed the conduct of those accused only under Section 256 (1), (4) CrC, but not according to Section 256 (2) Crc. The court dealing with an appeal of a point of law stated that the substance of the offence of causing harm to a creditor under Section 256 CrC. was the harmful behaviour as it related to creditors' property and the objective aspect covered two types of behaviour, which separately achieve the basic facts of the offence: (a) harm to the creditor's own person - conduct by the debtor himself (Section 256 (1) of the Criminal Code) and (b) harm to the a foreign creditor - conduct by a person other than the debtor (Section 256 (2) of the Criminal Code). In the case of debts belonging to the joint property of the spouses, but negotiated only by one of the spouses, in relation to the facts of the offence the harm caused to the creditor pursuant to Section 256 (1) and (2) CrC. it can be stated that if the spouse of the debtor who has entered into an arrangement has frustrated the satisfaction of the spouse's creditor by destroying, damaging, concealing, alienating or eliminating part of the property belonging to the joint property of the spouses (under Act No. 40/1964 Coll., the Civil Code, in the wording in force until 31 December 2013), this criminal offence can not be classified as frustrating the satisfaction of a creditor under Section 256 (1) CrC (or pursuant to Section 222 (1) of the Criminal Code), but only as a frustration of the satisfaction of the creditor of another person under Section 256 (2) CrC (or pursuant to Section 222 (2) of the Criminal Code). The opposite

conclusion would not co respond to the settled civil case law of the Supreme Court. If, on the basis of that case-law, the creditor can not, in the proceedings in the main proceedings, recover a debt belonging to the joint property of the spouses but negotiated by only one of the spouses from other spouse, it can not be inferred from the same that that other spouse is causing harm to the creditor if he destroys, damages, conceals, alienates or eliminates part of the property belonging to the common property of the spouses. These conclusions apply by analogy in cases where the reason for a binding legal relationship is also a fact other than a contract, such as a tax or customs obligation. The Supreme Court stated that it is clear from the review of receivables in the given criminal case that certain claims (which are specified in the decision) both of the accused appear as debtors. In relation to these claims, the actions of the accused can therefore be classified as harm caused to a creditor under Section 256 (1) a) CrC (frustrating the satisfaction of your creditor) On the other hand, other receivables were only receivable exclusively for one or other accused, so it is true that the conduct of the other spouse, that is, the person who does not have the status of the debtor in the obligation relationship, can only be classified as damage to the creditor under Section 256 (2) a) CrC. (frustrating the satisfaction of the creditor of another person). The Supreme Court, in its decision based on this assessment, basically assumed one of the recitals from the verdict of the court of appeal, in that it again distinguished with respect to individual receivables which of the accused was in the position of debtor in relation to the creditors or whether both the accused were in that position, and, in accordance with that distinction, adjusted the legal characterisation of their conduct in such a way as to correspond to that distinction. At the same time, the Supreme Court, in accordance with its settled case-law, assessed the actions of the accused as accomplices under Section 9 (2) CrC.

***On a dactyloscopic trace as indirect evidence and its probative value; the possibility of imposing a more severe punishment in the sentence than was imposed in the criminal injunction, which was annulled as a result of an appeal filed only by the accused***

Supreme Court ruling of 21 September 2016, file no. **5 Tdo 1207/2016,** published under No. 46/2017 Cr S Reports, deals primarily with two procedural issues. The Supreme Court addressed the nature of the dactyloscopic trace as evidence and concluded that the finding of a dactyloscopic trace belonging to the accused constituted indirect evidence and, therefore, if it was not direct evidence, it had to be supplemented by other indirect evidence which in its entirety constituted a logical, undisturbed and a closed set of indirect evidence complementary to one another. Furthermore, the Supreme Court dealt with the prohibition of *reformationis in peius* (prohibition of amending a decision against the accused to a worse one) if, under Section 314g (2) CrPR an appeal had been lodged duly and promptly against the criminal, the criminal order was annulled and the judge plaintiff ordered that the case be tried in main proceedings. In this case, when the case is dealt with in main proceedings, the single judge is not bound by the legal qualification or the type and extent of the punishment contained in the criminal injunction, the principle of the prohibition of *reformationis in peius* is not generally applicable here, but imposing a more severe punishment can not be based on arbitrariness of the court and must reflect the facts as found. The imposition of a stricter punishment must therefore have a basis in the established factual situation and must be sufficiently justified by the court (Section 125 (1) CrPR).

***Although the injured party used civil law remedies to redress the mischief done, the principle of subsidiarity of criminal repression does not exclude criminal liability being imposed on the person who caused the mischief by committing the crime***

Supreme Court ruling of 10 August 2016, file no. **8 Tdo 803/2016,** published under No. 50/2017 Cr S Reports, resolves the question of the subsidiarity of criminal prosecution, i.e. whether the standards of commercial law are sufficient for the accused to be held accountable and whether the civil-law instruments that have been used are sufficient and therefore whether or not criminal prosecution is excluded in the case of the accused. The accused in the appeal on a point of law (as well as in the appeal and also before the court of first instance) has demanded impunity given that his case is a typical case in which it is sufficient to apply the standards of commercial law to hold the accused accountable and criminal prosecution is excluded because the civil-law instruments used were quite sufficient as the injured company had applied them to obtain the release of its vehicles and semi-trailers. The criminal activity of the accused consisted of unauthorized transcription of several lorries and semitrailers in the motor vehicle records of the business company of which he was the manager and the unauthorized inclusion of these vehicles and semi-trailers in the company's assets, contrary to the agreements concluded with the owner, that is, with the injured leasing company. The Supreme Court considered the conclusions of the courts of both levels, which found against the accused, as correct, emphasising that the principle of subsidiarity of criminal prosecution (criminal sanction as a means of "ultima ratio") within the meaning of Section 12 (2) CrC can not be interpreted as excluding criminal liability if the injured party or another beneficiary against whom the offence was committed has sought or is seeking remedy against an offence under civil law, i.e. applying another kind of liability for the infringement, such as civil liability, in parallel. Consequently, the court of appeal concluded that the simultaneous application of criminal liability together with other types of liability can not be ruled out if the perpetrator deliberately misuses the civil law means for personal enrichment or to secure other benefits to the detriment of the entitled person by causing damage or other injury. Criminal liability would only be ruled out in situations where the application of another type of liability could be achieved by meeting all liability functions, i.e. fulfilling the reparative and preventive objective, while repressive function is not necessary in the given case. In this case, it was found that the accused knew all the necessary facts from the outset, and in particular that the vehicles and semi-trailers he leased were the property of the leasing companies and not his own. The futile repeated attempts by the owner to force performance by the accused finally resulted in the filing of a lawsuit for the release of the vehicles, which was approved and the relevant judgment became legally effective (after the appeals procedure, while the subsequent appeal proce-

dure on a point of law did not produce a different result) . Despite the owner's unsuccessful efforts, the accused did not return the vehicles and, as shown by the number of kilometres travelled by these vehicles, he continued to use them and the owner only , even despite these unsuccessful efforts of the owner, did not return the motor vehicles, but on the contrary he used them on the basis of the number of kilometres travelled on these vehicles, and the owner only recovered them after execution had been ordered. This was not simply an ordinary legal dispute based on commercial law relations and resolvable civil law means, but a serious crime. The seriousness of the accused's action lies, among other things, in the fact that it objectively prevented the owner from using motor vehicles for more than two years from the appeal for their return for non-performance of the contract and for at least one year after the judicial decisions had taken effect, even though the accused's objective was personal enrichment at the expense of entitled persons. Even though a number of civil courts decided the case, the accused failed to fulfil his duty. In was only after completion of the most severe of the possible civil law procedures - execution - that the leased assets illegally appropriated by the accused were finally retrieved. However, this took an exceedingly long time, during criminal proceedings that were already ongoing, and the vehicles restored to the injured party were , so that the damaged motor vehicles were restored to their owner in a used state and representing a significant financial loss.

***To meet the legal requirements for the crime of favouring creditors pursuant to Section 223 of the Criminal Code, the amount by which a particular creditor is favoured is decisive, not the number of other creditors or the amount of their claims***

Supreme Court ruling of 24 August 2016, file no. **5 Tdo 66/2016,** published under No. 51/2017 CR S Reports. In this matter, the Supreme Court granted the appeal on a point of law to the two defendants and set aside the conviction of the court of first instance and the decision of the appellate court which dismissed the appeal filed by the accused as unjustified. The accused were blamed for having, as members of the board of directors of the joint stock company (A), intentionally removed all tangible and intangible assets from this company for the benefit of another joint stock company (B) in which one of the accused was the chairman of the board of directors. The transfer of assets was to take place on the basis of a framework purchase agreement and settlement agreement, with the accused thereby intentionally causing harm to a total of 36 creditors with a total loss of CZK 4,773,091, thereby committing the offence of favouritism to a creditor under Section 223 (1), (2) CrC, committed in the form of complicity pursuant to Section 23 CrC. The court deciding on an appeal on a point of law stated that the recital of the guilty verdict by the court of first instance lacked any statement of the essential facts, in what amount and in what way did the creditor benefit - i.e. the joint stock company B, to which the property was to be transferred. This was probably the result of the fact that the indictment at the trial of the defendants was initially regarded as a completely different offence, the features of which, according to the court of first instance, were not fulfilled. There has therefore been a shift in the criminal qualification of the charge of the accused, which has not been





adequately addressed in the facts and description of the act, which only contains the circumstances concerning the transfer of assets, property rights and other assets of the limited liability company A and also includes the list of the injured parties and the damage caused. However, the amount of the share capital that would accrue to company B, as a preferential creditor of the limited liability company A, when applying the principle of proportional and even settlement, or how much this amount would exceed the actual performance based on the framework purchase contract and the settlement agreement, in other words, the amount by which the lender actually benefited can not be inferred from the recitals of the judgment of the court of first instance. The Supreme Court affirmed the claimants' argument that the recital of the verdict of the court of first instance suffers from a material defect, since it does not contain one of the basic legal elements of the criminal act of showing favouritism to a creditor with which the accused was charged, that is the description of the advantage gained by the creditor. Thus, in order to fulfil the legal elements of the criminal offence of favouritism to a creditor pursuant to Section 223 CrC, the amount of the benefit accruing to a particular creditor is decisive, not the number of other creditors and the amount of their debts, since these circumstances are not a feature of the given crime. The harmful consequences are the amount that was not given to the other creditors after the favouritism shown to a particular creditor. However, the number of creditors and the amount of their claims is indirectly reflected in the amount of the damages, since the total amount of the debt can only be determined and how much of it would be paid through a proportionate and equal settlement to the individual creditors when all the debtor's claims have been calculated. This will also be implicitly projected into the response to the question of how much the particular creditor benefited and, therefore, how great is the damage as an element of the crime under consideration (see Decision No. 6/2005-III. Cr S Reports).

***With respect to the accusatorial principle, the appellate court may not require that the group of persons accused be expanded to include another person***

Judgment of the Supreme Court of 18 January 2017, file no. **3 Tz 49/2016,** published under No. 53/2017 Cr S Reports, in which the Supreme Court, in response to a complaint for violation of the law, dealt with an interesting procedural issue concerning the extraordinary procedure of the appeal court pursuant to Section 260 CrC, under which the case was ordered to be returned to the preparatory stage because, according to the appellate court, the court could not continue the proceedings before the court for irreparable procedural defects and there was no reason for another decision. The court of appeal in this case returned the matter to the prosecutor for additional investigation in accordance with the procedure set out in Section 260 CrPR, on the basis that the judgment of the court of first instance suffered from a material procedural defect within the meaning of Section 258 (1) a) CrPR, consisting of the fact that the number of the accused in the case had to be extended to include additional persons. The Supreme Court clearly stated that such a procedure was contrary to the principle of indictment. Due to the fact that the Supreme Court pronounced the violation of the law only in favour of the accused, it limited itself in the decision to a so-called academic

pronouncement pursuant to Section 268 (2) CrPR, without being able to annul the contested decision or the previous proceedings pursuant to Section 269 (2) CrPR.

### 2. 4. 4. 4. Some interesting decisions not published in the Reports of Cases and Opinions

In 2017, the Chambers of the Criminal Court also made some other interesting decisions that were not published for various reasons in the Reports of Cases and Opinions. Of these, the following are of interest.

***The nature of the facts of the crime of infringement of trademark rights and other designations; meeting the requirements of the offence of unlawful business activities through the organisation of mail-order sales of medicinal products; the possibility of a joinder of the offences of unauthorised business activities and infringement of trademark rights and other designations; the characteristics of instigating another to commit a criminal offence with so-called dual intent; determining the correct procedure for imposing a pecuniary penalty***

Supreme Court ruling of 3 May 2017, file no. **5 Tdo 213/2017,** 5 Tdo 213/2017, is a voluminous decision dealing with the issue of several different provisions of the Criminal Code. This judgment created case law containing five recitals and the Criminal Division of the Supreme Court, at its meeting on 13 September 2017 approved the decision for publication in the Reports of Cases and Opinions of the Supreme Court, which will be published in 2018 and will become important case law unifying judicial practice. The recitals address the following issues: I. I. The facts of the offence of infringement of trademarks rights and other designations, pursuant to Section 268 paragraph 1 of the Criminal Code has a so-called "blanket" disposition, because the criminality of the conduct here is conditioned by violation of Act No. 441/2003 Coll., on Trademarks, as amended, which the Criminal Code directly invokes. In the so-called recital of the verdict, a general reference to the provisions of Section 8 of the cited law, which should have been infringed by the actions of the accused, is not sufficient, since this provision in paragraph 2 (a) to (c) and (3) (a) to (d) contains more options of behaviour infringing on trade mark rights, and the one that was actually engaged in in the specific case would have to be selected in order to make clear what specific behaviour the defendant is accused of and the violation of which standards. II. The elements of the offence of unauthorized business activities under Section 251 CrC can be fulfilled by the perpetrator by the fact that he enables the dispensation of medicinal products not intended for such dispensation as a person not authorized to do so pursuant to Section 85 (1) of Act No. 378/2007 Coll., on Drugs and Amendments to Certain Related Acts, as amended, or, which are not even authorised to be sold in the Czech Republic within the meaning of Section 25 (1) of the cited law. III. A joinder of the criminal activities of unauthorized business activities under Section 251 CrC and infringement of trademark rights and other designations pursuant to Section 268 CrC is not excluded even if the person charged with the same act, unauthorised, organises mail-order sales of this type of product containing active substances, which are counterfeits of genuine medicinal products. IV. Instigation to a criminal offence under Section 24 (1) b) CrC must entail behaviour with a so-called dual intent, that is to say the perpetrator's intent must relate to his own action, consisting of instigating another to decide to commit a criminal offence and, also the behaviour of the another, namely, the solicited (by the principal) perpetrator, who must fulfil the elements of an intentional crime or its attempt.. In both cases, culpability in the form of an indirect intention is sufficient. The factual conclusions regarding the accusation (in addition to other features of both the relevant form of participation and the crime committed by the principal perpetrator) must follow from the recital of the judgment and must be duly substantiated. This is particularly true if the principal perpetrator, against whom the prosecution has been conditionally suspended, has not also been found guilty in the same judgment. V. A pecuniary penalty is measured in so-called daily rates, in two separate stages. First, in accordance with the criteria set out in Section 68 (3) CrC, the number of daily rates must be calculated and subsequently their amount is determined, in statutory ranges pursuant to Section 68 (1) and (2) CrC. The total value of the pecuniary penalty is then calculated as the product (multiplication) of the values thus determined. In the light of the above-mentioned legal criteria, the procedure by which the court has reached these individual values (the number and amount of daily rates), must be properly explained in the justification of the judgment in a manner that does not raise any doubt. On the other hand, any different procedure followed by the court, which first sets out the total amount of the penalty and then divides it into daily rates would be inaccurate and inadmissible.





***Assessing the extent of culpability in the offence of the unlawful obtaining, forgery and alteration of a means of payment achieved by the use of a so-called "skimming" device installed in ATMs***

The resolution of the Supreme Court Grand Panel of 24 May 2017, file no. **15 Tdo 1491/2016,** is also a far-reaching decision that will become an important piece of case-law unifying court practice. Again, a detailed recital was created from this decision, consisting of several parts that relate to the offence of unlawful obtaining, forgery and alteration of means of payment pursuant to Article 234 (1), (2), (3), (4) b), (5) b) CrC. the Supreme Court Criminal Division has already approved this decision at its meeting on 25 October 2017 for publication in the Supreme Court's Reports of Cases and Opinions and will be published in 2018. Its recitals are: In the case of the offence of unlawful obtaining, forgery and alteration of a means of payment pursuant to Section 234 (3) (1) CrC, which has been committed through the use of devices for collecting, storing and transferring data from payment cards (so-called skimmers), the question is whether this act was committed "in a considerable extent" [Section 234 (4) b) CrC] or "in a large extent" [Section 234 (5) b) CrC], and should always be assessed on the basis of a wider range of criteria, according to the specific circumstances of the case. The basic criterion is the number of forged or altered means of payment , but this does not completely cover the concepts of "a considerable extent" or "a large extent". Taking into account the stage of the offence as in the preparation, attempt and completion of a criminal offence, or whether it was committed as a continuation within the meaning of Section 116 CrC, other criteria include, in particular: the amount

of data found to create means of payment using the so-called skimmer or other means for forging or altering the means of payment , the number of forged or altered means of payment used in ATMs or for payment in shops, restaurants etc., the damage caused to property by their use, the number of so-called skimmers or other instruments, objects, computer programs and other means for forging or alteration of the means of payment used, including the extent and duration of their use, the number of banking entities against whose accounts these forged or altered means of payment were used, the territorial scope of the use of forged or altered means of payment, as well as the so-called skimmers or other means used to forge or alter means of payment, including the territory of other States and the number of such States, the duration of the forging and alteration of means of payment and their subsequent use (including the preparatory phase) and the fact that the criminal activity was terminated by the perpetrators' own decision or through intervention by the law enforcement authorities, the expectation of the perpetrators' future behaviour and the degree of the future threat to the operation of the cashless payment system. According to these criteria, to meet the requirement of "considerable extent" a large amount of information generally has to be obtained on the means of payment and, following on from this, dozens of forged of altered means of payment and dozens of unauthorised transactions. To meet the requirement of "a large extent", there must be hundreds of such cases. It is therefore not possible to rely solely on the amount of damage caused or intended by the use of forged or altered means of payment, which can usually be described in concurrence with a criminal offence under Section 209 CrC . (including particularly aggravating circumstances involving a greater, considerable or large extent of damage). This distinction between whether the offence has been committed to a considerable extent or a large extent corresponds to the fact that it would be sufficient to counterfeit or modify even a single means of payment in order to fulfil the basic elements of the offence of unlawful obtaining, forgery and alteration of a means of payment under Section 234 (3) CrC. Compared to committing the crime to a considerable extent, it must therefore, in the case of a large extent, be several times larger, in particular in terms of the number of forged or altered or used means of payment, even taking into account the extent of the actions or operations carried out. All of the decisive criteria mentioned above, however, interact with one another, which means that one of them can be offset to a lesser (less intensive) extent by fulfilling one of the other criteria. In order to conclude on the existence of the appropriate scale of the offence committed, not all the above criteria have to be fulfilled with the same intensity. These conclusions regarding the considerable or large extent of the offence committed shall be applied mutatis mutandis to other alternatives to the offence of unlawful obtaining, forgery and alteration of a means of payment under Section 234 (1), (2) and (3) CrC.

***The unlawful nature of prohibitions on wiretapping and recording of telecommunications traffic is not only based on the fact that their justification was relatively brief***

Judgment of the Supreme Court of 7. June 2017, file no. **6 Tz 3/2017** is special, inter alia, by the fact that the Supreme Court decided, on the basis of a complaint for violation of the law submitted by the Minister of





Justice, to the detriment of a total of eleven defendants in a case which had not yet been finally decided. In proceedings before the decision-making of the Supreme Court, the court of first instance first concluded that the individual accused were guilty of the criminal offences and imposed sentences of imprisonment or other sentences (two judgments). The court of appeal subsequently annulled these rulings by on the basis of the appeals filed by the court of first instance and returned the case to it for a new hearing and decision because, in the view of the court of appeal, the guilt of all the accused was based on unlawful evidence, in particular obtained by wiretapping and permits to surveil people and things. The Minister of Justice disagreed with this decision of the appellate court and filed a complaint against it for a violation of the law. The Supreme Court, in its judgment in which it had ruled on a complaint filed for a violation of the law, concluded that the ruling of the court of appeal constituted a violation of the law, to the benefit of all eleven defendants. Different legal views were taken by individual courts, in particular, on the question of the lawfulness or illegality of the ordering and execution of wiretapping and recording of telecommunications traffic, and permission for the surveillance of persons and things, which were essential means of proof in this case. The Supreme Court therefore upheld the legal position taken in the complaint for a violation of the law

as well as in the judgment of the court of first instance, that all orders for wiretapping and recording telecommunication traffic, and permission for the surveillance of persons and things that the Court of Appeal found illegal because of their inadequate reasoning, were issued in accordance with the law.

## 2. 5. Special Panel established under Act No 131/2002 Coll., 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 does not form part of either of these courts.

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. The Special Panel determines which of the parties to the dispute is competent to deliver a decision.

In 2017, 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 David Havlík.

**Statistics of the Special Panel's cases in 2016 and 2017:**

| | Caseload | Decided in that year | Percent of that year's caseload | Pending as at 31 December |
|---|---|---|---|---|
| 2016 | 28 | 27 | 96 % | 20 |
| 2017 | 62 | 48 | 77 % | 35 |
| Total 2003–2017 | 1,172 | | | 35 |

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. 6. Recognition for Supreme Court Justices

Panel no. 29 of the Civil and Commercial Division of the Supreme Court, composed of Mr Filip Cileček (Presiding Judge), Mr Petr Šuk and Mr Jiří Zavázal received the Tribute to a Decision award at the 25th Karlovy Vary Juristic Days conference in June for their decision of 26 October 2016, published under file no. 29 Cdo 5036/2015, and addressing the issue of "the duty of due care", for an executive of a limited liability company. Split between the second and third place in the Author's prize category was Mr Michal Králík, Presiding Judge of the Civil and Commercial Division of the Supreme Court and author of the publication entitled *Civil and Criminal Accountability of Athletes for Sports Accidents*. The publication was produced by the Leges publishing house and is also exceptional because of its length, at 1,488 pages.

The Tribute to a Decision is awarded on the basis of a polling of the professional juristic public. The Author's prize is awarded each year on the basis of proposals (nominations) from prominent personalities in the field of law in the Czech and Slovak republics. A total of 199 experts vote on the nominations. The Karlovy Vary Juristic Days jury has the last say, which generally consists of simply confirming the nominations received.

On the occasion of the 25th conference, the Karlovy Vary Juristic Days society also recognised twenty important Czech law personalities for their personal contributions to the creation of legislation and legal consciousness. They included the President of the Supreme Court, Mr Pavel Šámal, Head of the Criminal Division, Mr František Púry, and Presiding Judge of the Civil and Commercial Division, Mr Zdeněk Krčmář.

On 10 November, the Association of Czech Lawyers (Jednota českých právníků) commemorated four prominent Czech lawyers at its traditional venue in the Prague Karolinum. Mr Vladimír Kůrka, Head of the Supreme Court Civil and Commercial Division, received the silver Antonín Randa medal from Mr Pavel Rychetský, President of the Constitutional Court and Chairman of the Association of Czech Lawyers for his lifetime contribution to legal theory and practice.

The celebrated professional award, which has been conferred since 1992, bears the name of the noted Czech lawyer and politician, Antonín Randa (1834–1914). Amongst other functions, he was a member of the Imperial Council House of Commons and a member of the Imperial Court in the former Austro-Hungarian Empire. He also served as Dean of the Faculty of Law at the Charles-Ferdinand University in Prague. After the separation of the university into Czech and German parts, he became rector of the Czech university.

The Lawyer of the Year is a prestigious nationwide competition of lawyers organised by the Czech Bar Association together with the EPRAVO.CZ publishing house. During a gala evening on February 3rd, the organisers introduced the long-standing President of the Supreme Court (3/2002 – 1/2015), Ms Iva Brožová, to the legal Hall of Fame. This distinguished accolade was awarded for her lifelong contribution to Czech law and principled position in the defence of judicial independence, also related to her dismissal as President of the Supreme Court by President Václav Klaus, which was subsequently repealed by the Constitutional Court. According to the long-term Supreme Court President, her award is confirmation that judicial independence is a value that is generally accepted.

As at the date of publication of the Supreme Court Yearbook 2017, the award-winning personalities for 2017 announced in the Lawyer of the Year competition at the end of January 2018 were already known. Mr Zdeněk Novotný, a former Presiding Judge in the Supreme Court Civil and Commercial Division and recognised expert in labour law, who, after reaching the age of 70 on 31 December 2017, retired from his position as Justice in accordance with Section 94 a) of Act No 6/2002 Coll., on Courts and Justices, was pronounced Lawyer of the Year in the Civil Law category. During his term of office at the Supreme Court from 1996, he was assigned almost 2,550 appeals on points of law to rule on as Presiding Judge. He is also well-known among judges and the legal public for his wide-ranging publishing and lecturing activities.

## 2. 7. Additional activities of Supreme Court Justices

In addition to the adjudicating and unifying efforts of the Supreme Court, its Justices were also involved in other specialist activities in 2017. These involved, in particular, law-making, training and publishing.

### 2. 7. 1. Law-making

In line with the Government's legislative rules the Supreme Court's Criminal Division actively contributes to comments on bills . They are required to be sent drafts of new legal norms regulating the activities of the Supreme Court, or which concern matters falling within its remit, as part of the inter-ministerial commentary procedure. More precisely, under the inter-ministerial commentary procedure, the Supreme Court is required to receive bills for comment, provided these bills relate to the jurisdiction of the Supreme Court, or the procedural rules governing it. Justices also helped to draw up some bills and amendments to laws directly, as the authors or co-authors of the respective bill.

### 2. 7. 2. Training of Justices and participation in professional examinations

Under Act No 6/2002 on Courts and Judges, as amended, Justices of the Supreme Court's Criminal Division 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 faculty of The Judicial Academy of the Slovak Republic. Some of the Criminal Division Justices also teach students of universities' or other higher education institutions' law schools as in-house or external teachers. Some are also members of scientific councils of higher education institutions, or of higher education institutions themselves. Nor do Criminal Division Justices neglect their participation in examinations of jurists, in particular justice and bar examinations.

### 2. 7. 3. Publications

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





## 2. 8. Administrative staff in the Judiciary Section

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

| Administrative staff for the Civil and Commercial Division | |
|---|---|
| Advisor | 1 |
| Supervisory clerk | 1 |
| Head of Office | 4 |
| Stenographer | 12 |
| Secretary of the Division | 1 |
| Referendary of the collection of decisions and standpoints | 1 |
| Total | 20 |

| Administrative staff for the Criminal Division | |
|---|---|
| Advisor | 3 |
| Supervisory clerk | 1 |
| Head of Office | 3 |
| Registry Clerk | 7 |
| Stenographer | 2 |
| Secretary of the Division | 1 |
| Referendary of the collection of decisions and standpoints | 1 |
| Total | 18 |

The court offices carry out professional and highly-qualified tasks, which require active knowledge of court records user programs and other IT systems. Administrative staff in the court offices works independently, according to the applicable legal regulations and Office Rules. The Head of the Court Office is responsible for the proper management of court records and court files. The supervisory clerk is responsible for running all the court offices in the Division.

## 2. 9. Court Agenda Section

The Section of the Court Agendas is also involved in ensuring the smooth running of the judiciary. The Registry and Evidence Department takes delivery of and records all paper and electronic documents sent to the Supreme Court, ensures delivery of documents sent from the Supreme Court and stores all completed Supreme Court files in the court registry archives. The applications manager ensures the smooth running and operation of IT systems and data processing processes. The Head of the Court Agenda Section manages and supervises the administrative work of the Judicial Section as a whole.





# 3. DOMESTIC AND INTERNATIONAL RELATIONS

## 3. 1. Report on the ECLI project (European Case Law Identifier), and Building on ECLI ("BO-ECLI")

The first task that was required at the beginning of 2017 was to update basic information on the function of the judicial system in the Czech Republic ,as well as the method of publishing decisions from the different courts. These modifications were sent in the form of comments on 19 January 2017. A report from Marc van Opijnen from the BO-ECLI headquarters and sent to the Supreme Court confirmed that the updates had been accepted and immediately incorporated into the system.

The main priority for the Supreme Court in 2017 in terms of the BO-ECLI project was to produce the outputs it had committed to. Back in September 2016, the Supreme Court had responded to a short questionnaire from the European Commission focusing on the progress made in implementing the project in relation to the outputs promised at its inception and the extent to which the Supreme Court assumes that the promises made will be carried out by project completion date on 31 March 2017, or 31 October 2017 by the extended deadline, or whether it expects some delay. At the same time, the Supreme Court has undertaken to meet the following key points:

- Participation of 10 regional/high courts (or their decisions) in the project
- Submission of 3,500 pieces of case law by regional and high courts to the Commission
- Ensure that an additional 6% decisions from these courts are submitted each year

In February 2017 the previous problems with the metadata for certain decisions were resolved, meaning that even decisions that had been gathered previously were successfully indexed. All the decisions submitted in the past have therefore been properly implemented and are all traceable through the ECLI Search Engine.[1]

Within the context of the objectives referred to above, we can state that, as at 20 February 2017, 4, 450 decisions from high and regional courts could be accessed using the search engine. By the end of 2017, 4,684

1 Available online at: https://e-justice.europa.eu/content_ecli_search_engine-430-en.do [Vid. 3. 1. 2017]

decisions from high and regional courts could be found using this tool. It follows from the above that the Supreme Court considers that the objectives of the CR for the BO-ECLI project have been met in all respects. Each month additional decisions will be added to the database allowing The Supreme Court to carry out its subsequent tasks within the framework of ongoing cooperation between the individual working groups ensuring the implementation and expansion of ECLI in the individual Member States.

On 3 March 2017, the twelfth meeting of the ECLI sub-group was held in Brussels and attended by Mr Michal Malaník, as deputy ECLI coordinator. He presented the Supreme Court's approach to the implementation of the ECLI project and its subsequent improvement of technical support for the operation of project-related activities.

From 8 - 9 June 2017, all the working groups from each country met in Athens. The Supreme Court of the Czech Republic was again represented at the conference by Mr Michal Malaník who summarised the current state of implementation in the Czech Republic for the attendees present. The main point of the individual presentations was to inform each other about the problems and challenges each country faces in implementing ECLI and an exchange of information on how to resolve this. Mr Michal Malaník also pointed out that the Supreme Court was one of the early players in the ECLI project, generating its decisions initially and followed later in 2014 by the Constitutional Court. He then informed the audience of the situation in the Czech Republic, where there is no single database containing all court decisions, but there are several public databases and a number of private ones, although there may be differences in the information contained therein. As is evident from the results to date, this situation has not prevented the Supreme Court from implementing its decisions, although it does make it difficult to implement subsequent decisions, at the level of the high and regional courts, which the working group has successfully begun. By the end of 2017, approximately 115,000 court decisions could be located using the ECLI Search Engine, most of them from the Supreme Court.

At the aforementioned international conference in June, participants went on to discuss the future direction of the ECLI project as a whole. For example, representatives of the Italian BO-ECLI team presented what is known as a reference parser (a program designed to identify, analyse and subsequently process references within a specific decision) as well as upgrading the current ECLI to the ECLI 2.0 platform to improve the syntax of the current identifier.

The main issue addressed by working groups in the individual European countries during 2017 was, apart from the implementation of the system itself, suggestions for the continuous improvement of BO-ECLI and systematic cooperation both on a national and a European level. At the same time, there was a definite interest in promotion and further work on developing ECLI,, which continues to be reflected in mutual cooperation.





## 3. 2. International conference, "Binding Effect of Judicial Decisions"

Given the increasing volume of case law at a European level, interaction between the top European judicial institutions and national courts of the Member States is rapidly gaining in importance. National courts constitute a key institution, ensuring compliance with and implementation of international obligations at a domestic level.

In view of this situation, on the occasion of the Czech Presidency of the Committee of Ministers of the Council of Europe, from 19 to 21 June 2017, the Supreme Court organised an international conference on the topic of *The Binding Effect of Judicial Decisions*. It was the most important judicial event in 2017 in the Czech Republic and was organised with the support of the Council of Europe and the Ministry of Justice of the Czech Republic.

### 3. 2. 1. Aim of the international conference

The international conference was one of the most significant judicial forums in the modern history of the Czech Republic and offered an opportunity for mutual exchange of ideas and for an informal meeting of important national and international guests in the historical centre of Brno. The Binding Nature of Judicial Decisions conference was a pan-European event, in the true sense of the word. Its high standard, both in terms of content and organisation, was much appreciated by many of the guests.

The aim of the Conference taking place in Brno, the capital of the Czech judiciary, with Presidents of the Supreme and Constitutional Courts of the Member States of the Council of Europe as well as judges of European Courts and leading academics participating, was primarily the topic of binding effect of judicial decisions of the European Court of Human Rights, the Court of Justice of the European Union and the national courts and the relationship between constitutional and ordinary courts within the national legal systems. The keynote speakers, panellists and the moderators were the representatives of judiciary, academia and attorneys at law, but their diverse professional backgrounds offered considerable room for critical analysis of contemporary trends of European justice.

### 3. 2. 2. Participants at the international conference

Among the participant of the Conference was the Secretary General of the Council of Europe Thorbjørn Jagland Amongst other distinguished speakers of the Conference were the President of the Court of Justice Koen Lenaerts, the President of the European Court of Human Rights Guido Raimondi, the President of the Constitutional Court of the Czech Republic Pavel Rychetský, the President of the Supreme Court of the Czech Republic Pavel Šámal, the Judges of the Tribunal of the Court of Justice of the European Union Irena Pelikánová and Jan Passer, the Advocate General of the Court of Justice Michal Bobek, director of Le-

gal Advice and Public International Law of the Council of Europe Jörg Polakiewicz, professor at the Centre for Socio-Legal Studies, University of Oxford Laurence Lustgarten, professor of the European Union Law, University of Cambridge Catherine Barnard, the Judges of the Supreme Administrative Court of the Czech Republic Zdeněk Kühn and Pavel Molek, the professor of international law at the University of Copenhagen Mikael Rask Madsen, the associate professor at KU Leuven Arthur Dyevre the senior lecturer at the Department of Legal Theory and Legal Doctrines at the Faculty of Law of the Charles University Jan Wintr and other prominent guests.

### 3. 2. 3. Summary of the conference programme

The first conference panel provided an analysis of various theoretical approaches to the topic of binding effect of judicial decisions. The afternoon session of the first day of the Conference was dedicated to the case-law of the European Court of Human Rights and was opened by the President of the Strasbourg Court Guido Raimondi, after his speech an expert panel followed on the topic of the binding effect and the execution of judgments of the ECHR and approaches of the governments of the Member States to the condemnatory pilot-judgments in selected fields of protection of the human rights and freedoms guaranteed by the Convention.

The third panel was launched on Wednesday morning by the topic of mutual relationship between ordinary and constitutional courts where special attention was paid mainly to the impact of Constitutional Courts on practice of Supreme Courts and Courts of Cassation. The subsequent forth panel of the Conference will offered an insight into the binding effect of case-law of the Court of Justice of the European Union from the perspective of the judge and the Advocate General of the Luxembourg Court. One of the highlights of the Conference was the speech of the President of the Court of Justice Koen Lenaerts entitled 'Court of Justice and National Courts: A Transparent Dialogue'.

### 3. 2. 4. Outputs from the international conference

The still active conference website, available at conference2017.supremecourt.cz, contains not only an extensive collection of photographs of the event, but also videos of all the speeches in Czech, English and French. This is also because the individual participants had already declared their intention to relay the conclusions of the conference back to the professional public in their own countries when they were in Brno.

The main output from the conference is a volume of the proceedings, published by the Wolters Kluwer publishing house and containing the papers delivered by its participants. This volume will not only be a valuable reminder of this successful international judicial event, but also an invitation to continue expert discussions in the area of the binding nature of legal decisions and, in particular, mutual dialogue between the European Court for Human Rights, the Court of Justice of the European Union and national European courts.





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

The Analytics and Comparative Law Department focuses in particular on 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.

In 2017, the Analytics and Comparative Law Department continued to increase its professional and staffing capacities in order to maintain the existing high standard of the work it carries and to develop it further. Members of the new, expanded team, continue to 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 Supreme Court, as well as lower courts, with the most relevant information from current events abroad.

### 3. 3. 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 also a member of the group through its Analytics and Comparative Law Department. 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.

From the 5 to the 6 October 2017 , the fourth meeting of the Comparative Law Liaisons Group took place. The Supreme Court was repre-

sented at the meeting venue, the Cour de Cassation in Paris, by the Director of the Office of the President, Mr Aleš Pavel and an advisor from the Analytics and Comparative Law Department, Ms. Katalin Deák. The meeting focussed on current issues related to the activities of the Comparative Law Liaisons group and on some problems of national decision-making practice in specific areas.

Among the key topics discussed at the meeting were the issue of surrogate motherhood and related legal issues, such as the legal nature of the surrogate maternity contract. In this respect, there has been a shift in decision-making practice in France, based on the decision-making practice of the European Court of Human Rights, where the French Supreme Court (Cour de Cassation) has found in favour of transcribing information regarding the father in the birth certificate and the adoption of the child by the new mother. The meeting also dealt with issues relating to identity checks by police officers within the context of non-discrimination. 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. 3. 2. Analytical activities

The core activity of the Analytics and Comparative Law Department 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 2017, the Analytical Department also produced analyses of aspects of selected legal issues relating to the appointment of "non-judges" to European supreme courts, the context of legislation regulating vehicle liability insurance focusing on compensation for non-pecuniary damage or financial penalties in the case law of the European Court of Human Rights.

The department also had the opportunity to address selected issues relating to legislation on the driving of motor vehicles under the influence of drugs and the possession of drugs for one's own needs, as well as an analysis of the legal implications of the judgment of the European Court of Human Rights in Jóhannesson v. Iceland on the application of the *ne bis in idem* principle in the light of the conclusions arising from the judgment on A and B v. Norway.

The department also dealt with comparisons in the area of legislation on remuneration for judges' standing in selected states and issues relating to the right of the surviving spouse to request the completion of the artificial insemination process using the cryopreserved sperm of her deceased husband.

Neither were the requirements of the case law of the Constitutional Court ignored concerning the quality of the reasoning in Supreme





Court rulings rejecting appeals, legal issues relating to the legal form of the Human Resources and Employment Operational Programme with special focus on assessing so-called "eligible expenditure" or the interpretation of the term "public order" in private law, focusing on reasons to waive the time limit for filing a motion for denial of paternity in selected foreign arrangements.

What is certainly also worth mentioning is an analysis of selected legal issues relating to legislation regulating the transfer of a business and a summary on the issue of adjusting disproportionately high contractual fines where the outstanding debt on the fine was calculated by the creditor to another of the debtor's receivables on the contractual fine.

## 3. 3. 3. ECHR decisions – a digest

The Analytics and Comparative Law Department 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.

The department has recently contributed, for example, to the translation of the judgment of the European Court of Human Rights on applications nos. 24130/11 and 29758/11 in the case A and B v. Norway, no. 32610/07 in the case Trevisanato v. Italy, no. 76438/12 in the case Constantinides v. Greece, no. 5821/10 and 65523/12 in the case Gerasimenko et al. v. Russia and no. 35589/08 in the case Nag- metov v. Russia.

Since 2017, the Supreme Court, in cooperation with the publishing house Wolters Kluwer, publishes its blue reports for subscribers also in a more user-friendly electronic form, on its website eslp.nsoud.cz.

## 3. 3. 4. Annotations of the ECHR case law

The staff of the Analytics and Comparative Law Department 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. 3. 5. The Bulletin

The Bulletin of the Analytics and Comparative Law Department, 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. The Analytics and Comparative Law Department has been publishing it for eight years 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. In addition to the current affairs from international and foreign courts, the quarterly also reports on, naturally, the Supreme Court's decisions, where certain elements of European law have been applied.

### 3. 3. 6. 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. 3. 7. Annual Conference of the European Law Institute in Vienna

The Annual Conference of the European Law Institute took place in Vienna from 6 - 8 September 2017. The conference, which was co-organised by the Vienna City Hall and the Vienna University Faculty of Law, was attended by a number of European experts, including academics and practitioners, such as judges and lawyers. The Supreme Court was represented at the conference by the Head of the Office of the President of the Supreme Court Mr Aleš Pavel and an advisor from the Analytics and Comparative Law Department, Mr Jan Bena.

The introductory speeches were given by the current ELI Chairperson, Diana Wallis, the Rector of the University of Vienna Heinz Engl and the Dean of the Vienna University Faculty of Law Paul Oberhammer. They pointed out, inter alia, that the conference represents an important stage in the development of the European Law Institute, whose agenda is becoming increasingly diverse over time. The topics covered a wide spectrum of issues, such as common constitutional principles in Europe, building a data economy, courts and alternative dispute resolution, the internet. The keynote lecture was delivered by the Director of the EU Fundamental Rights Agency. In his speech he addressed the current development of human rights protection in Europe, as well as the role of the Agency and the broader legal community in improving the current situation at a practical level. He also dealt with issues relating to the EU Charter of Fundamental Rights and its present application. Although the Charter is often overlooked as relatively less important, for example in comparison with the European Convention for the Protection of Human Rights and Fundamental Freedoms, or national catalogues of human rights, in practice it plays an irreplaceable role. One example might be the fact that the Charter includes rights that do not appear in other catalogues, such as the right to good administration. It is gradually also being applied in the national legal practice of the Member States.

### 3. 3. 8. Meeting of the EU Court of Justice in Luxembourg

On 11 September 2017 a working meeting of contact persons for the newly established European Judicial Network was held in Luxembourg. The European Judicial Network was established based on output from the meeting of the Forum of Judges, which took place from 26 to 28 March 2017 at the Court of Justice of the European Union.

As part of the activities of the European Judicial Network, an internet platform was launched in 2018, facilitating communication between all the judicial authorities involved, which also contains a pan-European database of judicial case law addressing the problems of EU law. The platform is available in all the official languages of the European Union. The user interface itself consists of three modules. The first contains information on preliminary questions, the second information on the most important national decisions with an EU element and the third has a comparative study of individual national analytical departments.

Access to the database is restricted to supreme courts, and more specifically to persons authorised by their institutions. This is intended to protect against the misuse of sensitive information sent for publication in the database.

Some of the novelties evidencing the usefulness of the database, we can highlight the publication of so-called referrals, which not only contain the wording of the preliminary questions themselves, but also the reasoning, explaining the reasons leading to the submission of these preliminary questions (including the national court's opinion of their settlement). The appointment of trained contact persons will result in a truly high-quality selection of the most important national decisions with an EU element and their submission to the database. This should simplify the search for really relevant decisions. Mr Dušan Sulitka, Head of the Analytics and Comparative Law Department, was appointed to be the contact person for the Supreme Court.

### 3. 3. 9. Inspections in Landshut and Munich as part of the digital archive pilot project

From 27 to 28 April 2017, the Head of the Office of the President of the Supreme Court, Mr Aleš Pavel, Head of the Court Agenda Section Ms Hana Straková, Head of the IT Department Ms. Vlasta Zelinková, Applications Manager Dita Prudká and advisor to the Analytics and Comparative Law Department. Ms. Katalin Deák made a visit of inspection to the Landshut County Court and the Bavarian Ministry of Justice in order to see the actual functioning of the electronic file system and to clarify different aspects of the digitalisation of justice.

The federal law on e-justice foresees the extension of e-law and electronic files in stages and the aim is to achieve a fully digitalised internal workflow by 2026. The system's basic building block is its modularity, with a unified look for all agendas and independence from different types of management. The judges have been very happy to accept the gradual introduction of the system. This is achieved by the close interdependence of the entire system with practical operations.

Within the context of introducing e-justice in Germany, structural challenges had to be addressed, in particular the preparation and building of the infrastructure, increasing network capacity, reinforcing servers, providing secure scanning, data protection and electronic archiving of files. These measures are associated with a number of costs, but on the other hand electronic files result in savings, such as the cost of leasing space for archiving, the costs of postage or paper.

The German experience of the practical introduction of the electronic environment into the operation of the justice system may be a useful basis for designing a realistic solution for the Czech environment.

### 3. 3. 10. Appointment of Mr Petr Angyalossy, ad hoc judge of the Joint Supervisory Body in Eurojust

Mr Petr Angyallossy, Justice of the Supreme Court Criminal Division, has been appointed ad hoc judge representing the Czech Republic on the Joint Supervisory Body in Eurojust. He will follow on from the work of the long-time Presiding Judge of the Supreme Court Criminal Division in this international institution, Mr Jindřich Urbánek.

Eurojust was established by the European Union in 2002 in an effort to improve the success rate of individual Member States in the investigation and prosecution of serious cross-border crime, in particular criminal offences committed by organised groups. The Joint Supervisory Body, of which Mr Petr Angyalossy is now a member, Is an independent supervisory body that collectively monitors Eurojust's personal data processing activities and ensures they are carried out in compliance with the Decision setting up Eurojust. It is composed of three permanent representatives and one ad hoc.





## 3. 4. 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.

### 3. 4. 1. The Supreme Court President

The President of the Supreme Court Mr Pavel Šámal accompanied by Presiding Judge of the Criminal Division, Ms Milada Šámalová and the Head of his Office, Mr Aleš Pavel, from 17 to 25 January 2017 visited the highest judicial institutions in Mexico, in particular the Supreme Court of Mexico, the Superior Court of Justice of Mexico, the Supreme Prosecutor's Office, the Institute of Forensic Sciences, the Mexican Judicial Council and the Educational Institute for Judges and other court employees. During his visit to the Supreme Court, where several business meetings took place, Mr Pavel Šámal also addressed a plenary session of all the judges of this court, where he received an honourable award from Edgar E Azar, President of the Supreme Court of Mexico.

In his speech the President of the Supreme Court referred to important changes to the constitutional legal development of the Czech Republic, from the Velvet Revolution, and presented the functioning of the Czech judicial system and the Supreme Court. With respect to the challenges facing both the European and Mexican justice, he emphasised that it is the courts that have the hard task of regulating negative social phenomena through their decision-making practice.

Accompanied by the Mayor of Mexico City and the President of the Supreme Court, Edgar E. Azar, the delegation attended a criminal trial and visited a prison. In an interview for Mexican television and radio, the President of the Supreme Court stressed the fact that establishing mutual relations can help enrich all those involved by highlighting the successful attempts by Mexican justice to introduce into the reformed oral and public criminal proceedings modern information and communications technology, not only enabling court hearings to be broadcast in order to inform the public, but also to help the internal communications between judges and their offices.

On 27 January 2017, the President of the Supreme Court Mr Pavel Šámal, Vice-President of the Supreme Court , Mr Roman Fiala and the Head of the Office of the President of the Supreme Court, Mr Aleš Pavel attended the opening ceremony for the European Court of Human Rights' judicial year. A seminar entitled "Non-Refoulement as a Principle of International Law and the Role of the Judiciary in its Implementation" was organised for the occasion of this event, and focused on current and complex issues associated with asylum seekers, emphasising the principle of not extraditing refugees to a country where they will face danger, also in connection with the responsibility of a state that refuses

to accept a refugee. The seminar was supplemented by examples of the relevant case law of the European Court of Human Rights and was followed by parallel blocks aimed at assessing the credibility of asylum seekers and the material conditions that need to be met, along with related problems and their possible solutions.

The ceremony was attended by the Presidents of the Supreme and Constitutional Courts of the Member States of the Council of Europe, former Presidents of the European Court of Human Rights, the leaders and judges of the Court of Justice of the European Union and other senior judicial officials, as well as the plenum of the European Court for Human Rights. The technical programme that preceded the opening ceremony addressed the current issue of assessing the credibility of asylum seekers and limiting the investigation into the circumstances surrounding these applicants as carried out by the European Court of Human Rights, the material and procedural guarantees for the integration of migrants who are already settled and practical issues concerning the application of the principle of non--refoulement.

From the 19 to 21 October 2017, the President of the Supreme Court, Mr Pavel Šámal, attended the colloquium and General Assembly of the Network of Presidents of the Supreme Judicial Courts of the Member States of the European Union in Tallin, Estonia. This year's summit of the EU Member States' highest judicial instances was dominated by one common, overarching idea, namely the actual situation in the Member States of the European Union in relation to the democratic principle of the division of power, from the perspective of the independence of supreme courts in the exercise of the administration of justice and the control of the judiciary by the authorities, particularly where the Presidents perform state administration of courts and ensure the operation of the courts in terms of their staffing and material needs.

An important point of the programme was a report by the President of the Supreme Court of Poland concerning the ongoing reform of the judiciary, which has paralysed the Polish Constitutional Court and led to fundamental interventions both in the composition of the courts, including the Supreme Court of Poland, and in the organisation of justice in Poland.

The supreme court Presidents agreed that the independence of the supreme court is closely related to the necessary freedom allowed to the court's President to handle the financing for these courts and the need to discuss recommendations for defining general principles for the financial autonomy of supreme courts.

### 3. 4. 2. The Supreme Court Vice-President

The seventh International Conference of Presidents of the Supreme Courts of Central and Eastern Europe took place from 5 to 7 June 2017 in Budapest under the auspices of the Hungarian Supreme Court *(Kúrie)*, in cooperation with the CEELI Institute (Central and East European Law Initiative Institute). Its theme focused on current problems affecting supreme courts. The Supreme Court of the Czech Republic was represented by its Vice-President, Mr Roman Fiala. The conference was divided





into nine sections. The main themes of the speeches included personal and decision-making independence for judges, the funding of courts and their budgets, the role and responsibility of Presidents of courts and public access to justice.

One of the key speakers was Judge Clifford J. Wallace from the USA, who, referring to his experience in the American legal environment, highlighted the practical problems caused by substandard teaching of law in universities. Although they provide sufficient theoretical background, they prepare very few students for regular legal practice. One of the possible solutions currently being discussed in the USA and picked up from the United Kingdom, is for experienced lawyers and judges to share their experiences with the students.

## 3. 5. Justices' official visits abroad

In 2017, the Supreme Court's Justices also attended a number of professional events 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 events as speakers and contributed to their success through sharing their experience at these forums.

Mr František Púry, Head of the Supreme Court Criminal Division from 3-5 December 2017 attended a specialised seminar for circuit judges of the Regional Court in Prešov, Slovakia. The event has provoked a controversial discussion of issues that are also topical in the Czech Republic, in particular the forthcoming recodification of the Criminal Procedure Code. Mr František Púry attended in most of the seminar and also joined in the discussions on the topics presented. Among other things, he also met with his counterpart Mr Libor Duľa, Presiding Judge of the Criminal Division of the Supreme Court of Slovakia, with whom he worked out the details of a planned meeting between the two Supreme Court Criminal Divisions in 2018 and discussed other common issues.

On 23 March 2017, Mr Antonín Draštík and Mr Stanislav Rizman attended a conference organised by Bratislava's Pan-European University on the topic of Theoretical and Practical Problems of Using Information and Technical Resources in Criminal Proceedings The conference

was organised in connection with the completion of the research project *To improve the effectiveness of detecting and proving crimes through IT.*

Supreme Court Justice Petr Angyalossy has been widely involved during the past year in the events organised by the Judicial Academy of the Slovak Republic. On 10 May 2017, he attended a seminar of the topic of Czech application practice with regard to criminal acts against the environment as a lecturer. Mr Petr Angyalossy also gave another lecture at the Judicial Academy of the Slovak Republic, together with Supreme Court Justice Mr Filip Dienstbier on 5 September 2017 on the topic of special requirements for a judicial review of the environment. He also attended a seminar on transport crimes as a lecturer on 2 November 2017. The lecture was presented in collaboration with Supreme Court Justice Mr Petr Vojtek, and focused on the civil law aspects of the given problem. The study materials created for the Judicial Academy will be used for further educational purposes.

Mr Petr Angyalossy also attended a seminar on the topic of international cooperation in criminal matters, with a focus on the fight with terrorism, organised by the EJTN (European Judicial Training Network) from 13 – 16 November 2017 in Madrid. In addition to lectures by various foreign experts, the seminar also covered the preparation of a case study and the cooperation between law enforcement authorities and the expert participants from the Czech Republic, Romania, Spain and Portugal.

## 3. 6. VIP visits to the Supreme Court

### 3. 6. 1. President of the Federal Court of Justice of Germany

From 10 to 12 October 2017 the President of the German Federal Court of Justice, Bettina Limperg, visited the Supreme Court with her colleagues. She met with the President, Mr Pavel Šámal and they primarily discussed the self-government of the judiciary, representation of parties in proceedings before the Federal Court of Justice and cooperation between judges, their assistants and court experts. The topics addressed also included work schedules, assignment of cases to judges and the standing of lay judges in Germany, including their experience of this institute in civil and criminal matters. In a later part of the work programme, the German delegation also visited the Constitutional Court, the Supreme Public Prosecutor's Office and the Judicial Academy in Kroměříž.

One of the most eagerly anticipated parts of the working programme of the German delegation was a lecture by Bettina Limperg on the subject "Challenges for the European Judiciary", which she gave on 11 October 2017 before a packed auditorium in the large courtroom of the Supreme Court.. Bettina Limperg address the problem of the relationship between EU and national law, which is often perceived in a simplified way. Among other things, she gave examples of judgments of the Court of Justice of the European Union, but also of the European Court of Human Rights, which is viewed unfavourably by the German professional and general public. One of the possibilities of understanding the meaning of the existence of the European Union and EU law is the continuous training of judges and court employees, who are best equipped to mediate rulings of the Court of Justice of the European Union and bring them to life while deciding on the rights and obligations of their own citizens.

In the second part of her lecture, the President of the German Federal Court of Justice dealt in detail with the threats currently facing European justice. She referred to the extensive reforms of the judiciary in Poland and emphasised the need for joint efforts to protect the independence of the judiciary from political pressures, which are increasing in Europe. Besides the changes to the jurisdiction of the Polish National Council of the Judiciary and the paralysing of the work of the Constitutional Court, she also mentioned the tendency to reduce the age limit for the retirement of judges and court functionaries, in an attempt to appoint judges reflecting the policies of the current political leadership. In the conclusion of her lecture, Bettina Limperg stressed that there had never been a greater need for a united Europe and that the path to mutual understanding of the diversity of European legal cultures is the ongoing dialogue between the Supreme Court of the Czech Republic and the Federal Court of Justice.

# 4. PROFESSIONAL TRAINING OF JUSTICES, THEIR ASSISTANTS AND STAFF MEMBERS

The Section of the Vice-President of the Supreme Court organises seminars focusing on legal, economic, but also general topics in the Supreme Court building in close cooperation with the Judicial Academy.

The following technical legal seminars took place in 2017:

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|---|---|
| 26 January 2017 | "Housing cooperative" – lecturer JUDr. Filip Cileček |
| 28 February 2017 | "Authenticy and support measures" – lecturer JUDr. Pavel Kotrady, JUDr. Lenka Fialová |
| 14 March 2017 | "Issues of housing co-ownership" – lecturer JUDr. Pavlína Brzobohatá |
| 25 April 2017 | "Insolvency proceedings"– prepared amendments" – lecturer JUDr. Jolana Maršíková |
| 28 – 30 June 2017 | Procedural and material succession law" – lecturer Mgr. Pavel Bernard, JUDr. Lenka Bradáčová, Ph.D., JUDr. Pavlína Brzobohatá, JUDr. Petr Čech, Ph.D., LL.M., JUDr. Roman Fiala, Mgr. Radim Neubauer, JUDr. Zbyněk Poledna, JUDr. Lubomír Ptáček, Ph.D. |
| 31 October 2017 | "Civil liability in healthcare" – lecturer MUDr. Jolana Těšinová, Ph.D., doc. JUDr. Tomáš Doležal, Ph.D. LL.M. |
| 15 December 2017 | "Tort law" – lecturer JUDr. Petr Vojtek |

12 seminars with an economic focus were also organised:

| | |
|---|---|
| 14 February 2017 | Insurance frauds |
| 6 March 2017 | New Consumer Credit Act |
| 23 May 2017 | NP engaged in business – Impact of the new CC on Taxation and Accounting |
| 30 May 2017 | Financial accounting |
| 13 June 2017 | Reading tax returns and cash diaries |
| 9 October 2017 | Award of expert opinions |
| 10 October 2017 | Credit, financial and cyber crimes |
| 31 October 2017 | Tax criminality I. |
| 8 November 2017 | Identification of NP income for guardianship purposes |
| 22 November 2017 | NP engaged in business from a tax perspective |
| 29. November 2017 | Accounting aspects of insolvency proceedings |
| 30. November 2017 | Securities trading |

Two general seminars were also held:

| | |
|---|---|
| 22 March 2017 | Presentation of APSTR |
| 3 April 2017 | Receipt of electronic submissions and deliveries |





# 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.

In addition to ensuring the operation of the court, the Supreme Court uses its 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 where rent payments of about CZK 1.3 million are also a major item in the budget.

In 2017, given the change in the temporary offices in the building linked to the construction of an extension to the SC building from Bayerova Street, the Supreme Court invested in renovating the structure and equipment of offices of the Justices and staff members affected, most of which dated from the 1990s. Funds are being spent on updating IT hardware on an ongoing basis as this still does not meet the standards the SC requires. 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.

| | Approved budget | Adjusted budget | Actual drawdown |
|---|---|---|---|
| **2015** | 214,445 | 331,312 | 301,679 |
| **2016** | 291,966 | 324,034 | 307,156 |
| **2017** | 331,395 | 350,543 | 333,594 |

(The figures are in thousands of CZK)

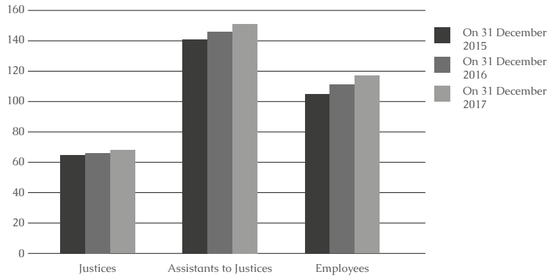
# 6. THE PERSONNEL DEPARTMENT

In 2017, the Supreme Court again slightly increased the number of Justices, assistants and staff members. Over the course of the year, 5 new Justices were transferred to the Supreme Court, three working in the Civil and Commercial Division and two in the Criminal Division.

| | On 31 December 2015 | On 31 December 2016 | On 31 December 2017 |
|---|---|---|---|
| Justices | 65 | 66 | 68 |
| Assistants to Justices | 141 | 146 | 151 |
| Employees | 105 | 111 | 117 |

The following Justices were transferred to the Supreme Court in 2017:
on 1 January 2017 JUDr. Marek Doležal; JUDr. Bc. Jiří Říha, Ph.D.; JUDr. Karel Svoboda, Ph.D.
on 1 April 2017 Petr Angyalossy, Ph.D., Mgr. Zdeněk Sajdl

The following Justices left the Supreme Court in 2017:
on 31 January 2017 JUDr. Ljubomír Drápal (transferred to the Prague RC)
on 30 April 2017 JUDr. Eduard Teschler (end of the judicial tenure)
on 31 December 2017 Mgr. Miloš Pól (transferred to the České Budějovice RC); JUDr. Danuše Novotná and JUDr. Zdeněk Novotný (end of the judicial tenure)








# 7. THE PUBLIC RELATIONS DEPARTMENT AND INFORMATION PROVISION

## 7. 1. Information office

In 2017, as in previous years, 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.

The information office, which is staffed by two desk officers, is competent to disclose information about progress in proceedings, i.e. whether or not a decision has been made in particular proceedings. It also provides information on the stage of completion of the justification of the decision or whether the decision, along with the file, has already been sent to the court of first instance, or where the complete file is currently located. 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 due service to the court of first instance. Journalists receive information from the press spokesman, but only after 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. In the interests of its own impartiality, the Supreme Court can not provide legal advice.

## 7. 2. Press spokesman

The Press Spokesman, Mr Petr Tomíček also heads the PR Department of the Supreme Court. The spokesman's core responsibilities primarily include communication with the media and responding to requests to provide information under Act No 106/1999 Coll., on Free Access to Information. Each year the PR Department completes the Supreme Court Yearbook, prepares the electronic quarterly AEQUITAS and publishes additional information materials for the court. Communication with the public also takes place through information places on the Supreme Court website www.nsoud.cz, and the Supreme Court is also present on the Twitter and LinkedIn social networks.

In 2017, the spokesman released 56 press statements; the PR Department organised two press conferences (the topics of the individual press conferences were: Informing the public of the results of the Supreme Court's decision-making activities, Rules for appointing new

Supreme Court Justices, Breaking ground on the construction of the court building at 3 Bayerova Street in Brno, Opening an international conference on the Binding Effect of Judicial Decisions, Closing an international conference on the Binding Effect of Judicial Decisions). The Press Spokesman also responded to more than 2,000 questions from journalists or the general public on medialised topics.

## 7. 3. AEQUITAS

Since April 2017, the Supreme Court has published an electronic quarterly entitled AEQUITAS. It places emphasis on the inclusion of images and a magazine format for contributions in an attempt to reach out to the general public by popularising the court's activities and the work carried out by the Justices and court employees. AEQUITAS has received substantial positive feedback and its articles are accepted by other media specialising in judicial matters - such as the Česká justice server.

Although a proposal was made by a member of the public to create a printed version of AEQUITAS, the Supreme Court is not considering this, given the expected high financial cost of this type of project. The quarterly would have to be published in full colour and on high quality chalk paper, which would make it excessively expensive. The current costs of producing one issue of the electronic quarterly do not exceed five thousand Czech crowns.

## 7. 4. Provision of information under Act No 106/1999 Coll., on Free Access to Information

### 7. 4. 1. Information under Act No 106/1999 Coll., on Free Access to Information

Between 1 January and 31 December 2017, the Supreme Court received 156 written requests to provide information under Act No 106/1999 Coll., on Free Access to Information, as amended (the "Information Act"). Of these, 137 requests were from natural persons and 19 requests were from legal entities. The vast majority of the request contained a number of cumulated requests to provide information.

In one case the enquirer withdrew his request, and in respect of 3 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. In the case of 5 requests the enquirers did not respond to an invitation from the obliged entity to add to the request (this most frequently concerned the addition of personal information on the enquirer) and these requests were therefore set aside at the end of the statutory time limit. All the other enquirers (148) were sent information , or a decision to dismiss or partially dismiss the request was issued, or a communication was sent information the enquirer that the request had been set aside, always within the statutory deadline for processing or suspending the request.





In total, besides the numbers detailed above, 7 requests were set aside and another 4 requests were set aside in part.

The most frequent reason for setting aside requests was that under Section 2 (1) of the Information Act the request for information did not relate to the remit of the obliged entity, in other cases the enquirer did not respond to an invitation to pay the costs quantified as the necessary costs incurred in an extremely extensive search for the information.

6 enquirers complained about the way in which their request for information was handled, or about the form, content or scope of the information provided. In 3 cases the superior authority confirmed the course of action followed by the first instance body of the obliged entity and described the complaints as unfounded. One complaint was not dealt with as the enquirer (complainant) appeared under a false identity and even when invited he did not confirm his real identity. The appeal body partially approved one complaint and provided the information

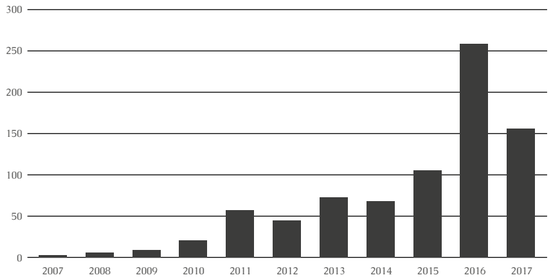
requested without the payment (originally) demanded. The remaining parts of this request was partially dismissed, because of the need to anonymise the decisions issued (the enquirer was provided with a decision without identifying the participant). The obliged entity did not decide on one complaint, because it was submitted prematurely.

The obliged entity, with the exception of the three above-mentioned unspecified requests that were dismissed, completely dismissed an additional 41 requests and partially dismissed 28 requests. The most frequent reason for dismissing requests in full was that the enquirers were seeking the disclosure of new or non-existent information. There were also repeated dismissals under Section 11 (4) a) Information Law, where enquirers sought information on ongoing criminal proceedings. The most frequent reason for the partial dismissal of requests was the fact that the obliged entity was protecting personal information on participants in criminal or civil proceedings in accordance with Act No 101/2000 Coll., on personal data protection, and the request for information was partially dismissed within the scope of the personal information.

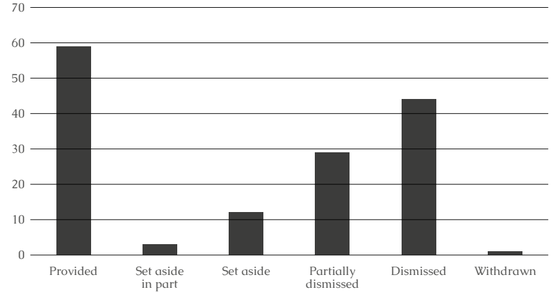
11 appeals were brought against decisions to dismiss requests or to partially dismiss requests. The superior authority of the second instance of the obliged entity rejected 9 of these appeals. In one case the decision of the first instance body was reversed insofar as it concerned the reason for dismissing the request, while the remainder of the appeal was rejected. In one appeal the reason for not providing the information subsequently disappeared and the obliged entity therefore cancelled the original dismissal, provided information under a reconsideration process and partially dismissed the request within the scope of the participant's personal details (in order to anonymise the decision provided). In one case, the enquirer filed an administrative appeal against the decision on appeal to the Regional Court in Brno.

Under Section 5(4) of the Information Law the Supreme Court posted, within the time limit, all answers to requests for information on its website 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.




Number of requests to provide information from 1 January – 31 December of the given year




Method of handling requests submitted in 2017





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

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 2017, the Supreme Court received 9 complaints, of which 7 concerned alleged delays in proceedings. Of these, six were considered unfounded and one founded. A further 2 complaints were submitted for misconduct of judiciary personnel, of which 1 was considered founded and 1 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.

| | Founded | Founded in part | Unfounded |
|---|---|---|---|
| Delays in proceedings | 1 | 0 | 6 |
| Misconduct of judiciary personnel | 1 | 0 | 1 |
| Impairment of the decorum of proceedings | 0 | 0 | 0 |

Handling of complaints under Act No 6/2002 Coll., in 2017

# 9. THE CZECH CASE LAW AND ANALYTICS DEPARTMENT

Since its inception on 1 October 2011, the Czech Case Law and Analytics Department ("ODAJ") has made a significant contribution the Supreme Court through its expert outputs. The department's scope of activities is already discernible from its very name. ODAJ is involved in expert legal analysis, particularly in areas of Czech case law and its records, in cases under the decision-making jurisdiction of the Czech courts in both civil and criminal proceedings.

It cooperates closely with the Reports Panels of the Supreme Court, where it carries out extensive searches of case law concerning specific legal issues, assesses its applicability to the given case and formulates partial conclusions, which are used as a basis for the work of the Reports Panels and proceedings in both Divisions. On the basis of the results of deliberations by the Divisions, short annotations are prepared for selected important decisions, which serve to inform the reader of issues regarding the given jurisprudence, thereby simplifying their orientation in the large volume of court decisions issued.

The department does not only provide support in areas affected by the decision-making of the court, but also extends to areas of court administration. For example, it produces legal documents for submissions filed in the register "Sm" – e.g. for complaints concerning delays in proceedings, requests for legal assistance or applications from the Ministry of Justice for rigorous monitoring of the speed and smooth running of appeal proceedings.

ODAJ, as part of its analytical activities in 2017, finalised its analysis of the issue of criminal penalties imposed during criminal proceedings, produced an analysis of the issue of disciplinary accountability of judges, which included the relevant conclusions published in the professional literature and also an assessment of decisions issued by the Supreme Administrative Court's Disciplinary Panel over a period of almost ten years (from 2008 to 2017). During 2017, ODAJ also continued its ongoing processing of individual decisions handed down by the lower courts concerning ancillary proceedings on claims to compensation for non-pecuniary damage brought before them.

As in the past, the ODAJ continues, on request, to produce background material for the Supreme Court's comments on new legislation, or its amendment, cooperates with individual Justices and their assistants, supports the work of the Supreme Court's Analytics and Comparative Law Department and, in collaboration with the Masaryk University





Faculty of Law, provides context and professional guidance for students engaged in their mandatory professional training.

In connection with the ongoing recodification work and the publication of Act No 89/2012 Coll., the Civil Code (hereinafter CC), there was a need for the selection and summarisation of civil law decisions in connection with the individual provisions of the new Code. Up until 2017, ODAJ has produced compilations of civil law in the following legal areas regulated by the CC: Inheritance law, subject-matter of civil law relations, easements, legal action, purchase, limitation and expiration, contract for work, general provisions on obligations, lease, possession and ownership, co-ownership, natural persons, legal entities, obligations and torts.

ODAJ has continued its work on these open projects in 2017, processing an additional 3,269 relevant decisions by the Constitutional Court, the Supreme Court, the Supreme Administrative Court, High Courts, regional courts, municipal courts, district and circuit courts, the Court of Justice of the EU, the European Court of Justice, ECHR and some foreign courts, which are divided into four thematic units and assigned to the relevant provisions of the CC. Four newly produced compilations address the following issues:

- Representation
- Family law (Title I. Marriage - formation, termination of marriage, rights and obligations of spouses - general provisions)
- Obligations for other legal cause
- Things and their division

The individual volumes contain the text of the legal regulation, an explanatory report and the available case law, as mentioned above, including historical cases (such as the decisions published in the Vážný Collection). The preparation process takes note of the explanatory report on the Civil Code, as well as the available expert commentaries in the literature.

In connection with the recodification of private law, the ODAJ has also begun working with Wolters Kluwer ČR a.s. to create volumes of relevant decisions by district, regional and High Courts published in the ASPI database relating to the Civil Code and the Act on Commercial Corporations. Each volume contains the texts of the decisions submitted, including the title and recital of law as they appear in the ASPI database, as well as commentaries, a brief annotation and the legal recitals created by the ODAJ. The volumes published to date are:

- Rights in rem
- Common property of spouses and co-ownership
- Act on special judicial proceedings - parts 1 and 2.

The ODAJ then produced the followings in 2017.

- Obligations from legal proceedings - the surrender of things for use by another - Parts 1 and 2
- General provisions on debt obligations, securement and settlement - Section 3 - Debt consolidation
- Family law, marriage, formation and termination of marriage, rights and obligations of spouses - Section 1 - General provisions)

# 10. 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 2017, the stock was extended to include almost 430 new publications and documents. Almost 1,700 readers used its services, and the librarians answered almost 800 questions from in-house and external enquirers.

A complete audit of the library stock, which had begun in 2016, was completed. This has been followed by a super-audit, which is expected to be complete in 2018. This deadline was set because of the planned relocation of the library to the new annex to the Supreme Court building. After many years, the library will finally be able to provide those using its services with far more welcoming and worthy facilities.





# 11. THE IT DEPARTMENT

Within the context of ever-increasing demands on cyber security, in 2017 the Department of Information and Communications Technology focused primarily on spreading awareness of the problem of ensuring data security within the environment of the Ministry of Justice's ICT systems to Justices and staff of the Supreme Court. The main result of these activities, based on Ministry of Justice instruction MSP-53/2015-OI-SP, is a deeper level information and knowledge gained by users. However, a number of obligations are also placed on the different organisations by this instruction. One of these was to conduct a blanket screening of all users in 2017, i.e. all the Justices and staff of the Supreme Court.. These electronic tests, aimed at assessing knowledge of cyber security, will be repeated regularly every 12 months and also represent one of the essential requirements for new staff members to access the systems. In response to the need to increase data cyber security, a regular assessment of individual IT systems is also taking place, which is directly related to the upgrade of HW and SW to ensure that all the data on the different internal systems of the Supreme Court are properly secured. All this is obviously dependent on the court's financial possibilities.

The ICT department is constantly working to improve the comfort of the Supreme Court's staff and visitors. To achieve this, a wi-fi network was completed in 2017, which meets the highest safety standards and can be used by all the Justices, staff and external participants in training and seminars.

# 12. THE CONFLICT OF INTERESTS DEPARTMENT

## 12. 1. Departmental activities

Since 1 September 2017, in connection with the entry into effect of Act No 159/2006 Coll., on Conflicts of Interest, as amended, the Supreme Court has been entrusted with taking delivery of and recording notifications of the activities, assets, salaries, gifts and obligations of Czech judges, as well as with storing and monitoring the completeness of the data contained in these notifications.

Because of this, the Supreme Court has established a Conflict of Interest Department, which has been incorporated into its organisational structure. This department carries out all statutorily required activities in relation to public officials and judges.

The preparation of the conflict of interest agenda began in June 2017. The department's activities were specified and adjusted, which consisted of laying down procedures for the reception and recording of notifications and the reception of communications. The method of storing notifications from judges and requests submitted to the records office was also determined. A method was required for auditing and supervising the completeness of the data included in the notification, as well as the creation of procedures for managing the registry for the conflict of interest agenda. Essential activities were subsequently incorporated into the IT systems and access to the Central Register of notifications was adapted to meet the needs of the Supreme Court.

All judges entered in the Central Register of notifications are required to submit a registration, issued by the Ministry of Justice of the CR, regularly, within the time limits laid down in the Act on Conflicts of Interest. The notifications are sent to the Supreme Court in written form on a form whose structure and format is stipulated by the Ministry of Justice in a decree. This notification is then kept for a period of five years after the date on which the judge's term ends. The register of notifications from judges is a separate and independent register, which cannot be consulted and the data contained within it will not be disclosed even under Act No 106/1000 Coll., on Free Access to Information, as amended. Only those persons named in the Act may access the information contained in the individual notifications.

Judges submitted the historically first notifications during the period from 1 October 2017 to 30 November 2017. The preparation stage preceding the actual submission of notifications mainly consisted of creating forms for the judges to use (standard form, interactive form) and mock-ups of the internal records for the conflict of interest agenda. A procedure for taking delivery of the notifications was created because of the sensitive nature of the information contained therein. All the necessary information is published on the Supreme Court website in a special section.

During the submission of the notifications, dozens of procedural questions were addressed in cooperation with the Ministry of Justice. The Presidents of the various courts were sent information on an ongoing basis. The department responded to hundreds of telephone and email messages and provided personal consultations. General instructions and guides have been produced in order to ensure problem-free compliance with the statutory obligation. Two lectures were organised for judges dealing with the issue of conflict of interest.

The department completed the final version of the written register of notifications from judges in 2018 and expects follow-up notifications to be submitted at the end of June. An audit of the completeness of the information in the notifications received will then begin.

## 12. 2. Statistical data

Of a total number of 3,061 judges as at 1 September 2017, the statutory obligation to submit a special notification applied to 3,050. The notification requirement did not affect 11 judges who had been temporary relieved of their functions pursuant to the provisions of Section 99 (1) a) to d) of Act No 6/2002 Coll., on Courts and Judges.

As at 31 December 2017, 3,024 of these notifications had been submitted, while 24 special notifications pursuant to Article II point 3 of the transitional provision in the Act were not submitted. Two judges died before the deadline for submitting the notification.

During the period from 1 September – 31 December 2017, 44 judges ended their terms. 8 judges were affected by the deadline for submitting an initial notification in 2017, and of that number 1 judge submitted the notification after the statutory time limit. The deadline for submitting an initial notification will affect the remaining 36 judges in 2018.

# POSTSCRIPT BY THE SUPREME COURT VICE-PRESIDENT

A word or two to conclude…

The Supreme Court yearbook you are currently holding is a clear and coherent recapitulation of all the most important activities this institution has carried out over the past year.

The Supreme Court, as the highest authority of Czech justice in matters falling within courts' remit in civil and criminal proceedings, has contributed to the formation of the Czech judiciary and the strengthening of the rule of law in the Czech Republic. Last year this court again proved the importance of its case law. It is primarily in the area of civil law that the Supreme Court is extremely conscious of its task in ensuring, as early as possible, the unified decision-making of the lower courts, and therefore continues to interpret questions arising from the recodification of private law. In order to make this yearbook more user-friendly, the Supreme Court began last year to issue the Reports of Cases and Opinions, as well as the so-called blue reports, containing a selection of the important decisions from the European Court of Human Rights, in electronic form.

Our wish is therefore that this publication make it evident that all the steps taken by the Supreme Court are directed to fulfilling its mission, which primarily arises from the Constitution and the Act on Courts and Judges, as well as its role to unify Czech court's decisions and ensure that they are lawful.

JUDr. Roman Fiala
Vice-President the Supreme Court



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