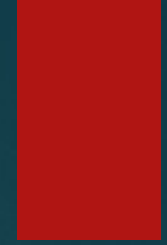
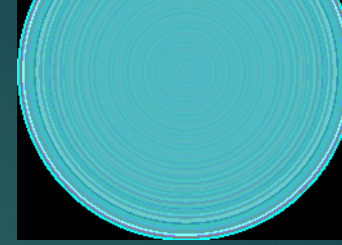




LEGAL REMEDIES, EXECUTION, INSOLVENCY

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LEGAL REMEDIES



LEGISLATION, TYPES OF REMEDIES, ORDINARY AND EXTRAORDINARY
LEGAL REMEDIES



LEGISLATION

▶ **Code on Civil Procedure** (No. 99/1963 Coll.) – „CCP“

▶ **Special Proceedings Act** (No. 292/2013 Coll.) – „SPA“

TYPES OF LEGAL REMEDIES

- ▶ **Ordinary** (x not final and conclusive decisions of the court of I. instance)
 - ❖ **Appeal** (§ 201 – 226 CCP)
- ▶ **Extraordinary** (x final and conclusive decisions of court appeal)
 - ❖ **Extraordinary appeal** (§ 236 – 243g)
 - ❖ **Suit for retrial** (§ 228 – 235i CCP)
 - ❖ **Nullity suit** (§ 228 – 235i CCP)

ADMISSIBILITY

▶ PRINCIPLE OF UNIVERSALITY:

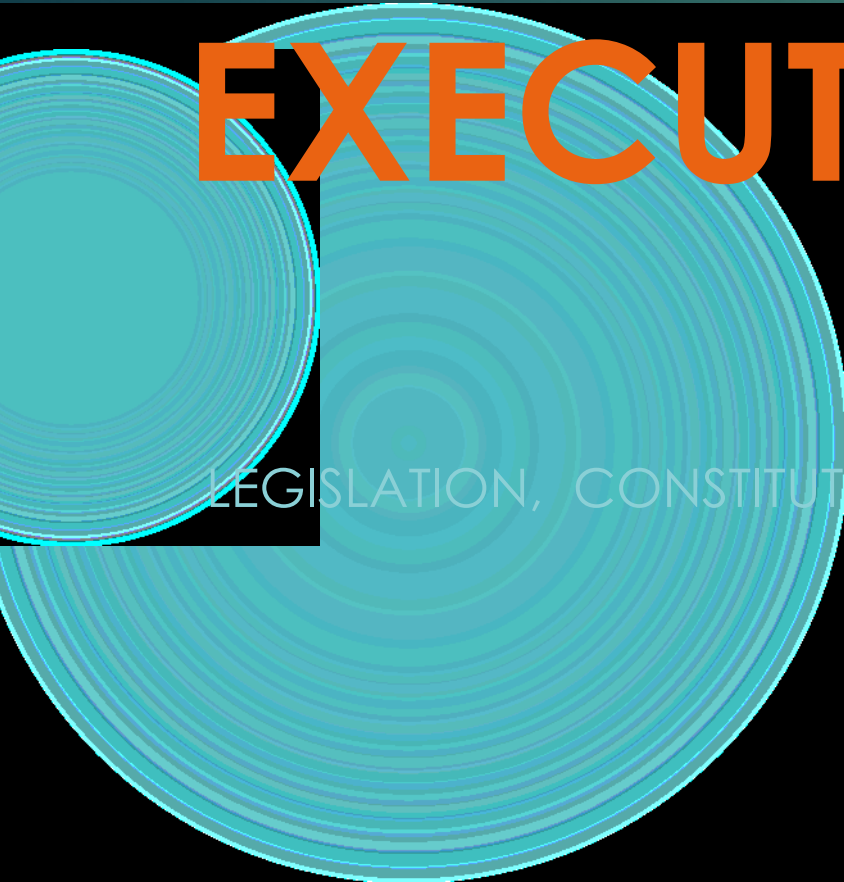
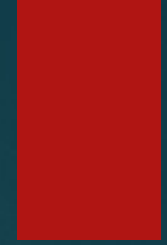
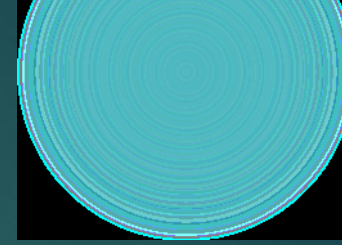
„The participant may appeal against a decision of the district court or against a decision of the regional court issued in the first instance proceedings **unless it is excluded by law.**“

▶ EXCEPTIONS:

- ❖ § 202 CCP (+ particular decisions according to SPA)

EXECUTION

LEGISLATION, CONSTITUTIONAL GROUNDS, ESSENTIAL ATTRIBUTES, SYSTEM

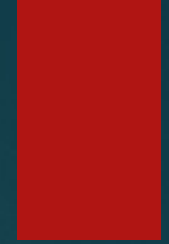
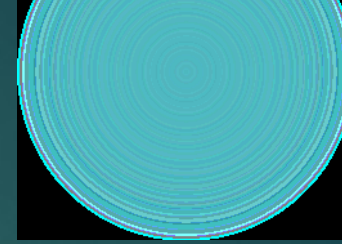


LEGISLATION

- ▶ **Civil Procedure Act** (No. 99/1963 Coll.)
- ▶ **Act on Non-Contentious Proceedings** (No. 292/2013 Coll.)
- ▶ **Executions/Enforcement Code** (No. 120/2001 Coll.)
- ▶ **Act No. 119/2001 Coll., on Rules for Simultaneous Executions**

BASIC FACTS

- ▶ Fair trial principle
 - ❖ „law finding“ (protection of breached/endangered right)
 - ❖ enforcability of law (execution)
- ▶ Petition of entitled person
- ▶ State authority
- ▶ Duality of exe proceedings
 - ▶ Courts
 - ▶ executors
- ▶ Functions
 - ❖ Compensation
 - ❖ Security
 - ❖ Not sanction



ESSENTIAL PRINCIPLES

- ▶ **Judicial power** = state power exercised by independent courts (protection of individual rights and interests)
- ▶ **Considering and legally binding decision-making in individual cases**
- ▶ **Procedure set by the law** (criminal, civil and administrative judicial procedure)

GROUNDS FOR EXECUTION

▶ Execution title

▶ **CRIMINAL JUSTICE** (guilt and punishment for criminal offences)

▶ **ADMINISTRATIVE JUSTICE** (protection against administrative decisions/inaction/unlawful interference)

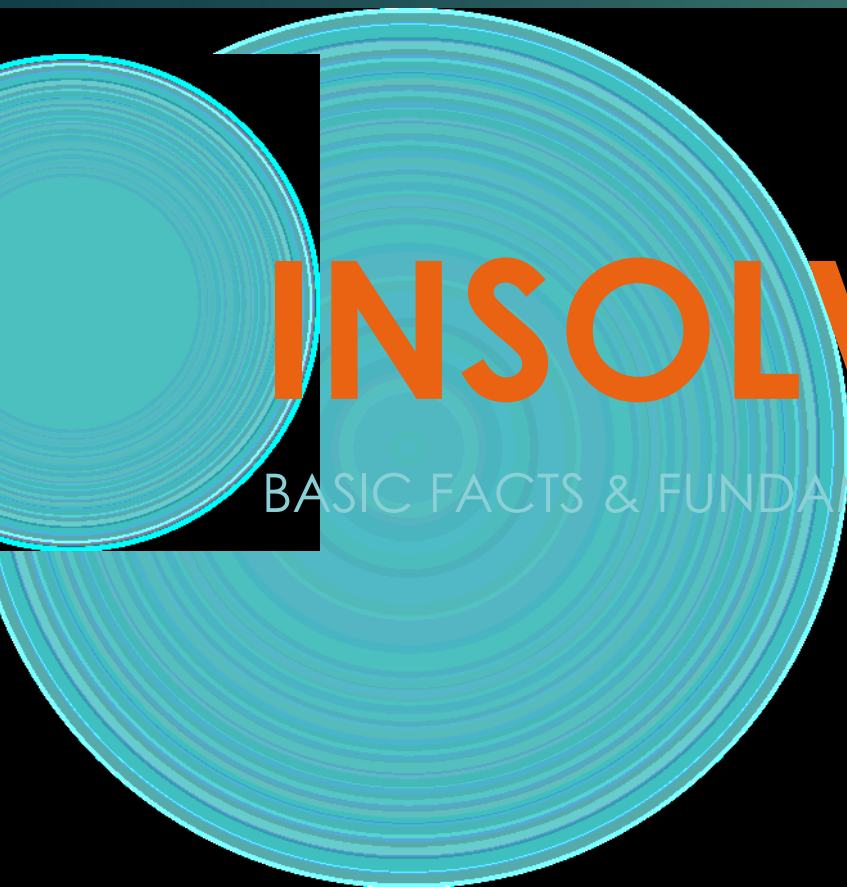
▶ **CONSTITUTIONAL JUSTICE** (protection of constitutionality)

DUALISM OF EXECUTION PROCEEDINGS

- ▶ Overload of courts
- ▶ Free choice of creditor
- ▶ Civil Procedure Code = *lex generalis* →
Execution Act = *lex specialis*

EXECUTORS

- ▶ persons of private law authorized to perform particular activities within execution proceedings
- ▶ Ministry of Justice and heads of the county courts supervision



INSOLVATION

BASIC FACTS & FUNDAMENTAL PRINCIPLES,

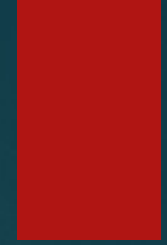
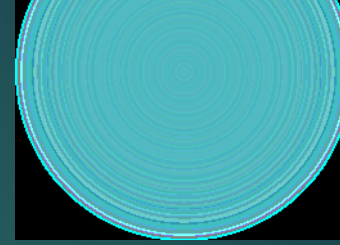


LEGISLATION

- ▶ **Civil Procedure Act** (No. 99/1963 Coll.)
- ▶ **Insolvency Act** (No. 182/2006 Coll.)
- ▶ **Act on Executions/Enforcement Code** (No, 120/2001 Coll.)
- ▶ Act No. 119/2001 Coll., on rules for simultaneous executions
- ▶ Rules of Procedure for County and District Courts (Ministry of Justice Order No. 37/1992 Coll.)
- ▶ Ministry of Justice Order No. 330/2001 Coll., on reward of executors

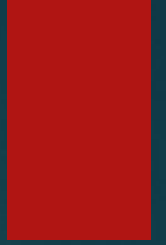
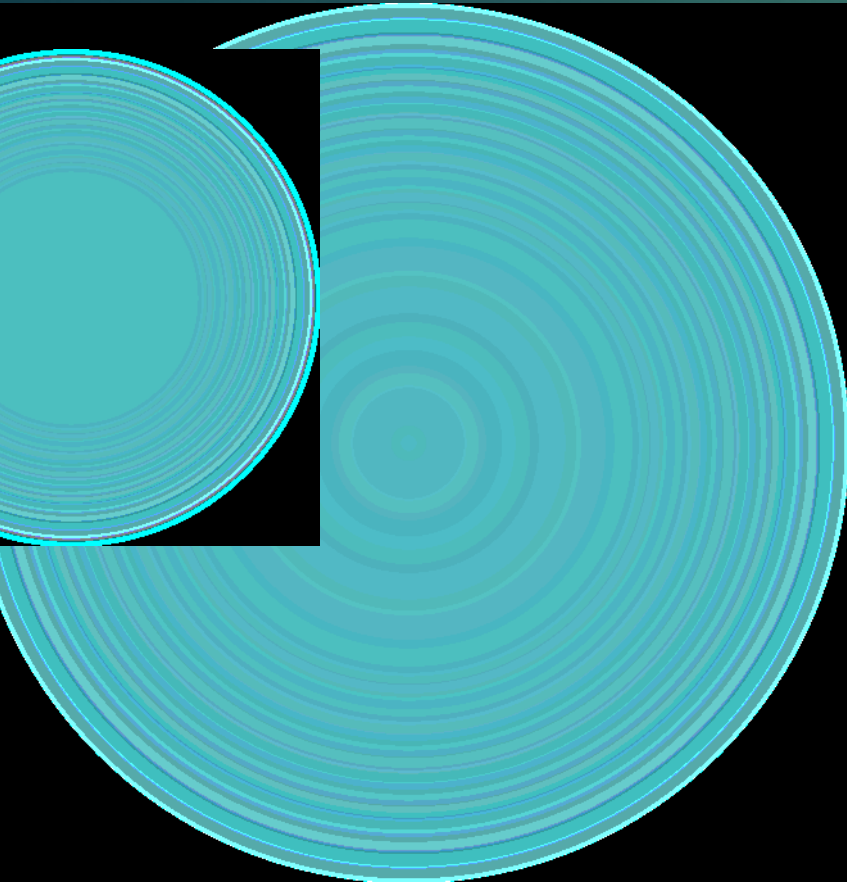
BASIC FACTS

- ▶ Special collective proceedings in cases of debtor's inability to fulfill the obligations (bankruptcy)



FUNDAMENTAL PRINCIPLES

► (lay judges)



INDEPENDENCE AND IMPARTIALITY OF COURTS AND JUDGES

- ▶ Judicial independence is not the private right of judges but **the foundation of judicial impartiality and a constitutional right**
- ▶ **Independent judiciary** (free from extraneous influence)
 - ❖ Art. 6 ECHR
 - ❖ Art. 81 s 82 of Constitution
 - ❖ Art. 36 of Charter of Fundamental Rights and Freedoms
 - ❖ § 1 and 79 of the Act No 6/2002 Coll., on Courts, Judges, Lay-judges and the State Administration of Courts

OBJECTIVE CONDITIONS AND GURANTEES

- ▶ Impartiality
 - ▶ **fundamental qualification of a judge and**
 - ▶ **core attribute of the judiciary**
- ▶ **Personal qualities** (ability to make impartial and independent decisions)
- ▶ **Conditions of service and tenure** (security of tenure, exclusion of removability/transfer to another court)
- ▶ Security of **remuneration**
- ▶ Incompatibility with other (public) functions/activities
- ▶ **Appointment of judges** (by president, no time limit)
- ▶ Publicity of court hearing
- ▶ **Disciplinary liaability**

„STATUTORY JUDGE“ PRINCIPLE

- ▶ „Nobody shall be denied his or her statutory judge. The jurisdiction of the court and the competence of the judge are set by law.“ (Art. 38 /1/ of Charter)
- ▶ Prevention of external influence
- ▶ Statutory (transparent) rules regarding court and judge selection (composition of panel)
- ▶ **Work time - schedule** – method of assignment of cases to judges (each court)

JUDICIAL SYSTEM

- ▶ **Supreme Court/Supreme Administrative Court** (Brno)
- ▶ **High Courts** (Praha, Olomouc)
- ▶ **District Courts** (8)
- ▶ **Regional Courts** (63)
- ▶ **Constitutional Court** (Brno)

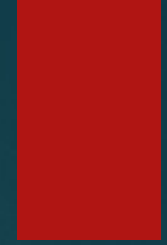
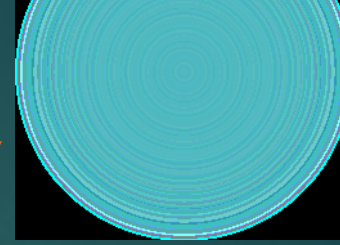
CONSTITUTIONAL COURT

- ▶ **Judicial protection of constitutionality** (special court system)
- ▶ 15 judges appointed for period of 10 years
- ▶ Structure - **plenum** (all judges), four **three-member panels**
- ▶ Scope of jurisdiction - § 87 of Constitution
 - ❖ **annulment of statutes/provisions** contrary to the constitutional order
 - ❖ **annulment of other legal acts/individual provisions** contrary to constitutional order or a statute
 - ❖ **constitutional complaints**
 - individuals/legal persons against final decisions /interference of public authorities
 - representative body of a self-governing region against an unlawful interference of the state
 - ❖ **jurisdictional disputes between state bodies**, state bodies and bodies of self-governing regions, and between bodies of self-governing regions
 - ❖ **constitutional charge** brought by the Senate **against the president**
 - ❖ etc.

SUPREME ADMINISTRATIVE COURT

- ▶ **The highest judicial authority** in matters falling within the competence of administrative courts
- ▶ **Chambers** (three member, seven/nine member extended chamber, special chamber)
- ▶ **Unlimited jurisdiction** of the case-law of regional courts and administrative authorities
 - ▶ **cassation complaint** (challenging final decisions of regional courts in matters of administrative justice, against the decisions of regional courts on the measures of a general nature, issues of local and regional referendum)
 - ▶ **protection against inaction**
 - ▶ **protection against unlawful interference**
 - ▶ **electoral matters** (incl. presidential election)
 - ▶ **registration and dissolution of political parties and movements**
 - ▶ **positive /negative conflicts of competence** (administrative authorities and/or territorial or professional self-governing bodies)
 - ▶ **disciplinary court** (judges, state prosecutors and enforcement agents)

COURT HIERARCHY



▶ **Two-instance** (three tier) **system**

▶ **Court of first instance**

❖ Regional court

❖ District court

▶ **Court of appeal**

❖ High Court

❖ Regional court



SUPREME COURT

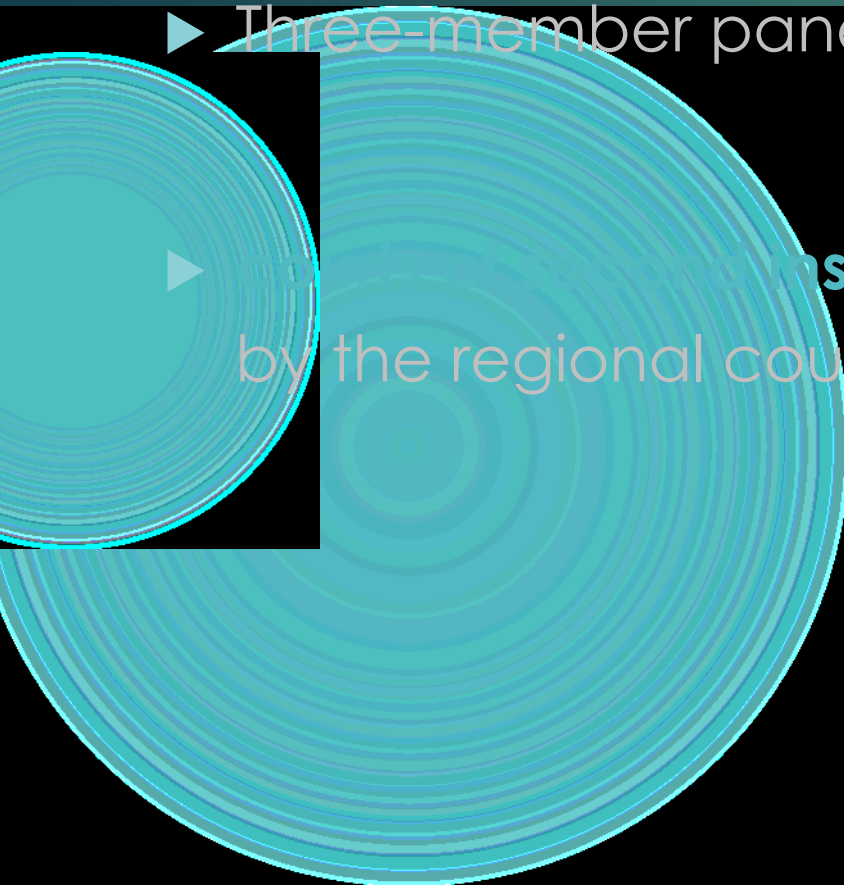
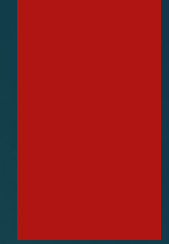
- ▶ **The highest judicial authority in civil and criminal matters** (except matters decided by Constitutional and Supreme Administrative Court)
- ▶ **Consistency and legality of decisions**
- ▶ **Composition and Structure:**
 - ❖ **Extraordinary appeal panel** (chairman and two judges) - extraordinary appeal, complaints for the violation of law (criminal cases), recognition and enforcement of decisions issued by foreign courts (if required by a special legal regulation/international agreement)
 - ❖ **Panel of judges** (min. nine judges of the same division) – legal opinion of a panel is different than expressed in the prior case-law
 - ❖ **Division of the Supreme Court** (Civil Law and Commercial Division and the Criminal Division) – ensure legality and consistency of decision-making of the courts by adopting standpoints, selection of judgements and decide on their publication
 - ❖ **Plenary of the Supreme Court** (President, Vice-President, Heads of the Divisions, Chairmen of the Panels and other judges of the Supreme Court) – the most important body - adoption of standpoints in the matters of particular kind, issues pertaining to both Divisions, issues disputable between the Divisions

HIGH COURTS

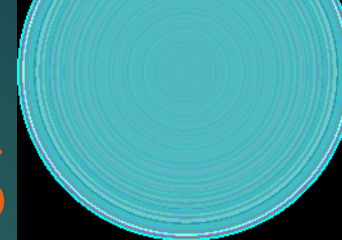
▶ 2 high courts seated in **Brno and Olomouc**

▶ **Three-member panels**

▶ **Second instance** in cases decided at first instance by the regional courts belonging to their areas



REGIONAL COURTS

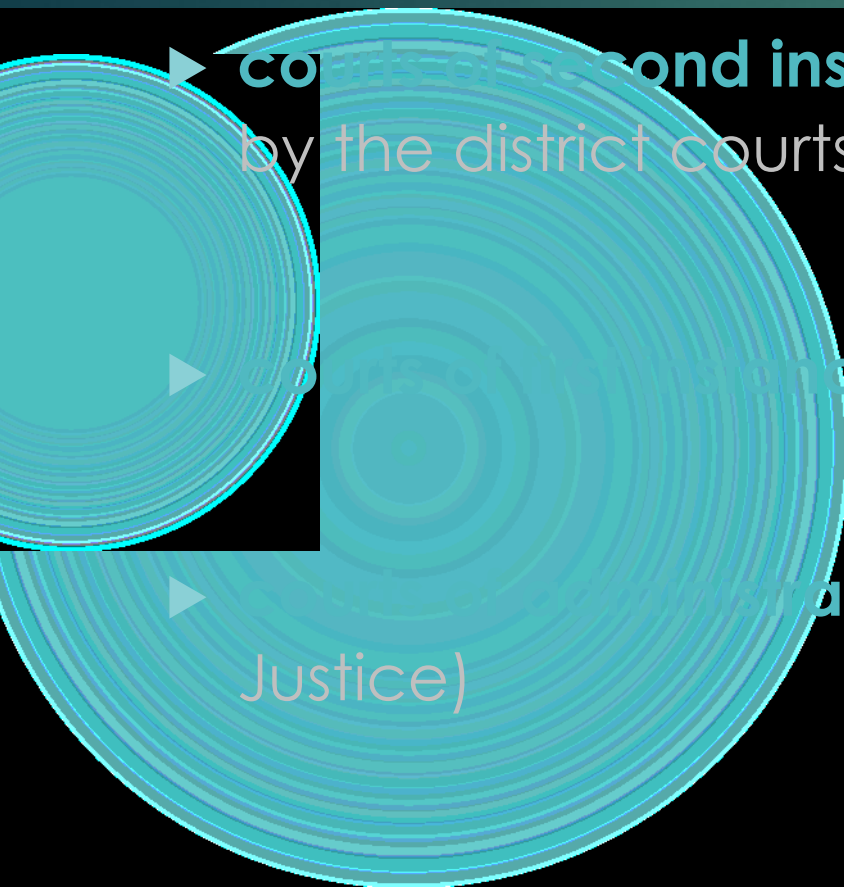
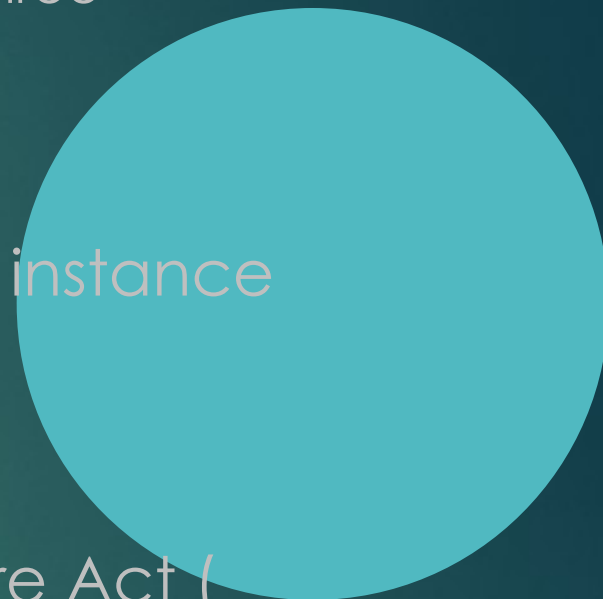


- ▶ 7 regional courts and Municipal Court in Prague (three-member panels/single judge)

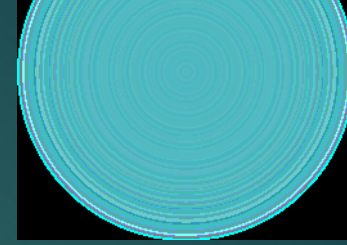
- ▶ **control of second instance** in cases decided at first instance by the district courts belonging to their areas

- ▶ **Administrative Justice** - § 9 (2) of the Civil Procedure Act (1962)

- ▶ **Administrative Justice** (Code of Administration Justice)



DISTRICT COURTS



▶ Area courts in Prague, Municipal Court in Brno

▶ **courts of first instance** - § 9 (1) of the Civil Procedure Act -
general rule

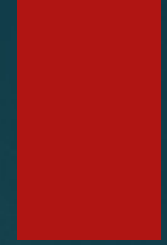
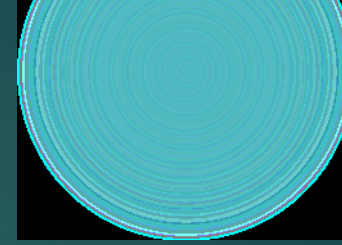


COURT ADMINISTRATION

- ▶ **Ministry of Justice of the Czech Republic** - central state administrative body for the courts
- ▶ **Administrative activity** – directly/by presidents of the courts
- ▶ Proper function of the judicial system

CIVIL PROCEDURE

CHARACTERISTIC, TYPES



FUNDAMENTAL ATTRIBUTES

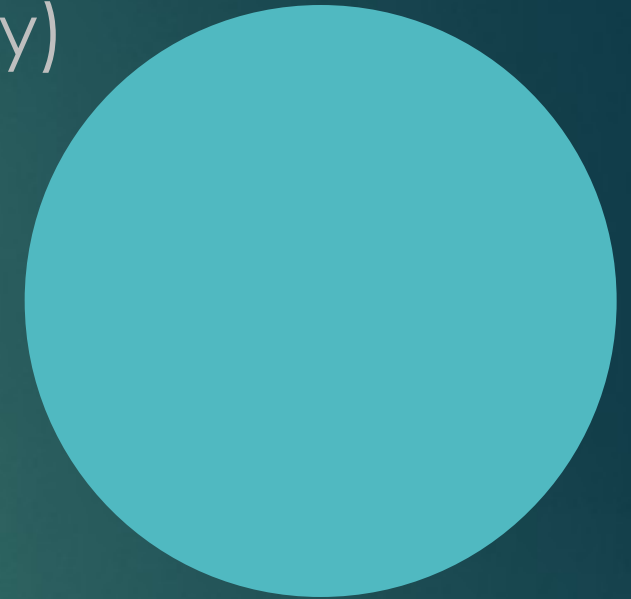
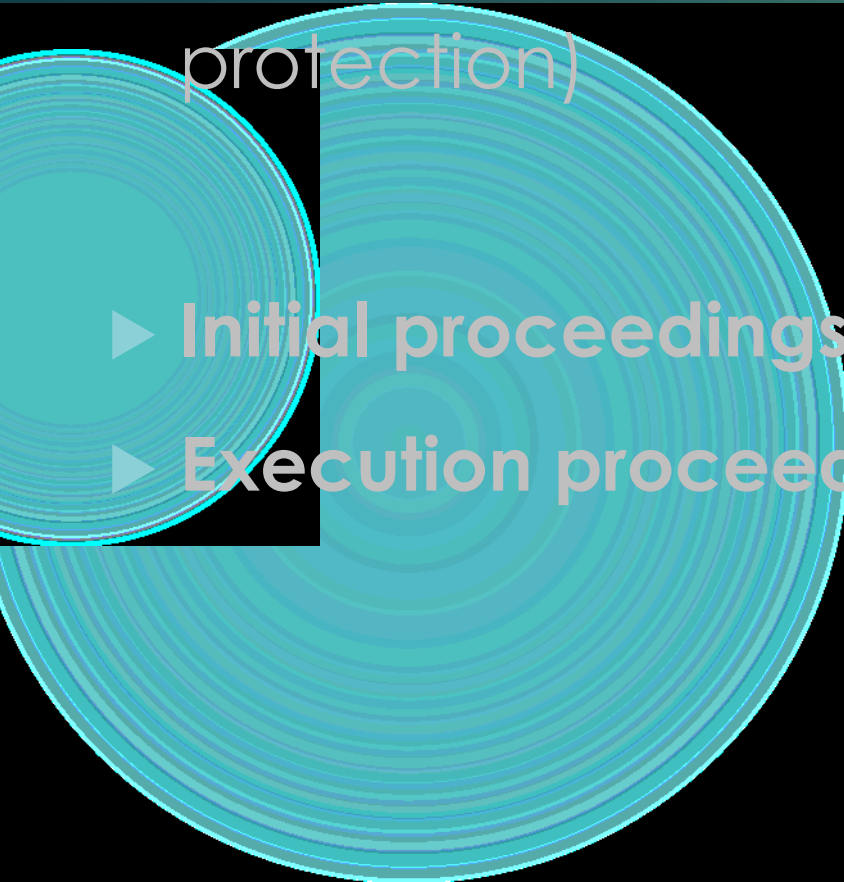
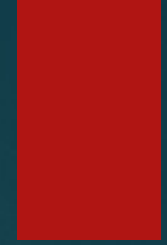
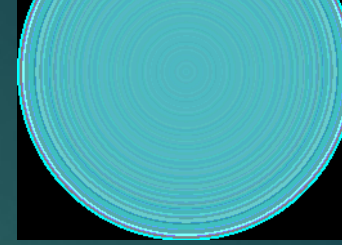
▶ the procedure of court and participants in civil judicial proceedings to **assure protection of private rights and lawful interests** of the participants

▶ court = independent and impartial decision-making body

▶ Legally binding (enforcable) decision

TYPES

- ▶ **Contentious** proceedings (litigation, adversary)
- ▶ **Non-contentious** proceedings (prevention, protection)
 - ▶ **Initial proceedings** (court trial)
 - ▶ **Execution proceedings**



CIVIL PROCEDURE

LAW

DEFINITION AND SOURCES

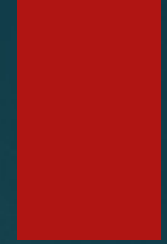
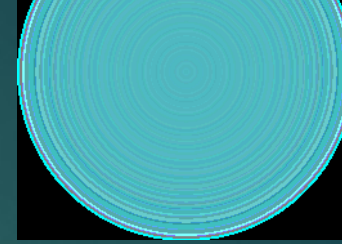
DEFINITION

▶ **set of rules regulating civil procedure** (rights and duties of the participating subjects)

▶ participating subjects – court, parties and other bodies/persons

SOURCES OF CIVIL PROCEDURE LAW

- ▶ Civil Procedure Act (No. 99/1963 Coll.)
- ▶ Act on Non-Contentious Proceedings (No. 292/2013 Coll.)



THANK YOU

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