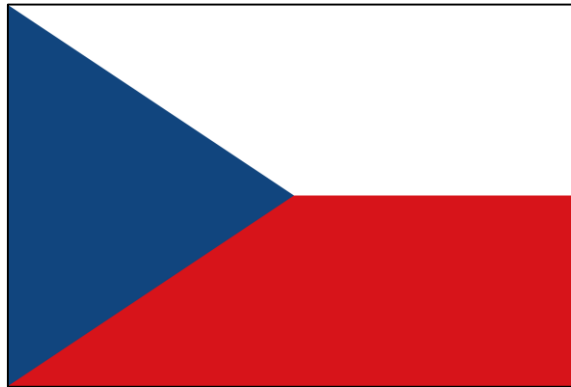


NATIONAL REPORT
- CZECH REPUBLIC -



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GENERAL OVERVIEW

<p>Court jurisdiction and different types of litigation for debt collection</p>	<p>The system of civil courts in the Czech Republic consists of district courts (okresní soudy), regional courts (krajské soudy) and high courts (vrchní soudy) and the Supreme Court (Nejvyšší soud). There is no special court for summary procedure. General rules on territorial and subject-matter jurisdiction apply. From the general rules it follows for various types of order procedures: With certain exceptions, decisions on an “ordinary” order for payment and electronic order for payment are normally in the first instance matter for the competent district courts, unless there is an express provision asserting jurisdiction to the regional courts (§ 9 CPC). These exceptions are quite numerous and are mainly applied in commercial disputes. Territorially competent is usually the court in whose jurisdiction the defendant has his residence, place of business or seat (§§ 84- to § 85a CPC).</p>
<p>National summary procedures for recovery of money claims</p>	<p>The main legal source of the Czech civil law is the Civil Procedure Code, Act No. 99/1963 Coll. (hereinafter referred to as CPC). This Act regulates three types of simplified and accelerated procedures for recovery of monetary claims. All these procedures can be described as summary procedure, because the courts decision is always in a form of an order for payment. The procedures are following:</p> <ul style="list-style-type: none"> – the order for payment summary procedure under §§ 172 to 174 CPC; – the electronic order for payment procedure under § 174a CPC; – the bills of exchange (cheques) order for payment procedure under § 175 CPC. <p>In summary procedure under § 172 CPC the claimant may assert any monetary claims arising from private law relationship, regardless of its amount; financial limit, which was originally applicable, was abolished in 1993. To issue an order for payment the court does not order a hearing nor discovery of evidence, the defendant is not given an opportunity to express his opinion on the matter. It is required, however, that the claim results from the facts alleged by the plaintiff in the action (§ 172 subsection 1 CPC). Another requirement is the fact that the defendant’s residence is known and that he should not be served abroad. If all these requirements are met, the court – even without claimant’s express motion – issues an order for</p>

	<p>payment, that imposes upon the defendant obligation either to pay the claimant up to 15 days from receipt of order for payment the amount claimed and costs; or to file a statement of opposition against the order for payment within the same period. A payment order against which a statement of opposition has not been filed shall have final judgement judgment effects (§ 174 subsection 1 CPC). Any further decision in order to make the order an enforceable title is therefore not necessary. If the defendant files a statement of opposition against the order for payment, the order shall be cancelled thereby to the full extent and the court hears the case in standard first instance adversarial proceedings.</p>
<p>State of IT operational options in judicial procedures for recovery of money claims</p>	<p>Regulation of electronic order for payment procedure was adopted in 2008. New provision of § 174a CPC has introduced the institute of an electronic payment order beside the existing regulation of “ordinary” payment order (§§ 172 to § 174 CPC). In its original form the electronic payment order differed from the “ordinary” payment order only in that the application should be submitted in electronic form, signed with a certified electronic signature, the required sum of money shall not exceed CZK one 1 million CZK, and, finally the court fee was lower. Otherwise, the cited provision referred to analogous application of §§ 172 to § 174 CPC; this meant that for electronic order for payment the same principles as for the “ordinary” order for payment procedure applied, including the requirement that the plaintiff’s claim must arise from allegations stated in the application as well as the possibility to lodge a statement of opposition by the defendant. For this it was obvious that the self self-regulation of the “electronic” summary procedure beside the “ordinary” summary procedure was very curious. This was obvious especially in the case of the “ordinary” order for payment procedure where nothing prevents the claimant to file an action electronically, and the court shall serve the order for payment on both parties also in electronic form (see below). The adoption of § 174a CPC can therefore be seen as a political effort to gain popularity using cheap slogans about electronic processing of justice, and not as an elaborate legal enterprise. This provision was amended several times. The most important changes consist in the fact that the court must refuse defective application to issue electronic payment order without any attempt to remove its defects; further in the possibility to submit a statement of opposition using electronic form; and finally in adjusting of court fees. Information regarding the debtor’s assets is available to the following extent at the Enforcement Authority for enforcement</p>

purposes through search in public registers, to which the Enforcement Authorities has direct access by computer.

SCOPE OF THE PROCEDURE

Eligible claims	<p>In an “ordinary” order for payment procedure (§§ 172 - § 174 CPC) and in an electronic order for payment procedure (§ 174a CPC) it is possible to assert any monetary claims. In civil proceedings, the courts have jurisdiction to hear disputes arising out of private law relations (§ 7 CPC). Therefore the claim must be a pecuniary claim of such a private law nature. Legal grounds for the claim are irrelevant. It can be in respect of both claims arising out of contractual and non-contractual obligation.</p> <p>Only in the order for payment procedure for bills bills-of of-exchange or cheques (§ 175 CPC) certain limitations shall apply to a certain type of claims; in this procedure it is possible to assert only claims arising under bills bills-of of-exchange or cheques.</p>
Limit regarding value of claim	<p>There is currently only one superior limit -- to proceedings on electronic payment procedure; under § 174a CPC it is possible to assert a pecuniary claim not exceeding CZK 1 million CZK (approximately EUR 38 38,500 EUR). This restriction does not apply both in “ordinary” order for payment proceedings (§§ 172- to § 174 CPC) and the order for payment procedure for bills of exchange or cheques (§ 175 CPC). In these proceedings, it is therefore possible to assert claim in any amount. It should be noted that the introduction of a superior limit for pecuniary claims in the electronic order for payment proceedings under current law lacks any rational reason. It is a residue of concept in which electronic order for payment should have been generated automatically without touching a human hand and therefore without examining whether there is a basis in law on the alleged facts. Fortunately, this concept was not accepted and only the financial limit remained.</p>

Possibility of using national procedure in cross border cases	It is not obligatory to use the order for payment procedure; it is always a decision of the creditor whether to assert his claim through standard procedure or simplified and accelerated procedure. In the case that all the conditions set out in § 172 of the CPC are met, the court may issue an order for payment even if the claimant has not explicitly applied for it. This way the court may issue only “ordinary” orders for payment. For an electronic order for payment and an order for payment procedure for bills bills-of exchange or cheques explicit application to issue is required.
Rules on representation by a lawyer	Mandatory representation by attorney CPC is required only for proceedings before the Supreme Court (§ 241 CPC). Therefore it is not necessary to be represented by lawyer in any of described summary procedures. The claimant may take into consideration whether to be represented by attorney or not.

COMPETENT COURTS

According to matter	<p>Regional courts have jurisdiction to hear bills-of-exchange or cheque order for payment procedures [§ (§ 9 subsection 1 point j) CPC].). General territorial jurisdiction is based on the fact that the ordinary court of the defendant is competent. Apart from that, a territorially competent court may be also a court in whose area is the place of payment [§ (§ 87 subparagraph 1 point e) CPC];); this is optional, and thus the claimant may choose whether he will file an motion to issue a bills-of-exchange or cheque order of payment at defendant’s ordinary court or at court in whose area the bill or cheque is to be paid (place of payment).</p> <p>This division of jurisdiction among district and regional courts is in legal practice not problematical. On the contrary, the effort to introduce a single court with territorial and substantial jurisdiction to handle procedures for electronic orders of payment, was clearly rejected. The problem is rather in having quite difficult rules on substantive jurisdiction. This causes delays. But this is a general problem of the Czech civil court proceedings, and not just order procedures.</p>
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APPLICATION FOR AN ORDER FOR PAYMENT - FORMAL REQUIREMENTS

Availability of standardized form and form description	<p>Generally, under § 42 CPC, the claimant may file any written submission not only in paper form, but also electronically through a public data network. In this case it is necessary to distinguish whether these submissions are signed by a certified electronic signature or not. If not signed by certified electronic signature, the claimant must, for reasons of authenticity, within three days, provide his submission in paper form as well, otherwise his submission will not be taken into consideration by court. However, if the submission is signed by a certified electronic signature, no further supplementary material would be necessary. Certified electronic signature has an equal position as a handwritten signature.</p> <p>These rules apply to any actions, including actions for recovery of monetary claims, and for any claimant. The claimant has a choice to submit an action in paper form electronically with certified electronic signature, or to submit his action electronically but without electronic signature; in the last case the claimant has an obligation to submit within three days the original in paper form (§ 42 CPC).</p> <p>There is no standard form for applying for an “ordinary” order of payment (§§ 172- to § 174 CPC) and bills-of-exchange (cheques) order of payment (§ 175 CPC). CPC contains a specific regulation in § 174a only for applications to issue an electronic order for payment and for a statement of opposition against the order of payment (see below).</p>
Rules on representation by a lawyer	<p>No, any person may in principle appear as a representative for the creditor, subject to that he is authorized by a proxy. There exist no specific conditions.</p>

<p>Description of the reasons for the claim</p>	<p>For both an “ordinary” and for an electronic order of payment to be awarded, entitlement must arise from the facts set out in the action (or in electronic form) by the claimant. The circumstances must be set out in sufficient detail to establish which legal claim is being asserted (which legal provision applies), and the claimant must set out all the facts creating, altering or extinguishing rights and obligations under the act. The petition to initiate the procedure must, inter alia, set out the material facts, cite the evidence on which the claimant is relying and make clear what redress the claimant is seeking.</p> <p>Although the CPC has no express provision, these conditions undoubtedly apply also for order for payment for bills of exchange or cheques. Conditions prescribed under § 79 subsection 1 CPC as to general requirements for any action or motion apply also for petition to initiate an order procedure; cited among them all material facts on which the claimant is relying.</p>
<p>Need for written evidence and documents admissible as proof</p>	<p>In order for this payment procedure to be used, general conditions for any petition to commence proceedings apply (§ 79 CPC). Claimant is obliged to designate the evidence and to attach documents in writing upon which he relies. Depending on whether the claimant submits an action in traditional way or electronically, he must attach documents in written or electronic form. In the application for an electronic order for payment the claimant has no other choice than to attach evidence in form of an electronic document.</p> <p>If claimant fails to attach written evidence, it may not lead to a situation that the court will not settle the motion on merits. In summary procedure the court in fact does not introduce evidence, but decides solely on allegations contained in the action. If entitlement arises from these allegations (and other conditions are met; see below), court settles the motion and issues order of payment, even though claimant did not attach his evidence in writing.</p> <p>Special rules apply for the bills-of-exchange and cheque order procedure (§ 175 CPC). As a precondition for this procedure the claimant has to submit the original of a bill-of of-exchange or a cheque whose authenticity is not questionable, and other documents necessary to exercise the right (e. .g. documents proving legal succession).</p>

Option of electronically filing the form	<p>The application to issue an electronic order for payment must be submitted using standardised electronic form which is available at http://epodatelna.justice.cz/ePodatelna/epo1200new/form.do. It must be signed with certified electronic signature. If the claimant seeks to issue an electronic order for payment, he has no choice whether to make the the submission in paper form or electronically; the electronic application using standardised form signed with electronic signature is in this case obligatory.</p> <p>In this standardised form (part A), the petitioner (claimant) chooses a competent court, and substantiates its territorial jurisdiction. Both these items – as well as many other data – can be selected by clicking on the drop-down menu. The claimant then selects e.g. the “District Court in Uherské Hradiště” and in the box for determining and substantiation of the territorial jurisdiction, selects “defendant’s residence”.</p> <p>Next step is to fill in personal details of the claimant, defendant and if represented by lawyer, claimant’s and defendant’s representative. This section cannot be considered as quite correct, because at the time before the motion is filed, and thus before commencement of the procedure, it is still impossible to predict whether and who would be the defendant’s lawyer in the procedure.</p> <p>In part C, claimant fills in the details concerning his claim. The claimant indicates whether he requires only the principal or also accession of the claim and its nature (e.g. interest on late payment). Claimant also indicates the relevant facts and evidence to prove them. The practice tends to underestimate this part sometimes, but to issue an electronic order of payment it is necessary that the claim to be paid is a certain sum of money (and possibly accession) arise from the facts stated by the claimant in his motion.</p> <p>Part D deals with costs of proceedings. The claimant chooses whether to waive the right to costs of proceedings or not. If claimant chooses not to waive costs of proceedings, he then fills in amount of court fees and eventually remuneration of other costs.</p> <p>In part E, the claimant fills in the bank account details, to which the defendant is obligated to pay the amount claimed, the costs of proceedings, or where court returns paid costs in case claimant is exempt from cost of proceedings.</p> <p>In part F, claimant may apply to be exempt from costs of proceedings.</p>
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Part G deals with demand for relief. It is based on previously entered data generated automatically by clicking on appropriate press key.

In part H, the claimant attaches all documents in form of electronic files (written evidence, power of attorney).

At the end of the form the claimant indicates whether he requires the court to send him an acknowledgment of receipt of his motion, and indicates his valid contact address. Claimant – or his lawyer – finally attach certified electronic signature.

ISSUE OF THE ORDER OF PAYMENT

Decision of the court on the payment order

The court decides on the facts invoked by the claimant. If the defendant considers that these facts are not true, he must challenge the order for payment. If the defendant challenges order for payment, the order is revoked in its entirety and the court orders a hearing without further ado. Therefore the possibility to appeal against order is not excluded, but shifted to another stage of the procedure.

In the order for payment, the court orders the defendant to pay the claimant within 15 days from the date of service the claim and costs of proceedings, or to challenge the order within the same period. Holding part of the order for payment can be formulated as follows:

Court orders the defendant to pay the claimant within 15 days from the date of service

- a) claim in the amount of 50.000 CZK with 7,75% interest from 1. 7. 2011 to the date of payment;
- b) costs of proceedings in the amount of 21.680 CZK, to JUDr. XY, claimant's attorney or to challenge the order for payment within 15 days from the date of service at competent court.

There is no reasoning in an order for payment. Nevertheless an order for payment contains extensive notice on defendant's procedural rights and obligations. The defendant is primarily informed that if order for payment is

	<p>challenged, the order is revoked in its entirety and the court orders a hearing without further ado; if a defendant's statement of opposition is not filed in time or is filed by a non authorised person, court will refuse this statement. Furthermore, defendant is informed that order for payment, that has not been challenged or the statement of opposition was refused, has the effect of a final decision. The defendant is also informed about the possibility to appeal against the verdict on costs of litigation. Finally, the order for payment informs on the possibility of court execution in case the defendant will not comply with its orders voluntarily.</p> <p>The order for payment must be served personally both on the defendant and the claimant. The prevailing practice is based on a presumption that it is not necessary to serve the order by personal delivery in defendant's own hands; this opinion is quite controversial, because even order for payment is a form of decision on merits. The Code on Civil Procedure contains express rules on service of documents to defendant (§ 173 CPC): order for payment must be delivered in defendant's own hands, alternative delivery is excluded. The law thus eliminates fiction of delivery that applies in case the addressee does not pick up written or electronic document in 1ten0-day deposit period. If the delivery of order for payment fails, court issues resolution to cancel the order. Under § 173 subsection 2 CPC the court is obliged to do so even if there is more defendants and the delivery into their own hands fails just to one of them. This regulation raises doubts, since it does not correspond to the nature of community of participants.</p>
<p>Defendant's service of the order of payment</p>	<p>The court may deliver all documents to participants not only through a delivering body (for examplee.g., through providers of postal services) but also electronically. CPC regulates two methods of electronic delivery; either by e-mail address (§ 46 subsection 2, § 47 subsection 2 and 3 CPC), or to the data mailbox (§ 46 subsection 1, § 47 subsection 1 CPC and § 17 of the Act No. 300/2008 Coll., on electronic acts and authorised document conversion). The difference between these two methods of serving documents is that the delivery to an e-mail address is ineffective unless the addressee acknowledges the receipt of the document within three days from sending of the document by means of data message accompanied by his certified electronic signature. Otherwise, the service of such a document is not valid. For document delivery to the data mailbox such confirmation is not required. The system of data mailboxes can recognise when a particular document was delivered to the data mailbox, and whether the data mailbox was entered by person authorised to access this document, or when this happened.</p>

Data mailboxes are obligatory for some persons. According to the Act No. 300/2008 Coll., on electronic acts and authorised document conversion, that includes advocates, tax advisors, insolvency administrator, legal entities established by law, legal entities registered in the commercial register and branches of a foreign corporate entities registered in commercial register. Otherwise it is at the discretion of each one whether they will request establishment of data mailbox at the Ministry of the Interior.

If the addressee has an accessible data mailbox, the court is under obligation to deliver all documents into this data mailbox. This applies regardless of whether the data mailbox was created upon request or upon legal obligation. Therefore, the court has no discretion which method of delivery to choose. Court has obligation to deliver documents into the data mailbox. If the court has to deliver a document that is originally in paper form, it must be converted into an electronic document.

The above described system of documents delivery serves as a general rule and is applicable to all types of procedure mentioned in this text. It is possible to deliver via data mailbox not only “electronic” order for payment in accordance with § 174 of the CPC, but also an “ordinary” order for payment. On the other hand, if the conditions for delivery to data mailbox are not met, e.g. the addressee does not have data mailbox, the court will have to delivery both “ordinary” and “electronic” orders for payment using other means of delivery (typically delivery via provider of postal services). In this case, the “electronic” order for payment is not actually electronic, it is a deed. This also shows the “quality” of current Czech legislation in this matter.

REJECTION OF THE APPLICATION

Grounds for rejecting application	<p>Court will not issue an order for payment unless all conditions for its granting are met, e.g. entitlement arises from the facts set out by the claimant or residence of the defendant is known in case of “ordinary” and electronic orders for payment, or there are reasonable doubts about the authenticity of the bill-of-exchange or cheque. In this situation, court does not issue a decision refusing an order for payment. If it does not want to grant a petition for such a decision, it orders a hearing (§ 172 sub subsection 3, § 175 subsection 1 last sentence CPC). This procedure merely manifests court’s opinion that conditions for issuing order for payment were not fulfilled; this does not automatically anticipate claimant’s loss. The case will be heard in standard adversarial procedure.</p> <p>Since the court does not deliver a decision-refusing an order for payment, but orders a hearing on the merits, the claimant has no defence against it. In fact, there is no decision the claimant could appeal against.</p>
Existence of prima facie of claim	No.

OPPOSITION BY THE DEFENDANT

Procedural rules

An “ordinary” and an electronic order for payment can be challenged by filing an opposition with the court. The defendant has 15 days from the date of service to challenge an order for payment. The opposition need not be substantiated. If just one of the defendants challenges an order for payment in good time, the order is revoked in its entirety (§ 174 subsection 2 CPC). The order for payment is revoked “ex lege”; court shall not issue a separate resolution. There is no special procedure after revoking an order for payment; the court hears the case in standard first instance adversarial proceedings. The next step therefore consist in that the court orders a hearing on the matter in standard first instance adversarial procedure (§ 174 subsection 2 CPC). Also the defendant can file the statement of opposition against the order of payment using electronic form with certified electronic signature (§ 174a subsection 6 CPC). Unlike the application to issue an electronic order for payment, the electronic form of statement of opposition is only an option, not an obligation.

The defendant may challenge the courts decision only in the part concerning costs of proceedings. In this case the challenge is not in the form of an opposition, but an appeal (§ 174 subsection 2 CPC); procedural time limit is the same as for an opposition (§ 204 subsection 1 CPC). The court of appeal will decide on the reimbursement of costs, not court of first instance. If defendant appeals only against the statement on costs of proceedings, the statement of the order for payment on merit is unaffected; in this part the order for payment has the effect of a final decision.

Effects of the Absence of Timely Defence	All these types of order for payments shall become effective as final judgments, i.e. they have all characteristics arising out of their legal force. They are binding on the parties as well as on all public authorities, and they constitute “res iudicata”. They cannot be contested nor by appeal nor by appellate review (i.e. remedial measure decided by the Supreme Court). They can be challenged only by filing action for renewal of proceedings or action for mistrial. Action for renewal of proceeding shall be filed only if reason for renewal (e.g. appear new facts or evidence that the party could not have used without own guilt in the original proceedings, and that can induce a favourable decision for him) could apply to conditions, under which listed types of orders for payment were approved (§ 228 subsection 2 CPC). Reasons for action for mistrial can be (pursuant to § 229 subsection 2 CPC) violation of “lis pendens”, “res iudicata” or material unenforceability of the order for payment.
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COURT FEES

Costs incurred in connection with payment order procedure consist primarily in court fees and costs associated with representation before court (remuneration for representation, lump-sum reimbursement of cash expenses, and possibly remuneration for the value added tax).

According to the Act on court fees (Act No. 549/1991 Coll.), court fee for an “ordinary” order for payment and a bills-of-exchange order for payment is CZK 1,000, when sued for an amount up to CZK 20,000 including; for amounts exceeding CZK 20,000 up to CZK 40,000.000 the court fee is 5% of the claimed amount; for amounts higher than CZK 40,000,000 court fee is set at CZK 2,000,000 and 1% of the amount exceeding CZK 40,000,000 (amount higher than CZK 250 million is not included). Lower rates are set for electronic order for payment; if sued for amount not exceeding CZK 10,000 included, the court fee is CZK 400; for amounts exceeding CZK 10,000 up to CZK 20,000 court fee is CZK 800; if sued for amount exceeding CZK 20,000, the court fee is 4% from the claimed amount.

Attorney’s fee was for the purposes of deciding on costs of litigation set as lump sum, regardless of the amount of legal services performed by attorney. This fixed lump-sum was regulated by regulation No. 484/2000 Coll., and depended on the

claimed amount of money. The regulation was annulled by the Constitutional court (judgment Pl. ÚS 25/12 of 17 April 2013). Attorney's fee is now fixed in the Regulation No. 177/1996 Coll., advocates tariff, and depends on the amount of performed legal services.

Attorney is also entitled to lump sum payment of cash expenses for every legal service act in the amount CZK 300; pursuant to § 13 of the Regulation No. 177/1996 Coll., advocates tariff. In order proceeding, claimant's attorney usually does two legal service acts, consisting of the preparation and legal representation, and filing action for order for payment; lump-sum remuneration for these two acts is CZK 600.

Remuneration for value added tax forms part of costs of litigation under § 137 subsection 3 CPC; only if – simply put – attorney is registered for VAT. The amount of VAT is currently 20% according to Act. No 235/2004 Coll.

As well as in standard adversarial proceedings, the principle for decision on compensation of costs of litigation is success in the matter (§ 142 subsection 1 CPC). In order for payment court awards the claimant remuneration of all costs that were necessary for efficient implementation or interference with rights against the defendant.

ENFORCEMENT OF NATIONAL ORDER OF PAYMENT

Domestically

The court shall issue the order for payment, electronic order for payment or bill-of-exchange or cheque order for payment if all statutory conditions are met. If the order for payment is not challenged or any objections are filed, it has the effect of a final decision. There is no need to further decision for the order for payment to be an enforceable title for enforcement procedure.

Order for payment, electronic order for payment and bills-of-exchange (cheque) order for payment are execution titles. In the national regime it is possible to propose either enforcement carried by court under Civil Procedure Code (§§ 251 et seq. CPC) or execution ordered by court and carried by judicial executor in accordance with the Execution Code (Act No. 120/2001 Coll.).

In the Czech Republic it is possible to enforce also foreign execution titles. It depends whether it is execution title governed by international treaty, or by directly applicable European Union act (e.g. Council Regulation (EC) No. 44/2001 (hereinafter Brussels I Regulation) or Council Regulation (EC) No. 805/2004). If no international treaty or European Union law is not applicable, then – until the end of 2013 – §§ 63 et seq. of the Act. No. 97/1963, Coll. on International Private and Procedural Law applies. According to this Act a foreign decision shall not be enforced and recognised under these conditions:

- (a) the recognition or enforcement is impeded by exclusive jurisdiction of Czech courts or where the proceedings could not have been conducted before any authority of foreign state if provisions concerning the competence of Czech courts had been applied to the consideration of jurisdiction of the foreign authority;
- (b) in the same case as the case in question, a final and conclusive decision has been issued by Czech authorities or a final and conclusive decision of an authority of a third state has been recognised in the Czech Republic;
- (c) the authority of the foreign state deprived the participant against whom the decision is to be recognised and/or enforced of the possibility to duly participate in the proceedings, particularly if this participant was not served the lawsuit or the writ of summons personally or if the defendant was not served the lawsuit personally;
- (d) recognition is contrary to Czech public order;
- (e) reciprocity is not guaranteed; reciprocity shall not be required if the foreign decision is not directed against a Czech citizen or a Czech legal entity.

Recognition of foreign decision in property matters is not pronounced by separate judgment. The Czech court recognises a foreign judgment by taking it into account, as if it was a decision of the Czech authority. Under these conditions it is possible to enforce a foreign judgment on property rights if its enforcement is ordered by Czech court. The decision must contain reasoning.

The Czech Republic has a new Act on International Private Law No. 91/2012 Coll.; it should take effect from 1 January 2014. This act contains in §§ 14 to 16 the same rules as described above.

Abroad

Czech orders for payment may be subject to execution abroad, under conditions set by international treaties, above mentioned, by EU regulations or national legislation. In case of order for payment and electronic order for payment this situation will not be frequent, because “ordinary” and electronic orders for payment cannot be issued if the defendant is to be served abroad (§ 172 subsection 2 point b) CPC). However, we cannot exclude this situation as such, because e.g. the defendant may move abroad only after the order proceedings, or had residence or seat abroad, but during the proceedings he was served to data mailbox, and therefore it was not there was nothing precluding issuing of order for payment. There is no similar regulation for a bills-of-exchange (cheque) order for payment as in § 172 subsection 2 point b) CPC. The Czech law does not prevent its recognition and execution abroad.

COMPARING NATIONAL AND EU ORDER FOR PAYMENT

Differences between national and EU order for payment procedure are following: Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (hereinafter: Regulation No 1896/2006) excludes from its scope claims arising out of non-contractual obligations (Art. icle 2 subsection 2 point b) CPC). Leaving aside the bills-of-exchange (cheque) order for payment procedure (which can naturally apply only to claims arising out of bills-of-exchange or cheques), there is no such restriction for “ordinary” or electronic orders for payment. They can therefore be used for both contractual and non-contractual obligations.

An application for a European order for payment shall be express and made using standard form. In this respect, European legislation is the same as national electronic orders for payment procedure; for bills-of-exchange (cheque) orders for payment then both have the requirement that the application must be express. In contrast, regulation of “ordinary” orders for payment under § 172 CPC do not require an application to be express. It is sufficient that the claimant asserts a right to payment of a pecuniary claim, and this pecuniary claim arises from the facts statement made by the claimant and other

conditions being fulfilled. Then, the court shall issue an order for payment even though the claimant did not have applied for it.

Differences are also in the content of applications. Regulation No 1896/2006 requires only that claimant individualised his claim so as not to be confused with another, and that the defendant knew what claim was raised against him, and therefore can consider filing an opposition; for evidence it suffices its description. National law, however, requires for all types of actions for order for payment that the claimant did properly all recitations, under which it would be possible to assess whether the alleged claim arises out of these facts. Also, it is not sufficient to merely describe the evidence, written documents have to be attached. In the bills-of-exchange (cheque) procedure, it is necessary to attach original bills or cheques, eventually oppositions or other documents.

Pursuant to Art. icle 8 of the Regulation No 1896/2006 the court seized of an application for a European order for payment shall examine whether requirements set out in Art. icles 2, 3, 6 and 7 are met and whether the claim appears to be founded. This examination may take the form of an automated procedure. Something like that at national level is not possible. While the national court does not examine whether alleged facts are true, court must examine whether at least the alleged amount arises out of these facts. This can be done only by human, not computer examination.

Art. icle 10 of the Regulation No. 1896/2006 allows claimant – after being informed by the court – to modify his application. Based on this the court may issue a partial European order for payment. This is not possible in the national order for payment procedure; the national court either fully complies with the application and issues an “ordinary”, electronic or bills-of-exchange (cheque) order for payment, or orders a hearing and hears the case in standard adversarial civil procedure. This is indeed another difference, because if requirements to issue order for payment are not met, then national court does not issue a negative decision but hears the case in ordinary civil adversarial procedure.

The defendant may lodge a statement of opposition against European payment order within 30 days of service of the order on the defendant. Time limit for national orders for payment is 15 days.

If a statement of opposition against European payment order is lodged within the time limit, the proceedings shall continue before the competent courts of the Member States of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event (Art. icle 7 subsection 4 Regulation

No. 1896/2006). National law does not allow the claimant a similar approach. The same result would be achieved by the claimant only if he took his action back.

The European order for payment shall be established for the collection of pecuniary claims that have fallen due at the time the application is submitted (Articles. 4 and 8 of the Regulation No. 1896/2006). In contrast, under Czech law it is sufficient if the claim is due only during court decision-making (§ 154 subsection 1 CPC).

Czech law does not allow other means of defence against the statement in the order for payment than a statement of opposition; there is no equivalent to the “review in exceptional cases” as regulated in Article 20 of the cited regulation in national law. The action for renewal of proceedings or action for mistrial, that can be filed in some cases, are so called extraordinary relief aimed at specific deficiencies. Therefore it is not possible to compare them with the review in exceptional cases.