INSTITUTIONAL PROTECTION OF FUNDAMENTAL RIGHTS IN THE CZECH REPUBLIC BY THE CONSTITUTIONAL COURT AND THE NATIONAL HUMAN RIGHTS INSTITUTION

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ABSTRACT

This paper primarily examines the fundamental rights adjudication in the Czech Republic. Article 83 of the Constitution states that the Constitutional Court of the Czech Republic is a judicial body for the protection of constitutionality. In the Czech Republic, the concept of constitutionality protection is not expressly defined in the Constitution. It may, however, be understood both as the legal space (range of cases) within which the Constitutional Court operates and as the set of means through which it safeguards the fundamental rights and freedoms of the constitutional law addressees. A somewhat more specific definition is provided by certain theorists who understand the protection of constitutionality as the safeguarding of constitutional rules, principles, and values contained in the constitutional order against the exercise of public power.

As regards the existence of circumstances in the Czech Republic that may affect the effective protection of fundamental rights, it follows from the consistent case-law of the Constitutional Court that the binding nature of its judgements is almost absolute. It should, however, be added that with respect to the so-called precedential binding nature of the Constitutional Court's judgements, general courts may depart from the legal opinions of the Constitutional Court, provided that they present competing considerations in good faith and thereby initiate a constitutional dialogue with the Constitutional Court.

KEYWORDS

the fundamental rights adjudication
the constitutionality protection
the Constitutional Court of the Czech Republic
the National Human Rights Institution (NHRI)
the Defender

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1. The Fundamental Rights Adjudication

1.1. The Judicial Body for the Constitutionality Protection

Article 83 of the Constitution states that the Constitutional Court of the Czech Republic is a judicial body for the constitutionality protection.[2] The concept of constitutionality protection itself is not defined in the Constitution, but can be understood as both the legal space (range of cases) wherein the Constitutional Court decides and set of means by which it decides to preserve the fundamental rights and freedoms of the constitutional law addressees. A somewhat more specific definition is provided by some authors who understand constitutionality protection as the protection of constitutional rules, principles and values contained in the constitutional order against public power.[3] The democratic majority, represented by the public authorities, thus collides with the boundaries of constitutionality and the Constitutional Court is a kind of arbiter and regulator overseeing compliance with the basic rules of democratic governance.[4] The Constitutional Court provides protection for the fundamental principles of the rule of law and, above all, fundamental rights and freedoms; ensures the balance between the various state bodies; decides on the measures necessary to implement the decisions of the international courts; and performs other tasks assigned to it by the Constitution and the implementing regulation, that is Act no. 182/1993 Coll., on the Constitutional Court of the Czech Republic (hereinafter 'the Constitutional Court Act'). In connection with the above, it is noteworthy that the Czech Republic has a concentrated model of constitutional justice within which abstract, concrete, incident, preventive and consequential control of legal norms is conducted, both in terms of formal and substantive constitutionality.[5]

The Constitution and the Constitutional Court Act set out the basic structure, organisation, competences of the Constitutional Court[6] and the proceedings held before it, namely constitutional complaint proceedings.[7] As for its structure and organisation, under Sections 1 to 26 of the Constitutional Court Act, the Constitutional Court comprises the President, two Vice-Presidents, and twelve Justices. The President of the Constitutional Court represents the Court vis-à-vis third parties, conducts the Court's administrative activities, convenes and presides over the meetings of the Constitutional Court's Plenum, sets the agenda of the plenary meetings, appoints Presidents of the Constitutional Court's Panels, and performs other tasks accorded him by statute. The Constitutional Court's internal structure includes a Plenum, which comprises all Justices, and four three-member Panels. The Constitutional Court lays down which matters are to be decided by the Plenum and the Panels. To each case, a Judge-Rapporteur is assigned. Each Justice is assigned three assistants. Justices' chambers were created to facilitate the business of the individual judicial offices. Apart from the President and Vice-Presidents,

2 | For more details see Sládeček et al., 2016, pp. 905–920 and see also Vyhnánek, 2024, pp. 773–790; Grinc, 2022, pp. 423–433; Kokeš, 2011, pp. 175–187.
3 | See also Garlicki, 2007, pp. 44–68.
4 | See also Zidouemba, 2025.
5 | For more details see Filip, Holländer and Šimíček, 2007, pp. XVII–XXIV and see Linhart, 2008, p. 41.
6 | See also Kysela and Stádník, 2021, pp. 899–998.
7 | See also Weber, 2024, pp. 605–620.

the Constitutional Court's other official is the Secretary General, under whose direct purview comes the entire Court's administration, the Judicial Department, the Analytics Department, including the Library, and the External Relations and Protocol Department. The Court's administration itself is managed by the Director of Court's Administration.[8]

As for the Judge-Rapporteur, their position is defined primarily in Sections 40 of the Constitutional Court Act.[9] Specifically, if the petition concerns a matter that the Court deals with in the Plenum, then the petition shall be assigned to the Judge-Rapporteur designated by the court schedule. If the petition concerns a matter within the jurisdiction of a Panel, it shall be assigned to a Justice who is designated as the Judge-Rapporteur by the work schedule and to the Panel designated by the work schedule. If the Justice designated as the Judge-Rapporteur is excluded from the matter due to doubts about impartiality, by a resolution, the President of the Constitutional Court shall assign the petition to another Judge-Rapporteur designated for that purpose by the work schedule.[10]

The Judge-Rapporteur shall see to the necessary procedural work of the case; in particular, they shall see to the gathering of documentary evidence and the examination of witnesses, possibly even by means of another court, if such evidence was proposed by one of the parties and if, according to the current status of the proceeding, it might serve to establish the facts of the case. The Judge-Rapporteur shall also, without delay, see to it that the petition is delivered to the other parties, and when appropriate also to secondary parties, with the request that they give their view upon it by the deadline designated by the Judge-Rapporteur or which is provided for by the Constitutional Court Act. Under Section 43(1) of the Constitutional Court Act, without holding an oral hearing and without the parties being present, the Judge-Rapporteur shall by preliminary ruling reject the petition, if: (a) the petitioner fails to cure defects in the petition by the deadline designated therefore; (b) the petition was submitted after the deadline for its submission laid down in the Constitutional Court Act; (c) the petition was submitted by a person who is clearly not authorised to submit it; (d) it is a petition over which the Court has no jurisdiction; or (e) the submitted petition is inadmissible, unless the Constitutional Court Act provides otherwise.[11]

Under Section 47 of the Constitutional Court Act, at the oral hearing, the Justice who is presiding over the hearing shall first give the floor to the Judge-Rapporteur, who shall inform the Court of the contents of the petition instituting the proceeding and of the results of the proceeding before the Court up until that time; her report must not contain an opinion as to how the petition should be decided. Under Section 49(3) of the Constitutional Court Act, after a proceeding is instituted, the Court may safeguard evidence upon motion if there is concern that it would not be possible to procure it later, or only with great difficulty. The Judge-Rapporteur shall have the evidence safeguarded by the court within the jurisdiction of which the threatened evidence is found. Under Section 55 of the Constitutional Court Act, the Judge-Rapporteur shall prepare a draft of a judgment or ruling. However, if a proposal for a decision is adopted which differs considerably from the

8 | For more details see Filip, Holländer and Šimíček, 2007, pp. 1–116; see the Constitutional Court of the Czech Republic, 2015a and for more details see Filip, Holländer and Šimíček, 2007, pp. 1–116.
9 | See also Lazović, 2023, pp. 193–209.
10 | For more details see Filip, Holländer and Šimíček, 2007, pp. 199–202.
11 | For more details see Filip, Holländer and Šimíček, 2007, pp. 203–267.

Judge-Rapporteur's draft, the judgment or ruling shall be prepared by a Justice designated by the presiding Justice.[12]

Regarding the role of advisory staff, under Section 8 of the Constitutional Court Act, each Justice is appointed at least one Assistant to the Justice (hereinafter only as 'the Assistant') for a definite period of time not exceeding the time for which the Justice to whom the Assistant has been appointed is engaged. The President of the Constitutional Court names and recalls each Assistant on the basis of a proposal of the Justice for whom they will work. Under Section 9 of the Constitutional Court Act, any upstanding person who has completed a university legal education may be appointed as an Assistant. An Assistant may resign from office: the employment of the Assistant shall terminate on the day after the day on which the letter of resignation was delivered to the President of the Constitutional Court unless the date stated on the resignation letter was the following day. The employment of an Assistant shall further terminate (a) upon termination of the office of the Justice to whom the Assistant was appointed, (b) on the day when a decision by which an Assistant is convicted of a criminal offence becomes final, (c) upon his recall, (d) by expiration of the period of time for which an Assistant has been appointed, provided they had been appointed for a definite period of time. An Assistant is obliged to maintain confidentiality on matters learned during the course of the performance of office. This obligation shall stand after termination of office; however, the President of the Constitutional Court may discharge an Assistant from such obligation. At this point, it is also important to mention that unless the Constitutional Court Act provides differently, the provisions of the Act no. 262/2006 Coll., the Labour Code, shall apply to the employment relations pertaining to the office of a Justice and the position of Assistant.[13]

Under Section 41 of the Constitutional Court Act, Justices may assign to their Assistants (a) the task of refusing submissions which, as ascertained from the contents, are manifestly not a petition instituting a proceeding, and of notifying accordingly the person who made the submission; (b) should the petition instituting a proceeding not meet the requirements of this Statute, the task of notifying the petitioner accordingly and of setting for him a deadline by which the defects in the petition must be cured. Justices may also assign to their Assistants the procedural tasks of the Judge-Rapporteur under Section 42(2) and (4) the Constitutional Court Act, with the exception of the examination of witnesses.[14]

1.2. The Main Roles of the Constitutional Court

Under Article 87(1) and (2) of the Constitution, the Constitutional Court has jurisdiction: to annul statutes or individual provisions thereof if they are in conflict with the constitutional order; to annul other legal enactments or individual provisions thereof if they are in conflict with the constitutional order or a statute;[15] over constitutional complaints by the representative body of a self-governing region against an unlawful encroachment by the state; to decide jurisdictional disputes between state bodies, state bodies and bodies of self-governing regions, and between bodies of self-governing regions, unless that power is given by statute to another body; over constitutional complaints of natural or legal

12 | Ibid, pp. 276–277.
13 | For more details see Filip, Holländer and Šimíček, 2007, pp. 39–43.
14 | Ibid, pp. 195–198.
15 | See also Florczak-Wator, 2020.

persons against final decisions or other encroachments by public authorities infringing upon constitutionally guaranteed fundamental rights and basic freedoms; over remedial actions from decisions concerning the certification of the election of a Deputy or Senator; to resolve doubts concerning a Deputy or Senator's loss of eligibility to hold office or their incompatibility under Article 25 of the Constitution of some other position or activity with holding the office of Deputy or Senator; over a constitutional charge brought by the Senate against the President of the Republic under Article 65(2) of the Constitution; to decide on a petition by the President of the Republic seeking the revocation of a joint resolution of the Assembly of Deputies and the Senate under Article 66 of the Constitution; to decide on the measures necessary to implement a decision of an international tribunal, which is binding on the Czech Republic, in the event that it cannot be otherwise implemented; to determine whether a decision to dissolve a political party or other decisions relating to the activities of a political party is in conformity with constitutional acts or other laws; and to decide concerning the conformity with the constitutional order of a treaty under Article 10a or Article 49 of the Constitution, prior to the ratification of such treaty.[16]

As previously mentioned, under Article 87(1) of the Constitution, the Constitutional Court rules on a constitutional complaint against a decision that has gone into legal effect or other intervention by a public authority that interferes in constitutionally guaranteed rights and freedoms. In constitutional complaint proceedings, the Constitutional Court Act sets out who is entitled to file the constitutional complaint. Specifically, under Section 72(1) of the Constitutional Court Act, the constitutional complaint can be filed by an individual or legal entity who claims that a decision that has entered into legal effect in a proceeding wherein they were parties, a measure or other intervention by a public authority violated their fundamental right or freedom guaranteed by the constitutional order. The practical consequence of this legal regulation is that the complainants must state in the constitutional complaint which fundamental right or freedom was violated in their case, by which public authority and by what decision or intervention was it violated, and specifically what that violation of a fundamental right or freedom consisted of. The Constitutional Court may not consider any other rights. In this regard, it must be remembered that the Constitutional Court is not hierarchically above the general courts, or the court of final appeal; it only reviews constitutionality, not the legality or correctness, of judicial decisions. The Constitutional Court's role is only the protection of constitutionally guaranteed fundamental rights and freedoms.[17]

Under Section 74 of the Constitutional Court Act, the constitutional complaint may also propose annulment of a provision of a legal regulation, but only if application of that provision led to a circumstance that is the subject matter of the constitutional complaint, and the complainant claims that the legal regulation or the provision is inconsistent with a constitutional act, or another law, in the case of a sub-statutory legal regulation. In other words, the contested legal regulation must have actually been applied in the complainant's case, and the complainant must state which constitutional act or law, and which provision thereof, the contested legal regulation is inconsistent with. A petition seeking the annulment of a legal regulation is of an accessory nature as regards a constitutional

16 | For more details see Sládeček et al., 2016, pp. 940–1005; see the Constitutional Court of the Czech Republic, 2015b; and see also Ondřejková, Blažková and Chmel, 2019, pp. 589–617.

17 | See the Constitutional Court of the Czech Republic, 2015c and for more details see Filip, Holländer and Šimíček, 2007, pp. 490–667.

complainant, which means that it shares its fate. Therefore, if the constitutional complaint is denied for any reason, the petition seeking annulment of a legal regulation is thereby also automatically denied. Without a connection to a particular decision or intervention by a public authority, an individual or legal entity is not entitled to propose the annulment of a legal regulation. In the sense of Section 43(1)(c) of the Constitutional Court Act, the Constitutional Court would have to deny a direct petition seeking the annulment of a legal regulation because it is filed by an obviously unauthorised party.[18]

As for the conditions of its submission, under Section 75 of the Constitutional Court Act, the constitutional complaint is not permissible if it concerns a matter on which the Constitutional Court has already issued a judgment. The constitutional complaint is also impermissible if the Constitutional Court is already conducting proceedings in the same matter or the complainant has not exhausted all procedural remedies that the law provides him for protection of his rights. Such means include all regular remedies, typically an appeal, a complaint, a complaint in the administrative court, as well as extraordinary remedies, such as an appeal on a point of law or a cassation complaint. In addition to these common remedies for protection of rights, it is also necessary to exhaust other procedural remedies that are connected to the opening of a judicial, administrative, or other legal proceedings. However, among extraordinary remedies, it is not necessary to exhaust a petition to renew proceedings or extraordinary remedies that the body ruling on them can deny as impermissible on grounds that are within its discretion. If such a remedy was exercised nevertheless, one may wait until the appropriate body rules on it, because the constitutional complaint can be filed against a foregoing decision on a procedural remedy for protection of rights, which was contested by the extraordinary remedy, within a period of 60 days from the delivery of that decision on the extraordinary remedy. Under Section 43 of the Constitutional Court Act, if the Constitutional Court finds that the constitutional complaint is impermissible – that it was filed in a matter on which the Constitutional Court has already ruled in a judgment, or on which proceedings are being conducted, or that the complainant did not exhaust all the prescribed procedural remedies – it has no choice but to deny the constitutional complaint due to impermissibility. It is also necessary to note that a complainant cannot write the constitutional complaint, file it, or appear in a proceeding himself. Under Section 29 and 30 of the Constitutional Court Act, every individual or legal entity that is a party, including the complainant or secondary party, must be represented by an attorney in proceedings before the Constitutional Court. The power of attorney issued for representation must expressly state that it is given for representation before the Constitutional Court. The Constitutional Court does not assign attorneys to complainants. In case of difficulty finding an attorney, one must turn to the Czech Bar Association, which, under certain conditions, can assign an attorney under the Act no. 85/1996 Coll., on the Legal Profession.[19]

Under Section 82 of the Constitutional Court Act, if the Constitutional Court finds the constitutional complaint to be justified, specifically, if it determines that a fundamental right or freedom guaranteed by the constitutional order was violated, it may annul the contested decision and, in the event of the constitutional complaint against a different kind of intervention by a public authority, it may forbid that public authority from continuing

18 | Ibid.

19 | See the Constitutional Court of the Czech Republic, 2015c and for more details see Filip, Holländer and Šimíček 2007, pp. 490–667.

to violate the right or freedom and order it to, insofar as possible, return matters to the condition before the violation. Therefore, it is necessary to keep these options for the Constitutional Court's action in mind when formulating the proposed judgment of the constitutional complaint, namely, when formulating what the complainant seeks from the Constitutional Court, what he asks from it. The Constitutional Court cannot, for example, order a public authority to grant a particular request from the complainant, to provide some particular performance, and so on. The Constitutional Court cannot change the contested decision, nor can it decide instead of the relevant public authority or court. If it annuls the contested decision, the matter is returned to the public authority for a new decision. If the complainant seeks from the Constitutional Court something that is not within its competence, the Constitutional Court must deny the constitutional complaint due to inappropriateness.[20]

1.3. The Review of Norms

As for the proceedings on the proposed annulment of a statute or some other enactment, a petition under Article 87(1)(a) of the Constitution proposing the annulment of a statute, or individual provisions thereof, may be submitted by: (a) the President of the Czech Republic; (b) a group of at least 41 Deputies or at least 17 Senators; (c) a Panel of the Court in connection with deciding a constitutional complaint; (d) the government, under the conditions stated in Section 118; (e) anyone who submits a constitutional complaint under the conditions stated in Section 74 of the Constitutional Court Act or who submits a petition for rehearing under the conditions stated in Section 119(4) of the Constitutional Court Act.[21]

A petition under Article 87(1)(b) of the Constitution proposing the annulment of some other enactment, or individual provisions thereof, may be submitted by: (a) the government; (b) a group of at least 25 Deputies or at least 10 Senators; (c) a Panel of the Court in connection with deciding a constitutional complaint; (d) anyone who submits a constitutional complaint under the conditions stated in Section 74 of the Constitutional Court Act or who submits a petition for rehearing under the conditions stated in Section 119(4) of the Constitutional Court Act; (e) the representative body of a region; (f) the Defender; (g) the Interior Minister, in cases concerning petitions proposing the annulment of generally binding municipal ordinances, of regional ordinances, or ordinances of the capital city of Prague, under the conditions laid down in the acts governing territorial self-government; (h) the competent ministry or other central administrative office, in cases concerning petitions proposing the annulment of orders of a region or of the capital city of Prague, under the conditions laid down in the acts governing territorial self-government; (i) the director of a regional office, in cases concerning petitions proposing the annulment of municipal orders under the conditions laid down in the acts governing territorial self-government; (j) representative body of a municipality, in cases concerning petitions proposing the annulment of a legal enactment of a region within the territory of which the municipality lies. The petition of a group of Deputies or Senators must be signed by the required number of Deputies or Senators. The head of a county office may also submit

20 | Ibid.
21 | For more details see Filip, Holländer and Šimíček, 2007, pp. 347–385.

a petition proposing the annulment of an enactment, or individual provisions thereof, issued by a municipality.[22]

Under Section 74 of the Constitutional Court Act, a complainant may submit, together with their constitutional complaint, a petition proposing the annulment of a statute or some other enactment, or individual provisions thereof, the application of which resulted in the situation which is the subject of the constitutional complaint, if the complainant alleges it to be in conflict with a constitutional act, or with a statute if the complaint concerns some other enactment. Under Section 119(4) of the Constitutional Court Act, a petitioner may submit, together with a petition for rehearing, a petition proposing the annulment of a statute or other legal enactment, or individual provisions thereof, the application of which gave rise to the facts which are the subject of the petition for rehearing, if they are, according to the petitioner's assertion, in conflict with a constitutional act, or with a statute if the petition concerns some other enactment.[23]

In connection with decision-making under Article 95(2) of the Constitution, courts are also authorised to submit petitions proposing the annulment of a statute or individual provisions thereof. The Plenum may institute a proceeding to annul a statute or some other enactment, or individual provisions thereof, if there are grounds therefore under Section 78(2) of the Constitutional Court Act, stating that if in connection with deciding a constitutional complaint, a Panel comes to the conclusion that a statute or some other enactment, or individual provisions thereof, the application of which resulted in the situation that is the subject of the constitutional complaint, is inconsistent with a constitutional act, or with a statute if the complaint concerns some other enactment. It shall then suspend the proceeding and submit to the Plenum a proposal under Article 87(1)(a) or (b) of the Constitution for the annulment of that statute or other enactment. Should the Plenum come to such a conclusion in connection with deciding a constitutional complaint, it shall institute and bring to conclusion a proceeding under Article 87(1)(a) or (b) of the Constitution.[24]

Under Section 66 of the Constitutional Court Act, the petition shall be inadmissible if the statute or other enactment, or individual provisions thereof, which are proposed be annulled, lost force and effect prior to the petition's delivery to the Court, or if at that point it had not yet been promulgated either in the Collection of Laws or in some other legally prescribed manner. The petition shall further be inadmissible if, prior to its delivery to the Court, the constitutional act or the statute, with which the enactment under review is alleged to be in conflict, lost force and effect, or if at that point it had not yet been promulgated in the Collection of Laws. Under Section 67 of the Constitutional Court Act, if the statute or other enactment, or individual provisions thereof, which are proposed to be annulled, lose force and effect prior to the completion of the proceeding before the Court, the proceeding shall be discontinued. The proceeding shall likewise be discontinued in the case of the petition proposing the annulment of a statute or some other enactment, or individual provisions thereof, due to their alleged conflict with a constitutional act or a statute, if the constitutional act or statute loses force and effect. On the other hand, under Section 68 of the Constitutional Court Act, if the petition has not been rejected on preliminary grounds or if grounds for its discontinuance have not arisen during the

22 | For more details see Filip, Holländer and Šimíček, 2007, pp. 347–385.
23 | Ibid, pp. 543–549.
24 | Ibid, pp. 615–621.

course of the proceeding, the Court is obliged to act upon it and to resolve the matter, even without the submission of further petitions. In making its decision, the Court shall assess the contents of a statute or some other enactment from the perspective of its conformity with constitutional acts, or, if the matter concerns some other type of enactment, with statutes, and ascertain whether it was adopted and issued within the confines of the powers set down in the Constitution and in the constitutionally prescribed manner.[25]

Section 69 of the Constitutional Court Act then defines the parties to proceedings for annulment of statutes or some other enactments, which primarily include the petitioner. The body that issued the statute or other enactment that is proposed to be annulled shall also be a party to the proceeding; without delay, the Judge-Rapporteur shall send it the petition that instituted the proceeding and a request to submit its views on the petition within 30 days of receiving it. The Judge-Rapporteur shall immediately send the petition seeking to initiate the proceeding under Article 87(1)(b) of the Constitution to the Government unless the petition concerned is filed by the Government, thus the Government may notify the Constitutional Court within 30 days after the receipt of such a petition that it shall participate in the proceedings. Should the Government do so, it shall have the status of a secondary party. Without delay the Judge-Rapporteur shall also send the petition initiating a proceeding under Article 87(1)(a) and (b) of the Constitution to the Public Protector of Rights, provided he is not the petitioner. Within 10 days of the petition's delivery to him, he may inform the Constitutional Court that he is intervening in the proceeding, in which case he shall have the status of a secondary party.[26]

Section 70 of the Constitutional Court Act states that if, after holding a proceeding, the Constitutional Court comes to the conclusion that a statute, or individual provisions thereof, is in conflict with a constitutional act, or that some other enactment, or individual provisions thereof, conflicts with a constitutional act or a statute, it shall declare in its judgment that such statute or other type of enactment, or individual provisions thereof, shall be annulled on the day specified in the judgment. On the other hand, if the Constitutional Court comes to the conclusion that no grounds have been adduced for the invalidation of the statute or other enactment, or individual provisions thereof, it shall reject the petition on the merits. At this point, it is also necessary to add that if the Constitutional Court annuls a statute, or individual provisions thereof, on the basis of which implementing regulations have been issued, then it shall also state in its judgment which of the implementing regulations, or which individual provisions thereof, shall lose force and effect simultaneously with the statute.[27]

At the end of the commentary on the legal regulation of the Constitutional Court, it is appropriate to mention Section 71 of the Constitutional Court Act, which states that if, on the basis of a statute or some other enactment which the Court has annulled, a court in a criminal proceeding has passed a judgment which has acquired legal effect but has not yet been enforced, the invalidation of this statute or other enactment shall constitute grounds for reopening the proceeding in accordance with the provisions of the law on criminal judicial proceedings. Other legally effective decisions issued on the basis of a statute, or some other enactment, which has been annulled remain unaffected; however, rights and duties arising from such decisions may not be enforced. This also applies

25 | For more details see Filip, Holländer and Šimíček, 2007, pp. 386–405.
26 | Ibid, pp. 405–421.
27 | For more details see Filip, Holländer and Šimíček, 2007, pp. 421–453.

in cases wherein a part of a statute or some other enactment, or any of the provisions thereof, is invalidated. Otherwise, rights and duties flowing from legal relations created prior to the invalidation of the statute, or other type of enactment, remain unaffected.[28]

1.4. The Current Constitutional Court's Decision-Making in the Area of Fundamental Rights and Freedoms

As for the Constitutional Court's decision-making in the area of fundamental rights and freedoms, in 2024, one of the most fundamental human rights, protected under Article 6 of the Charter, was addressed by the Constitutional Court in connection with criminal liability for the death of a child during a home birth. In Judgment Case no. I. ÚS 605/24 of 19 November 2024, the Constitutional Court upheld the conclusions of the general courts that the child was protected under criminal law from the moment it began to leave the mother's body during birth. It stated that the child was not a subject of the right to life under the first sentence of Article 6(1) of the Charter, as it was not proven that the entire body had left the mother while still alive. However, its life was protected under the second sentence of the same article. This protection, though weaker than after birth, is stronger than during pregnancy. During labour, the unborn child is also protected against interventions by the mother. If the life or health of the foetus or the child being born is at risk, reasonable restrictions on a woman's right to freely choose the circumstances and location of childbirth are permissible.[29]

Over the past year, the Constitutional Court dealt with several cases concerning pre-trial detention. It emphasised the principle of adversarial proceedings in detention decisions in Judgment Case no. I. ÚS 306/24 of 28 February 2024, illustrating, among other things, how a breach of 'mere' legality – in this case, the failure to deliver the request for an extension of detention – does not necessarily render the contested decision unconstitutional. The principle of adversarial proceedings was also addressed in Judgment Case no. I. ÚS 682/24 of 24 April 2024, wherein the Constitutional Court found that this principle had been violated when the appellate court fully endorsed the public prosecutor's arguments without giving the complainant a real opportunity to respond to the appeal. The Constitutional Court stressed that in decisions concerning personal liberty, the right to a fair trial includes the creation of a space in which the party can effectively raise objections capable of influencing the court's decision.[30]

This is also linked to the requirement for proper reasoning in decisions to keep an accused person in detention – a principle reaffirmed by the Constitutional Court, for example, in Judgment Case no. III. ÚS 5/24 of 20 March 2024. The general courts had repeatedly failed to provide adequate reasoning in detention decisions, errors that the Constitutional Court had already criticised in the same criminal case in Judgment Case no. III. ÚS 2498/23. The Constitutional Court reiterated the doctrine of heightened justification, which must be provided for the continued deprivation of personal liberty. A violation of the right to personal liberty may occur when a court merely repeats the grounds stated in the initial phase of detention without explaining why continued detention remains necessary. In line with its previous case law, the Constitutional Court also found errors in Judgment Case no. IV. ÚS 94/24 of 20 March 2024, in which the general court

28 | Ibid, pp. 744–762.
29 | See the Constitutional Court of the Czech Republic, 2025, pp. 38–52.
30 | See the Constitutional Court of the Czech Republic, 2025, pp. 38–52.

entirely ignored clearly and specifically formulated objections, in which the complainant had thoroughly explained circumstances relevant to their release from detention. The Constitutional Court had already ruled in this matter once before (Judgment Case no. IV. ÚS 2442/23), yet the general court repeated the unconstitutional approach.[31]

1.5. The Circumstances Affecting the Effective Protection of Fundamental Rights

At this point of the paper, it is necessary to answer the question of whether there any circumstances in the Czech Republic that affect the effective protection of fundamental rights, whether there is any jurisdictional dispute or dominance struggle between the Constitutional Court and ordinary courts or the Supreme Court, and whether there is any resistance from courts to enforce the Constitutional Court's decisions. The answer to these questions follows from the consistent case-law of the Constitutional Court, in particular from Judgment Cases no. III. ÚS 425/97 of 2 April 1998, no. IV. ÚS 1642/11 of 8 November 2011, no. Pl. ÚS 20/15 of 19 July 2016 et seq., dealing in great detail with the binding nature of Constitutional Court judgments. It follows from these judgments that the binding nature of the Constitutional Court's judgments is almost absolute. The requirements for reflecting a cassation judgement in a subsequent decision of a general court are significantly stricter than in the case of mere precedential binding nature. While in the case of the so-called precedential binding nature of Constitutional Court's judgements, it is possible for a general court not to reflect the legal opinions of the Constitutional Court by presenting competing considerations in good faith and initiating a constitutional dialogue with the Constitutional Court. The cassation binding nature can only be reflected by unconditional respect for the Constitutional Court's judgement; however, of course, this is only if the facts of the case remain unchanged (for more on this, see Judgment Case no. III. ÚS 467/98 of February 25, 1999, et seq). Therefore, in proceedings following a cassation judgment, there is no room for consideration of whether the legal opinion of the Constitutional Court is correct, well-founded, or complete. This rule does not stem from the Constitutional Court's conviction of its own infallibility, but from the need to definitively end a specific dispute and prevent endless judicial ping-pong. This legal opinion is a logical expression of the very meaning of cassation in the legal system and is broadly supported in legal literature. Therefore, the Constitutional Court repeatedly emphasises that the rule according to which a judgment of the Constitutional Court cannot be appealed has the effect that a judgment of the Constitutional Court constitutes a final resolution of constitutional issues in a specific case, and must, therefore, be respected by the court concerned, even if the latter has doubts. The Constitutional Court adds that failure to respect a previous judgment of the Constitutional Court causes the proceedings before the courts to be prolonged further and without proper cause, thereby violating the complainant's fundamental right to a fair trial within the meaning of the European Convention on Human Rights, Article 36(1), and Article 38(2) of the Charter.[32]

As for the potential domestic resistance to the European Court of Human Rights' decisions, the legal regulation under Section 119 of the Constitutional Court Act is absolutely crucial. Specifically, Section 119 of the Constitutional Court Act states that should the Constitutional Court have decided in a matter in which an international court found that, as the result of the encroachment of a public authority, a human right or fundamental

31 | Ibid, pp. 38–52.
32 | See the Constitutional Court of the Czech Republic, 2025, pp. 38–52.

freedom was infringed in conflict with an international treaty, a petition for rehearing may be submitted against such decision of the Constitutional Court under the conditions set down in this Statute. Such a petition may be submitted by a person who was a party to the proceeding before the Constitutional Court in a matter mentioned above, and in whose favour the international court decided. A petition for rehearing may be submitted within six months of the day the decision handed down by the international court becomes final in accordance with the relevant international treaty. In addition to the general requirements for a petition, a designation of the Constitutional Court's decision against which the petition is directed and of the international court's decision on which the petition rests must be included, and it must describe the conflict between the Constitutional Court's decision and that of the international court. The petitioner may submit with the petition for rehearing, a petition proposing the annulment of a statute or other legal enactment, or individual provisions thereof, the application of which gave rise to the facts which are the subject of the petition for rehearing, if they are, according to the petitioner's assertion, in conflict with a constitutional act, or with a statute if the petition concerns some other enactment. Apart from the petitioner, persons who were parties to the proceeding before the Constitutional Court, the rehearing of which is proposed, shall also be parties to the proceeding on the petition for rehearing; those persons who were secondary parties in that proceeding shall also have that status in the proceeding on the petition for rehearing.[33]

In 2024, the Constitutional Court issued 3,712 decisions, of which 234 were judgments and 3,478 resolutions. Regarding judgments, 196 constitutional complaints were granted, 48 constitutional complaints were rejected, and 10 constitutional complaints were partially granted and partially rejected.[34]

2. The National Human Rights Institution (NHRI)

2.1. The Six Key Pillars (Independence, Pluralism, Cooperation, Access, Funding, Broad Mandate) of the National Human Rights Institution (NHRI), in Line With the Paris Principles

The National Human Rights Institution[35] (hereinafter 'the NHRI') in the Czech Republic will be established with effect from 1 July 2025 by Act no. 77/2025 Coll., amending the Defender Act (hereinafter 'the Amendment').[36] In connection with the expansion of the human rights mandate of the Defender, the mission of the institution is to be redefined. The traditional ombudsman task of promoting the principles of good administration[37] shall be expanded to include the task of protecting and promoting fundamental rights and freedoms. This solution is not unusual in foreign legal systems. In a number of European countries, this solution, which links independent ombudsman institutions

33 | Ibid.
34 | Ibid, p. 56.
35 | See also Meuwissen, 2015, pp. 441–484.
36 | See also Doubek, 2023, pp. 353–379.
37 | See also Křepelka, 2020, pp. 602–620.

with the protection of fundamental rights, has proven to be very effective.[38] Although the protection of fundamental rights is already well represented in the current activities of the Defender, the current legislation still perceives it either as a supplementary aspect of the ombudsman's activities (under the current wording of the law, the ombudsman only contributes to the protection of fundamental rights), or the ombudsman's human rights activities focus on specific human rights issues (i.e. protection against ill-treatment, equal treatment, and the rights of persons with disabilities). The individual activities of the Defender shall be aimed at achieving this general objective. Thus, the Defender shall contribute to the protection and promotion of fundamental rights and freedoms through all of its activities, including both its traditional ombudsman and existing human rights powers. To this end, the Defender shall also conduct analyses and research, evaluate the protection of individual fundamental rights and freedoms, formulate recommendations for its improvement, and raise awareness of these rights through education and information.[39]

In Section 1a(1)(a) of the Amendment, new powers are assigned to the Defender as a national human rights institution,[40] i.e. the performance of tasks in the area of protection and enforcement of fundamental rights and freedoms under Section 21a of the Amendment. Specifically, Section 21a of the Amendment states that, for the purpose of protecting and promoting fundamental rights and freedoms, the Defender (a) systematically monitors and evaluates the fulfilment of fundamental rights and freedoms; (b) conducts research and analysis in the field of fundamental rights and freedoms; (c) issues reports, opinions, and recommendations on the fulfilment of fundamental rights and freedoms; (d) supports the fulfilment of fundamental rights and freedoms and recommends measures to improve their protection; (e) supports raising awareness of fundamental rights and freedoms in society, including education in the field of human rights; (f) cooperates and ensures the exchange of information with relevant international bodies that monitor the Czech Republic's compliance with its obligations under international treaties on fundamental rights and freedoms; and (g) cooperates and ensures the exchange of information with domestic and foreign bodies and persons active in the field of the protection of fundamental rights and freedoms, including representatives of civil society.[41]

The other provisions of the Amendment are a list of all the existing powers of the Defender. The definition of these powers has remained virtually unchanged. Only minor legislative and technical amendments have been made in connection with the new Section 1a of the Defender Act, whereby in Section 1a(1)(f) a reference has been added to directly applicable EU regulation, namely Regulation (EU) no. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union. Many of the existing powers overlap significantly, and some could be subsumed under the new powers of the national human rights institution.[42] However, as these competences fulfil many specific obligations of the Czech Republic under EU or international law, they remain subject to separate legislation. A more detailed description of the activities through which the Defender should fulfil his individual competences is

38 | See also Lacatus, 2022, pp. 192–213.
39 | The Ministry of Justice of the Czech Republic, 2024.
40 | See also Vidović and Petričušić, 2024, pp. 113–146.
41 | The Ministry of Justice of the Czech Republic, 2024.
42 | See also de Beco, 2007, pp. 331–370.

contained in the other provisions of the Defender Act. The investigation procedure is described in Section 9 - Section 21, and the fulfilment of individual human rights agendas is then contained in Section 21a - Section 21i.[43]

The legal regulation under Section 1b of the Amendment defines the personal competence of the Defender. It contains an explicit definition of the range of entities whose activities the Defender shall be able to deal with. This is important for future accreditation and for the general legal certainty of all entities concerned. However, this does not mean that the Defender has any regulatory power over these entities to enforce compliance with his conclusions. The findings of the Defender shall continue to be of a recommendatory nature, both in the case of individual complaints and in the case of monitoring and supervision of the fulfilment of fundamental rights and freedoms. The Defender's activities shall not have an authoritative character in this respect. They shall not be an exercise of state power in the true sense of the word. The definition of personal jurisdiction varies in individual areas of competence. The scope of personal jurisdiction is defined in such a way as to cover all entities that are relevant for monitoring the fulfilment of the specified range of fundamental rights and freedoms.[44] [45]

In Section 1b(1) of the Amendment, the range of entities whose activities may be subject to investigation by the Defender is specified. There is no change from the current situation. An investigation by the Defender is a specific form of activity whose aim is to independently assess the conduct of the investigated entity in an individual case. As before, the subject of an investigation by the Defender may only be the exercise of state administration, in particular, by state authorities and local self-government bodies. In the text of the Defender Act, they are referred to by the legislative abbreviation 'authorities'. The text of this paragraph is, with only minor legislative technical adjustments, similar to the currently valid Section 1(2) of the Defender Act. Closely related to the proposed Section 1b(1) is Section 1b(5) of the Amendment, which excludes certain state authorities from the investigative powers of the Defender. These are the Parliament, the President of the Republic and the Government, the Supreme Audit Office, the intelligence services of the Czech Republic, law enforcement authorities, public prosecutors' offices and courts, with the exception of the administrative units of public prosecutors' offices and the state administration of courts. A similar list of entities excluded from the jurisdiction of the Defender is also contained in the current wording of the Defender Act.[46]

The exercise of the investigative (supervisory) powers of the Defender[47] in relation to these state authorities could be considered inappropriate (the President, the Government, the intelligence services), or ill-conceived (the Chamber of Deputies), or potentially threatening to their independent exercise of their powers (the Supreme Audit Office). In the case of exclusions relating to the decision-making activities of courts or criminal justice authorities, the purpose is to clearly define the absence of the Defender's supervisory powers over these entities in individual cases. This exclusion is established for the exercise of investigative powers. In the case of the exercise of the mandate of an NHRI, the Defender should be entitled to collect information and, on that basis, to evaluate in

43 | The Ministry of Justice of the Czech Republic, 2024.
44 | See also Hossain et al., 2021.
45 | The Ministry of Justice of the Czech Republic, 2024.
46 | The Ministry of Justice of the Czech Republic, 2024.
47 | See also Magiera and Weiß, 2014, pp. 489–536.

general terms the practices of all domestic authorities in the implementation of fundamental rights and freedoms. In practice, this would most often involve monitoring court case law and domestic legislative activity, and analysing it from the perspective of the fulfilment of fundamental rights and freedoms. However, this would not allow the Defender to interfere with or influence the activities of courts or other state authorities.[48]

Legal regulation under Section 1b(2) of the Amendment defines the range of facilities whose activities the Defender shall be able to examine during systematic visits carried out for the purpose of preventive protection against ill-treatment. Although the Defender already carries out inspections in these facilities under the current legislation, the legislator nevertheless considers it important that the Amendment emphasises that Section 1b(2) also applies to facilities where preliminary court measures, educational measures imposed by the court, and measures imposed by the juvenile court are conducted.[49]

In the case of Section 1b(3) of the Amendment, the personal jurisdiction of the Defender for the exercise of the power to monitor expulsion is established. This shall apply both to facilities where foreigners may be placed, which are mostly prisons or detention facilities, and to the entities that administer them, specifically, the Prison Service of the Czech Republic and the Refugee Facilities Administration of the Ministry of the Interior. In this case, too, the Amendment does not aim to change the manner or scope of the Defender's monitoring of expulsion.[50]

The amendment newly regulates the qualification requirements and the process of nomination and election of the ombudsman and deputy ombudsman such that they are closer to the requirements for NHRI accreditation at level A. This proposal reflects the need to strengthen transparency, openness, and consideration of expertise in the nomination and election process. Many bodies recommend taking expertise into account within the evaluation advisory body or, more generally, a participatory process open to as many candidates as possible. Here, the GANHRI[51] Subcommittee on Accreditation, which is responsible for accrediting NHRIs in accordance with the Paris Principles,[52] can be mentioned. This requirement is also part of the Venice Principles, which set out the optimal functioning of ombudsman institutions. Furthermore, this method of establishment is recommended by the European Union Agency for Fundamental Rights (FRA)[53] and is also mentioned by the Committee of Ministers of the Council of Europe.[54]

Thus, it can be assumed that this prerequisite is important for the purpose of A-level accreditation, and for this reason, the number of eligible nominators for the position of the Defender and their Deputy is being expanded to include a body composed of representatives of higher education institutions. The intention of the submitter of the Amendment in selecting a new nominator of candidates was to find a body with a sufficient degree of independence and impartiality[55] which, given the professional requirements for the performance of the function, would be able to generate professionally qualified candidates and whose existence is already provided for by the legal order of the Czech Republic.

48 | The Ministry of Justice of the Czech Republic, 2024.
49 | Ibid.
50 | Ibid.
51 | See also Takata, 2022, pp. 285–305.
52 | Ramcharan et al., 2023, pp. 105–108.
53 | See also De Schutter, 2009, pp. 93–136.
54 | The Ministry of Justice of the Czech Republic, 2024.
55 | See also Sześciło and Zakroczymski, 2021, pp. 1819–1834.

At the same time, it is necessary to ensure that, prior to the election by the Chamber of Deputies, candidates undergo an evaluation process wherein their qualifications for the position are assessed and which ensures broader participation in the selection process. Consequently, under Section 2(4) of the Amendment, the Chamber of Deputies shall establish an evaluation committee composed of representatives of the scientific and academic spheres, civil society, national and other social groups, taking into account the fair representation of men and women.[56]

The legal regulation under Section 2(4) of the Amendment does not prevent the Chamber of Deputies from allowing representatives of public administration to participate in the evaluation committee; however, such participation may only be permitted in an observer or advisory role. The Paris Principles and the recommendations of the Sub-Committee on Accreditation (GANHRI) prohibit representatives of public administration from having decision-making powers within the evaluation committee. Thus, they cannot be full members, including the right to vote in the evaluation committee.[57]

As for the required qualifications,[58] the Amendment removes the provision linking them to the rules governing eligibility for election to the Senate. The law shall now regulate qualification requirements separately. With regard to maintaining citizenship as one of the qualifications laid down by law, the submitter may make use of the exception in Article 45(4) of the Treaty on the Functioning of the EU, in accordance with the relevant case-law of the Court of Justice of the European Union. Contrary to previous requirements, a specific qualification has been added for the Defender and their Deputies, namely, previous experience in the field of protecting or promoting fundamental rights and freedoms for at least five of the last ten years. This experience refers to a non-exhaustive list of professional activities, whether in public authorities, academia or the non-profit sector, the essence of which is either the promotion or protection of fundamental rights and freedoms. The requirement of such experience is considered to be fulfilled in particular by activities carried out within the Human Rights and Minorities Department of the Office of the Government, the Human Rights and Transformation Policy Department of the Ministry of Foreign Affairs, the Government Council for Human Rights or the Office of the Public Defender of Rights, the position of Government Commissioner for the Representation of the Czech Republic before the European Court of Human Rights in Strasbourg and activities carried out within his office, the position of Government Commissioner for the Representation of the Czech Republic before the Court of Justice of the European Union, the position of judge, legal practice, academic activities at public universities focusing on human rights, or work performed in non-profit organisations whose activities are aimed at promoting or protecting human rights.[59]

In Section 2a(1) and (2) of the Amendment, the mutual relations between the Defender and their Deputy are defined. The Amendment attempts to clarify certain issues concerning the Deputy's participation in the exercise of the Defender's powers. Given the similarity of the election procedure for the Defender and his Deputy (and the similar degree of legitimacy derived from the Chamber of Deputies), the Amendment formally strengthens the role of the Deputy. Unlike the current wording of Section 2(4) of the Defender Act (the

56 | The Ministry of Justice of the Czech Republic, 2024.
57 | Ibid.
58 | Meuwissen, 2015, pp. 441–484.
59 | The Ministry of Justice of the Czech Republic, 2024.

Defender may delegate part of his powers to their Deputy), it has been established that the delegation of part of the Defender's powers to their Deputy is not merely an optional possibility at the Defender's discretion. Therefore, the Amendment expressly states that the division should take place no later than 30 days after the deputy ombudsman takes office. The proposal also assumes that the Deputy should be entrusted with half of the Defender's powers. In this respect, the Amendment reflects the long-standing practice of dividing responsibilities between ombudsmen and their deputies. Defenders have delegated approximately half of the matters entrusted to them to their deputies, in terms of workload, importance, and number. Such a division is generally desirable, also in view of the overall scope of work associated with the exercise of the powers entrusted to the Defender. Since the institution of the Defender was established, the overall volume of work has increased significantly and is difficult for one person to manage.[60]

In addition, the Amendment assumes that the Deputy shall fully represent the Defender in their absence. In practice, only long-term inability to perform the function (i.e. hospitalisation, resignation, etc.) is considered 'absence'. The Amendment aims to ensure that the ombudsman's function is performed continuously, even if one of the functions remains temporarily vacant. The requirement to ensure the stability and continuity of the mandate is demanded by the Sub-Committee on Accreditation (GANHRI) with reference to point B.3 of the Paris Principles.[61] For this reason, in the event of failure to comply with the statutory 30-day deadline, it is also proposed to allow the Deputy to exercise ex lege the powers of the Defender under Section 1a(1)(a), (c) and (e) to (g) of the Amendment, namely, the powers exercised by the Defender in the field of the protection of fundamental human rights.[62]

These are the powers of an NHRI, a national preventive mechanism for ill-treatment (NPM)[63], monitoring of the rights of persons with disabilities (CRPD),[64] equal treatment (DIS) and protection of the right of EU citizens and their family members to free movement. The main aim of the proposed provision is to ensure that, in the event of inaction or potential disagreements between the Defender of Rights and their Deputy, the requirement to ensure the stability and continuity of the mandate of the NHRI is not jeopardised. However, the Amendment leaves the different internal arrangements between the Defender and their Deputy to their discretion and mutual agreement.[65]

The legal regulation under Section 2a(2) of the Amendment imposes an obligation on the Defender and their Deputy to cooperate with each other. Although the exercise of their mandates should be formally separate and independent, in practice they shall be linked not only by a shared office ensuring their activities but also by their common task of protecting and promoting fundamental rights and freedoms. As for Section 2b of the Amendment, the seat of the Office of the Public Defender of Rights remains in Brno. At the same time, in the context of Section 1c of the Amendment, Brno is the seat of the Defender. However, this does not rule out the possibility of establishing a branch office in Prague. The main reason for this is its proximity to the seat of the government, central

60 | Ibid.
61 | See also White, 2020, pp. 21–35.
62 | The Ministry of Justice of the Czech Republic, 2024.
63 | See also Carver and Handley, 2020, pp. 387–408.
64 | See also Caughey and Liu, 2024, pp. 617–641.
65 | The Ministry of Justice of the Czech Republic, 2024.

state administration bodies, and both Chambers of Parliament, with which they shall be in frequent contact regarding recommendations for improving the fulfilment of fundamental human rights and freedoms.[66]

The Amendment deleted from Section 3(1) of the Defender Act is the prohibition on concurrently holding the office of judge and public defender or deputy public defender. In addition, the Amendment added a new reason for temporary suspension from the office of judge to Section 99(4) of Act no. 7/2002 Coll., on Courts and Judges, namely, election of a judge to the office of Public Defender of Rights, and Deputy Public Defender of Rights. The temporary suspension of a judge's duties would take effect by operation of law on the date of taking up the aforementioned positions. During this period, the judge would not be entitled to remuneration or other benefits associated with the performance of the duties of a judge under a special legal regulation.[67]

The reason for this legal provision is that it is generally desirable, given the importance of the office of the Defender and the tasks entrusted to them, that the legal provisions governing candidacy for and performance of these offices should not unjustifiably exclude an entire professional group, whose members (perhaps best) meet the requirements expected of a candidate for the office of the Defender (experienced lawyer, objective, impartial, professionally knowledgeable). The reasons for establishing the incompatibility of the office of judge with that of the Defender on the basis of the law (authorisation in Article 82(3) in fine of the Constitution) are not apparent even on the basis of an analysis of the very concept of incompatibility as one of the components, and guarantees of judicial independence and the separation of powers. The office of the Defender is characterised by the absence of prescriptive and decision-making powers (it does not decide on rights and obligations).[68]

Although the Defender is often associated with legislative power (under Section 2 of the Defender Act, the Defender is elected to office by the Chamber of Deputies, under Section 5(2) of the Defender Act, the Defender is responsible to the Chamber of Deputies for the performance of their duties, and under Section 23 and 24 of the Defender Act, the Defender must submit reports on their activities to the Chamber of Deputies at specified intervals), administrative law characterises them as an autonomous state supervisory body. The independence (institutional aspect) and impartiality (subjective aspect) of the Defender's office are reinforced by a number of provisions of the Defender Act (criminal procedural immunity, fixed term of office, exhaustively defined grounds for termination of office, confidentiality, prohibition of membership in a political party or movement, incompatibility with other public functions, the Defender's salary, organisational independence, and so on). Therefore, based on the above, there seems to be no reason to consider the function of the Defender incompatible with the function of a judge due to insufficient fulfilment of the principle of separation of powers.[69]

66 | Ibid.
67 | Ibid.
68 | Ibid.
69 | The Ministry of Justice of the Czech Republic, 2024; see also Young, 2025, pp. 1–31; Sunstein, 2025, pp. 149–179.

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