



Legal update

January 2022

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The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics listed in this bulletin should be consulted before any decisions are made.

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News in Legislation

Amendment to the Enforcement Code and the Code of Civil Procedure

On 1 January 2022, an amendment to Act No. 120/2001 Coll., the Enforcement Code, as amended (the „**Enforcement Code**“), and Act No. 99/1963 Coll., the Code of Civil Procedure, as amended (the „**CCC**“), which is one of the most extensive amendments relating to the enforcement of judgments and execution that has come into force.

Stopping unsuccessful executions

Probably the most significant change brought by the amendment is the stopping of unsuccessful executions. If within six years counted from the date of the execution clause, no performance sufficient to cover at least the costs of the execution has been recovered in the execution, and if at the same time any real estate is not affected by the execution, the beneficiary who does not agree with the suspension of the execution must pay a deposit for its further conduct, otherwise, the bailiff will suspend the execution.

However, the entitled person is exempted from the obligation to pay a deposit for the further conduct of the execution if the execution is for the recovery of a claim for:

- i. child support due for a minor child,
- ii. substitute maintenance,
- iii. compensation for the injury caused to the victim by a work injury,
- iv. compensation for damage caused to the victim by a criminal offence,
- v. occupational disease,
- vi. tort under Act No. 89/2012 Coll., Civil Code, as amended, or
- vii. unjust enrichment.

Similarly, the obligation to pay the deposit may be waived by the bailiff at the request of the beneficiary if there are particularly compelling reasons for doing so.

In the case of the deposit being paid by the beneficiary, the execution shall be prolonged for another 3 years, during which the court shall not grant any motion of the debtor to stop the execution for lack of means. In this way, the time limit can be extended twice in total. The total duration of the unsuccessful execution may thus be a maximum of 12 years.

Forgiving claims up to the original principal amount of CZK 1,500

There is also a significant change in the rights of creditors holding claims with an original principal amount of up to CZK 1,500, from which nothing has been recovered in the last three years. This change again does not apply, for example, to claims for maintenance or compensation for damage caused by personal injury.

As in the case of the adjustment of unsuccessful executions, the beneficiary will be able to make a deposit for the continuation of the execution for another three years. In such cases, the bailiff shall, within three months from the entry into force of the amendment, call upon the beneficiary to deposit the advance on the costs of the execution set out in the implementing legislation. If the beneficiary fails to deposit within 30 days of receipt of the summons, the bailiff shall stop the execution and award the beneficiary compensation in the amount of 30 % of the recovered claim in the form of an income tax rebate.

Set-off of recovered performance



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Another important change relates to the offsetting of any recovered performance, whereby the recovered amount will first be offset against the costs of enforcement, then against the principal, then against interest and default interest, and only then against the costs of the beneficiary.

This regulation represents a significant advantage for debtors, as the performance is no longer counted according to the previous principle, which stipulated the procedure that the recovered amount is first counted against the debt's accessories and only then against the principal, which led to so-called debt spirals, where in cases where the entire recovered amount was not paid, it often happened that the principal was de facto not reduced and only new accessories were added to it.

New rights and obligations of payroll payers

The amendment also introduces new rights and obligations for payroll payers (employers). The payroll payer is now entitled to a lump-sum reimbursement of costs against the debtor (the employee from whose wages it is obliged to make deductions). The amount of the lump-sum reimbursement is set at CZK 50 per calendar month in which the payroll payer makes deductions. It is also important that if the payer makes deductions at the same time to recover several claims against the same debtor (so-called multiple enforcement), they are entitled to reimbursement of costs only once.

Newly, payroll payers also have obligations in the form of information obligations towards the bailiff, where they must now provide the bailiff with information on wages or other income, deductions made from wages or other income, or information concerning the employment relationship of the debtor, etc. The creation of uniform forms for communication between bailiffs and employers is also expected at a later stage.

Audio recording of all calls

The amendment obliges bailiffs to record in the form of an audio recording all calls made via the publicly available telephone service and the telephone number of the bailiff's office from 1 July 2022. However, the number must be designated by the bailiff for communication with litigants, third parties, or the public. It is an essential condition that the calls relate to the enforcement proceedings being conducted.

News in Case Law

Delays in court proceedings represented by the failure of the court to lend the file

(Judgment of the Supreme Court File No. 30 Cdo 267/2021 of 22 December 2021)

In the present case, the applicant sought from the defendant Czech Republic – the Ministry of Justice the payment of CZK 146 668 together with accessories, as compensation for non-pecuniary damage caused by an incorrect official procedure, which consisted in a breach of the court's obligation to issue a decision within a reasonable time. This was due to the court's inactivity caused by the fact that another court did not lend it the court file that should have been provided as evidence in the original proceedings.

Both the Court of First Instance and the Court of Appeal concluded

that no deficiency on the part of the court was found in the proceedings under review which would have led to a substantial prolongation of the proceedings. Furthermore, according to the Court of Appeal, the court was not inactive, and there was no unjustified delay or procedural error in its procedure. Nor can the Court of First Instance be faulted for not proceeding with the oral hearing of the case until it had the file in question, based on which it could only assess the applicant's claim. Both the Court of First Instance and the Court of Appeal concluded that, if the court cannot be faulted for any error in the proceedings under review which is fundamentally significant in terms of the length of the proceedings, then no misconduct consisting in the unreasonable length of the proceedings within the meaning of Section 13(1) of Act No. 82/1998 Coll., on Liability for Damage Caused in the Exercise of Public Authority by Decision or Improper Official Action, amending Act No. 358/1992 Coll., of the Czech National Council, on Notaries and their Activities (the Notarial Code), as amended („Act on Liability for Damage“) can be inferred.

Under Section 13(1) of the Act on Liability for Damage, the State is liable for damage caused by an incorrect official procedure. A breach of the obligation to perform an act or to issue a decision within the time limit prescribed by law is also an improper official procedure. Where the law does not provide for any time limit for the performance of an act or the issue of a decision, a breach of the obligation to perform an act or issue a decision within a reasonable time is also regarded as maladministration.

The applicant subsequently filed an appeal. The Supreme Court examined the case and disagreed with the above conclusion of the Court of First Instance, which was also confirmed by the Court of Appeal, for the reasons set out below.

First, the state must guarantee the right to a reasonable length of proceedings as a whole. In other words, all the State authorities concerned must act in such a way that the purpose of a particular proceeding is not frustrated and the right of the parties to have the case heard within a reasonable time is not jeopardized. It does not matter whether the public authority concerned is the public authority before which the proceedings are pending or a public authority whose cooperation is essential for the determination of another case.

Second, if the cooperation is to consist of the loan of a file, the requested authority must make every effort to comply with the request, for example, by lending the file for a relatively short period in cooperation with the requested authority.

Third, if the requested authority finds that the file cannot be lent under any circumstances, it must endeavour to secure the purpose of the request and, in cooperation with the requested authority, provide at least a copy of the file, or any part of it relevant to the evidence.

However, the Court of Appeal did not take the above into account in its consideration of the case and did not consider whether the period during which the court could not proceed in the proceedings under review because it did not have the requested file available could be regarded as a delay because the court was not provided with the necessary assistance by another state authority in the proceedings under review. The Court of Appeal's mere finding that the court could not proceed with the proceedings under review without the loan of the file is not sufficient for the reasons set out above.

The Supreme Court, therefore, set aside the contested judgment of



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the Court of Appeal and remanded the case back to it for further proceedings.

As the President of Senate No. 30 of the Supreme Court, JUDr. Pavel Simon himself stated this case has once again demonstrated that the individual components of the state do not cooperate because they do not perceive themselves as part of a whole. The Supreme Court, therefore, seeks to contribute to the better functioning of the Czech judiciary and public administration and the enforcement of the right to a reasonable length of proceedings as a fundamental right.

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