

Please note that the translation is not an official version and it is a summary.

**Act No 629  
of 11 November 2004  
on the provision of legal aid in cross-border disputes in the European Union**

By this Act of the Czech Republic, the Parliament has enacted the following:

Section 1

**Cross-border dispute**

(1) For the purposes of this Act ‘cross-border dispute in the European Union’<sup>1</sup> (hereinafter “cross-border dispute”) shall mean any dispute in civil or criminal matters where the party has his or her place of residence in a Member State of the European Union (hereinafter “Member State”) other than that in which the court deciding on the dispute sits (hereinafter “the court of the proceedings”).

(2) Any proceedings connected with cross-border dispute proceedings within the meaning of paragraph (1) shall also be deemed to be cross-border dispute proceedings; for the purposes of this Act this means proceedings on ordinary or extraordinary legal redress, proceedings on recognition of judgments, proceedings declaring enforceability and proceedings on enforcement or execution (hereinafter “related proceedings”).

(3) The relevant factor in determining whether the dispute is a cross-border dispute within the meaning of paragraphs (1) and (2) shall be the situation on the date on which the cross-border dispute legal aid application referred to in Section (2)(1)(b) was submitted or the date on which the cross-border dispute legal aid application referred to in Section (9)(1)(a) was sent to the Ministry of Justice (hereinafter “the Ministry”).

(4) The provisions of this Act shall not apply in respect of the Kingdom of Denmark.

**Provision of legal aid in cross-border disputes  
in cases where the court of the proceedings is a court in the Czech Republic**

Section 2

(1) Where the court of the proceedings is a court in the Czech Republic, legal aid for the cross-border dispute shall be granted to the individual if:

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<sup>1</sup> Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

- (a) he or she has his or her place of permanent residence or habitually resides within the territory of a Member State other than the Czech Republic;<sup>2</sup>
  - (b) he or she has, directly or via the body responsible in the Member State (hereinafter “competent body of the Member State”) or via the Ministry, submitted to the court of the proceedings a cross-border dispute legal aid application in accordance with the model laid down in the procedural legal provisions;
  - (c) the person’s financial and social circumstances justify granting partial or total exemption from the payment of legal fees,<sup>3</sup> and;
  - (d) the cross-border dispute legal aid application is not manifestly unfounded in the sense of being a frivolous or evidently futile exercise or defence of a right.
- (2) Where the court of the proceedings establishes that the conditions laid down in paragraph (1) are met by the person in question (hereinafter “foreign beneficiary”), it shall provide him or her with legal aid in the cross-border dispute in the manner set out in Section 3.

### Section 3

(1) The provision of legal aid in a cross-border dispute for a foreign beneficiary shall mean:

- (a) appointment of a representative in the proceedings before the court of the proceedings in accordance with the relevant procedural provisions;<sup>4</sup>
- (b) appointment of an interpreter in the proceedings before the court of the proceedings in accordance with the relevant procedural provisions;<sup>5</sup>
- (c) exemption from legal fees and from payment of a deposit for any costs of evidence in the proceedings before the court of the proceedings that acquire legal force through a decision by the court of the proceedings in accordance with Section 4(3);
- (d) translation from a foreign language (with the exception of Slovak) into Czech of documents submitted by the foreign beneficiary during the proceedings before the court of the proceedings and required to be produced in evidence in accordance with a decision by the court of the proceedings;
- (e) reimbursement of the foreign beneficiary’s essential travel expenses incurred in travelling from his or her place of permanent residence or the place where he or she habitually resides in the Member State to place where the court of the proceedings is located, if the court of the proceedings decides that his or her presence in court is

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<sup>2</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

<sup>3</sup> Section 138 of Act No 99/1963 (Civil Proceedings Code), as amended.

<sup>4</sup> Sections 30 and 31 of Act No 99/1963, as amended.

<sup>5</sup> Section 18 of Act No 99/1963, as amended.

indispensable in order to safeguard equality between the litigants or in view of the complexity of the case.

(2) The legal aid expenses referred to in paragraph (1) shall be borne by the State.

#### Section 4

(1) The court of the proceedings shall on receiving a foreign beneficiary's cross-border legal aid application take a decision on it without undue delay.

(2) If the conditions laid down in Section 2(1)(a), (c) and (d) are not met or if the dispute is not a cross-border dispute within the meaning of Section 1 of this Act, the court of the proceedings shall reject the legal aid application.

(3) Where the court of the proceedings does not reject the legal aid application in accordance with paragraph 2, it shall decide to grant cross-border dispute legal aid to the foreign beneficiary; reasons need not be given for the decision and no legal address against the decision shall be admissible.

#### Section 5

A decision by the court of the proceedings to grant legal aid to the foreign beneficiary shall also cover all related proceedings as referred to in Section 1(2).

#### Section 6

(1) The court of the proceedings may, of its own motion, rule that the foreign beneficiary is required to pay back to the State all or part of the expenses incurred by the State in respect of the legal aid referred to in Section 3(1)(a), (d) and (e) granted so far, where it establishes that:

- (a) at the time when the legal aid application was submitted the granting condition referred to in Section 2(1)(c) was not met because of the foreign beneficiary providing inaccurate or incorrect information; or
- (b) the financial and social circumstances of the foreign beneficiary have substantially changed, in particular as a result of winning the cross-border dispute in question.

(2) A decision by the court of the proceedings taken in accordance with paragraph 1 shall have the legal effect of terminating:

- (a) the State's obligation to pay the costs of the legal aid granted to the foreign beneficiary in accordance with Section 3(1)(a),(d) and (e);
- (b) the exemption from legal costs referred to in Section 3(1)(c).

(3) The court of the proceedings competent to take a decision as referred to in paragraph (1) is the court that decided to grant the cross-border dispute legal aid to the foreign beneficiary; however, if there are any related proceedings under way, the court

hearing these related proceedings shall be competent to take a decision as referred to in paragraph (1)

(4) The decision requiring the expenses to be paid back in accordance with paragraph (1) must be taken no later than 3 years from the entry into force of the final decision in the cross-border dispute, including decisions in related proceedings.

(5) The foreign beneficiary shall without delay notify the court of the proceedings in accordance with paragraph (3) of the circumstances referred to in paragraph (1).

(6) The provisions of paragraph (1) shall not apply if the costs of the legal aid granted to the foreign beneficiary in accordance with Section 3(1)(a), (d) and (e) incurred by the State have been or are to be reimbursed to the State from the payment of the legal costs awarded to the State in accordance with Section 7.

### Section 7

(1) Where a foreign beneficiary meets the conditions laid down by special legal provisions to be awarded compensation for legal costs in a cross-border dispute,<sup>6</sup> the court of the proceedings shall decide to award the compensation for the legal costs to the State instead of to the foreign beneficiary.

(2) Where the compensation for legal costs to be awarded to the State in accordance with paragraph (1) is greater than the legal aid costs granted to the foreign beneficiary in accordance with Section 3(1)(a), (d) and (e), the State shall be awarded compensation only up to the amount of the legal aid costs; the remainder of the legal cost compensation shall be awarded to the foreign beneficiary.

### **Provision of legal aid in cross-border disputes in cases where the court of the proceedings is a court in a Member State other than the Czech Republic**

### Section 8

Where the court of the proceedings is a court in a Member State other than the Czech Republic, the cross-border dispute legal aid shall be provided by the Ministry in the manner and on the conditions set out in Section 9:

(a) to nationals of the Czech Republic<sup>7</sup> who have their place of permanent residence within the territory of the Czech Republic or habitually reside within the territory of the Czech Republic;<sup>8</sup>

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<sup>6</sup> Section 142 ff. of Act No 99/1963, as amended.

<sup>7</sup> Czech Nationality (Acquisition and Loss) Act No 40/1993, as amended.

<sup>8</sup> Population and ID Numbers (Records) and Other Acts (Amendment) Act No 133/200 (the "Population Records Act"), as amended.

- (b) foreigners residing, in accordance with the special legal provisions,<sup>9</sup> within the territory of the Czech Republic for an uninterrupted period of more than 90 days;
  - (c) foreigners granted asylum within the territory of the Czech Republic,<sup>10</sup>
- (hereinafter “domestic beneficiary”).

## Section 9

(1) The Ministry shall:

- (a) take receipt of cross-border dispute legal aid applications from domestic beneficiaries;
- (b) forward cross-border dispute legal aid applications from domestic beneficiaries within 15 days of the day on which it received them or of the day on which any errors in them were rectified to the competent body in the Member State in accordance with the model laid down in the procedural provisions;
- (c) confirm to domestic beneficiaries that their application has been forwarded to the competent body in the Member State.

(2) The Ministry shall provide domestic beneficiaries with the necessary assistance to ensure that the legal aid application complies with all the requirements laid down by the law of the relevant Member State; to this end, the Ministry shall, in particular, instruct the person concerned on how and by when to rectify any errors in the application and, if necessary, arrange, at the State’s expense, for the translation into a foreign language of the application and any documents required to be attached to it.

(3) When submitting an application for cross-border dispute legal aid, domestic beneficiaries shall inform the Ministry of whether they have applied for legal aid for the cross-border dispute directly to the competent body in the other Member State which is to decide on the application in accordance with the law of that Member State.

(4) The Ministry shall decide to reject an application for cross-border dispute legal aid and shall return the application, if:

- (a) the application was not submitted by a domestic beneficiary;
- (b) the application does not concern a cross-border dispute;
- (c) the application is manifestly unfounded in the sense of being a frivolous or evidently futile exercise or defence of a right;
- (d) the domestic beneficiary failed to correct any errors in the application within the time limit stipulated by the Ministry; or

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<sup>9</sup> Foreigners (Residence in the Czech Republic) and Other Acts (Amendment) Act No 326/1999, as amended.

<sup>10</sup> Asylum Act No 325/1999, amending the amended Czech Police Act No 283/1991, as amended.

- (e) the application was submitted by a domestic beneficiary who has already submitted an application directly to the competent body in the other Member State concerning the same case.

(5) Rejection of an application in accordance with paragraph (4)(a)-(d) shall not affect the domestic beneficiary's right to address the application directly to the competent body in the other Member State.

## Section 10

The Ministry may decide that the domestic beneficiary is required to compensate the State in full or in part for the cost of the translation into a foreign language of the legal aid application or the documents required to be attached to it in accordance with Section 9(2), where the application has been rejected by the competent body in the other Member State or where that body has decided that the domestic beneficiary is required to pay back in full or in part the expenditure incurred in respect of him or her for the legal aid provided so far; the Ministry may take such a decision within three years of the day on which the decision by the competent body in the other Member State acquired force.

## **Common provisions**

### Section 11

(1) Proceedings in cases referred to in Sections 4-7 shall be governed by the Code of Civil Procedure, save where otherwise stipulated by this Act.

(2) Proceedings in cases referred to in Sections 9(1)(a), 9(4) and 10 shall be governed by the Code of Administrative Procedure. Where a domestic beneficiary's application for acceptance of a cross-border legal aid application is granted, a decision shall not be issued in administrative proceedings.

### Section 12

Compensation payable to the State in accordance with Sections 6 and 10 shall constitute State budget revenue.

### Section 13

## **Enabling provisions**

The Ministry shall, by decree, lay down a model for cross-border dispute legal aid applications, as referred to in Section 2(1)(b), and a model for forwarding cross-border dispute legal aid applications, as referred to in Section 9(1)(b).

### Section 14

### **Effect**

This Act shall enter into force on the date of its promulgation.

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ACT  
of the Czech Republic  
No. 99/1963 Sb.  
Civil Procedure Code

as amended by the Acts No. 36/1967 Sb., No. 158/1969 Sb., No. 49/1973 Sb., No. 20/1975 Sb., No. 133/1982 Sb., No. 180/1990 Sb., No. 328/1991 Sb., No. 519/1991 Sb., No. 263/1992 Sb., No. 24/1993 Sb., No. 171/1993 Sb., No. 117/1994 Sb., No. 152/1994 Sb., No. 216/1994 Sb., No. 84/1995 Sb., No. 118/1995 Sb., No. 160/1995 Sb., No. 238/1995 Sb., No. 247/1995 Sb., by the decision of the Constitutional Court No. 31/1996 Sb. (consolidated text published in No. 62/1996), by the Act No. 142/1996 Sb., by the decision of the Constitutional Court No. 269/1996 Sb., by the Acts No. 202/1997 Sb., No. 227/1997 Sb., No. 15/1998 Sb., No. 91/1998 Sb., No. 165/1998 Sb., No. 326/1999 Sb., No. 360/1999 Sb., by the decision of the Constitutional Court No. 2/2000 Sb., by the Acts No. 30/2000 Sb., No. 46/2000 Sb., No. 105/2000 Sb., No. 130/2000 Sb., No. 155/2000 Sb., No. 204/2000 Sb., No. 220/2000 Sb., No. 227/2000 Sb., No. 367/2000 Sb., No. 370/2000 Sb. (consolidated text published in No. 69/2001 Sb.), No. 120/2001 Sb., No. 137/2001 Sb., No. 231/2001 Sb., No. 271/2001 Sb., No. 317/2001 Sb., No. 451/2001 Sb., No. 491/2001 Sb. and No. 501/2001 Sb.

PART ONE

GENERAL PROVISIONS

CHAPTER ONE

FUNDAMENTAL PROVISIONS

Section 1

The Civil Procedure Code shall regulate the procedure of court and participants in civil judicial proceedings in order to assure protection of rights and lawful interests of the participants and to teach to preserve law, to fulfil obligations honestly and to respect rights of others.

Section 2

In civil judicial proceedings, the courts shall hear and decide on disputes and other legal cases and conduct enforcement of a decision that was not fulfilled voluntarily; in doing so, they shall see to it that rights and lawful interests of individuals and legal entities are not violated and that rights are not abused to the detriment of these persons.

### Section 3

Civil judicial proceedings shall be one of the guaranties of the rule of law and shall serve to strengthening and developing it. Everyone shall be entitled to exercise his jeopardized or violated right with a court.

### Section 4

repealed

### Section 5

The courts shall instruct the participants of their procedural rights and obligations.

### Section 6

The court shall proceed in co-operation with all participants of the proceedings so that protection of rights is quick and effective and that facts being at issue between the participants are ascertained reliably.

## CHAPTER TWO

### THE COURTS

#### Jurisdiction

##### Section 7

(1) In civil judicial proceedings, the courts shall hear and decide on disputes and other legal cases following from civil, labor, family and commercial relationships save where a law provides that these relationships shall be heard and decided by other authorities.

(2) Other cases shall be heard and decided by courts in civil judicial proceedings only where it is provided by law.

##### Section 8

Where proceedings before another authority have to be conducted before the commencement of proceedings before court, the courts shall proceed only if the case has not been finally and conclusively resolved in such proceedings.

##### Section 8a

Disputes concerning jurisdiction

The high court shall decide on disputes concerning jurisdiction between courts and authorities of state administration; the proceedings shall be conducted by the high court in whose district the site of the concerned authority of state administration is located.

## Competence

### Section 9

(1) Unless the law provided for anything else, the first instance competence shall be exercised by district courts.

(2) The first instance competence shall be exercised by regional courts

a) in cases concerning protection of personality according to the Civil Code and protection of rights of third persons and, as the case may be, in cases concerning protection of rights of third persons according to mass media regulations;

b) in disputes following from exercising rights and obligations under provisions regulating protection of personal data in information systems,<sup>39)</sup>

c) in disputes concerning claims following from the Copyright Act,<sup>40)</sup> in disputes concerning claims following from jeopardize and violation of rights under the Copyright Act and in disputes concerning claims to surrender the unjustified enrichment gained to the detriment of the bearer of rights under the Copyright Act;

d) in disputes between the employer and the recipient concerning a mutual settlement of a pension insurance allowance paid unlawfully or in a higher than proper sum;

e) in disputes between the relevant sickness insurance authority and the employer concerning compensation of damages arisen from an improper realization of the sickness insurance;

f) in disputes concerning illegality of a strike or lock-out;

g) in disputes concerning nullity of termination of a labor or service relationship under Section 18 para. 2 of the Act No. 451/1991 Sb., providing for several further requirements for execution of several posts in state authorities and organizations of the Czech and Slovak Federal Republic, Czech Republic and Slovak Republic;

h) in disputes concerning a foreign state or persons enjoying diplomatic immunities and privileges if these disputes fall within jurisdiction of Czech courts;

i) in disputes concerning determination whether an application for registration of a political party or a political movement has no defect preventing it from registration;<sup>1)</sup>

j) in proceedings against a decision of the Board for Radio and Television Broadcast according to a special law;<sup>1a)</sup>

k) in disputes concerning a mutual settlement of a state social support allowance overpaid granted unlawfully or in a higher sum between the entitled person and the person considered together with the entitled person or between the entitled person and the legal entities or individuals referred to in a special legal regulation.<sup>1b)</sup>

(3) The first instance competence shall be exercised by regional courts also in the commercial cases as follows:

a) in cases concerning Commercial Register, Generally Beneficial Companies Register and Foundations Register;

- b) in cases concerning the legal status of business companies, co-operatives and other legal entities under Part One, Two and Four of the Commercial Code;41)
- c) in cases following from legal relationships connected with establishing business companies, co-operatives, generally beneficial companies, endowments and endowment funds;
- d) in proceedings concerning winding-up a generally beneficial company and a liquidation thereof and concerning appointment of a liquidator;42)
- e) in proceedings concerning winding-up a foundation or endowment fund and a liquidation thereof, concerning appointment of a liquidator of the foundation or endowment fund and concerning appointment of new members of the board of directors of the foundation or endowment fund;43)
- f) in proceedings concerning winding-up a state enterprise and appointment and recall of a liquidator thereof;44)
- g) in disputes from legal relationships between business companies (co-operatives) and the founders thereof (partners or members) as well as in mutual disputes between the partners (members or founders) as for relationships concerning participation in the company (membership in the co-operative), in disputes concerning agreements on transfer of a partner's (membership rights and obligations) and in disputes connected with increase of the basic capital (accession of an associate or member) save where the competence under letter b) is given;
- h) in disputes between business companies (co-operatives) and statutory bodies thereof, liquidators or other bodies and in disputes between partners (members) and statutory bodies, liquidators or other bodies as for relationships concerning execution of office of these bodies;
- i) in disputes concerning legal relationships between a businessman, generally beneficial company, foundation or endowment fund on one side and the trustee managing the assets falling into bankruptcy estate thereof, eventually an enforced administrator appointed thereto on the other;
- j) in disputes between a proxy and the businessman who granted the procuration and, where the procuration was granted to more proxies, in mutual disputes between these proxies;
- k) in cases concerning protection of economic competition;45)
- l) in cases concerning protection of rights violated or jeopardized by an unfair competition conduct46) and in cases concerning violation or jeopardize of rights to a commercial secret;47)
- m) in cases concerning protection of the name and goodwill of a legal entity;48)
- n) in disputes concerning rights to a commercial name;49)
- o) in disputes concerning claims following from industrial property rights, in disputes concerning claims following from jeopardize and violation of industrial property rights and in disputes concerning claims to surrender an unjustified enrichment gained to the detriment of the bearer of industrial property rights;
- p) in disputes concerning bills of exchange, promissory notes, cheques and other securities, derivatives and other values being tradable on capital market;
- q) in disputes following from commodate exchange transactions;

r) in disputes following from other commercial obligations including disputes concerning compensation of damages and surrender of unjustified enrichment between businessmen in the course of their business activities except for disputes

1. following from credit agreements,50) current account agreements51) and deposit account agreements52) and a security therefor; the provision of letter p) shall hereby not be affected by this rule;

2. concerning compensation of damages and to surrendering unjustified enrichment arisen in connection with the agreements referred to in point 1 and concerning a security therefor;

3. concerning determination of ownership to a real property and concerning nullity of an agreement on transfer of ownership of the real property;

4. concerning rights to somebody else's things;53)

5. concerning lease of a real property, flats and non-residential premises;

6. concerning a pecuniary performance unless the sum demanded by the actor exceeds 100 000 Czech crowns; for this purpose, the accessories of the receivable shall not be taken into account;

s) in bankruptcy and composition cases;

t) in disputes evoked by bankruptcy or composition except for settlement of joint property and other assets of spouses;

u) in capital market cases.

(4) The Supreme Court of the Czech Republic (hereinafter the "Supreme Court") shall decide as a first instance court in cases provided by a special law.

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1) Section 7 para. 4 of the Act No. 424/1991 Sb., on associating in political parties and political movements.

1a) Section 66 of the Act No. 231/2001 Sb., on operating radio and television broadcast and on amendment to other acts.

1b) Section 62 para. 3 and Section 63a para. 2 of the Act No. 117/1995 Sb., on state social support, as subsequently amended.

39) Act No. 256/1992 Sb., on protection of personal data in information systems.

40) Act No. 35/1965 Sb., on works of literature, science and art (Copyright Act), as subsequently amended.

41) Act No. 513/1991 Sb., Commercial Code, as subsequently amended.

42) Section 8 para. 4 and 5, Section 9 para. 2 of the Act No. 248/1995 Sb., on generally beneficial companies and on amendments to several acts.

43) Section 7 para. 3 to 5, Section 9 para. 2 and Section 16 of the Act No. 227/1997 Sb., on foundations and endowment funds and on amendment to several related acts (Foundations and Endowment Funds Act).

44) Section 6 para. 4 and Section 9 para. 3 of the Act No. 77/1997 Sb., on state enterprise.

45) Act No. 63/1991 Sb., on protection of economic competition.

46) Section 44 ff. of the Commercial Code.

47) Section 17 ff. of the Commercial Code.

- 48) Section 19b of the Act No. 40/1964 Sb., Civil Code, as amended by the Act No. 509/1991 Sb.
- 49) Section 8 ff. of the Commercial Code.
- 50) Section 497 ff. of the Commercial Code.
- 51) Section 708 ff. of the Commercial Code.
- 52) Section 716 ff. of the Commercial Code.
- 53) Section 151a ff. of the Civil Code.

#### Section 9a

The lawsuit under Section 91a shall be heard in the first instance either by district or by regional courts according to which of these courts hears the case concerning the thing or right claimed by the actor.

#### Section 10

- (1) Regional courts shall decide on appeals against decisions of district courts.
- (2) High courts shall decide on appeals against decisions of regional courts being first instance courts.

#### Section 10a

The Supreme Court shall decide on recourses against decisions of regional or high courts being courts of appeal.

#### Section 11

- (1) The proceedings shall take place before the court being materially and locally competent. Circumstances existing at the moment of commencement of the proceedings shall determine the material and local competence until the conclusion of proceedings.
- (2) Where more courts are locally competent in the case, the proceedings may take place before any of them.
- (3) Where the case falls within the jurisdiction of courts of the Czech Republic and the circumstances determining the local competence are missing or can not be ascertained, the Supreme Court shall determine by what court the case will be heard and decided.

#### Section 12

- (1) Where the competent court can not proceed due to the fact that the judges thereof are excluded (Section 14, Section 15 para. 1 and Section 16a), the case shall be delegated to another court of the same instance.

(2) The case may be delegated to another court of the same instance also for reasons of suitability.

(3) The delegation shall be decided on by the nearest court superior to the competent court and to court to which the case is to be delegated. The participants shall be entitled to express their opinion as for to which court the case is to be delegated and, in cases referred to in paragraph 2, also to the reason for delegation.

## Section 13

repealed

## Exclusion of judges

### Section 14

(1) Judges and assessors shall be excluded from hearing and deciding the case if a reasonable doubt can be thrown on their disinterestedness with regard to their relation to the case, participants or their representatives.

(2) Judges of the court of a higher instance shall be also excluded if they heard and decided the case before a court of lower instance and vice versa. The same rule shall apply to deciding on a recourse.

(3) Judges who issued the decision or heard the case shall be excluded from hearing and deciding on a nullity suit against the concerned decision.

(4) Reasons for exclusion of a judge (assessor) are not circumstances consisting in how the judge (assessor) proceeds in the heard case or how he decides other cases.

### Section 15

(1) As soon as the judge or assessor learns of a circumstance justifying the exclusion, he shall immediately notify it to the chairman of the court. Only urgent measures may be taken meanwhile in the proceedings.

(2) The chairman of the court, proceeding in accordance with the work schedule, shall determine another judge (assessor) instead of the judge (assessor) referred to in paragraph 1 or, if the notification concerns all members of the panel, shall submit the case to another panel; where it is impossible, he shall submit the case being decided according to Section 12 para. 1. In case of the exclusion under Section 14 para. 1, if the chairman of the court supposes that there is no reason for doubting the disinterestedness of the judge (assessor), the chairman shall submit the case to the court referred to in Section 16 para. 1.

### Section 15a

(1) The participants shall be entitled to express their opinion regarding the judges and assessors who are to hear and decide on the case under the work schedule. They shall be instructed on this entitlement.

(2) The participant must raise the objection of bias of a judge (assessor) no later than during the first meeting wherein the concerned judge (assessor) was present; where the participant did not know of the reason for exclusion at this moment or where this reason arose later, the objection may be raised within 15 days after the participant learnt thereof. After this moment, the participant may raise the objection of bias only if he was not instructed by the court on his right to express his opinion regarding the judges (assessors).

(3) Apart from the general requisites (Section 42 para. 4), the objection of bias shall identify the person of the concerned judge (assessor) against whom the objection is raised, specify what is considered to be the reason for doubt on his disinterestedness and, as the case may be, the moment when the participant raising the objection learnt of the reason and by what evidence this reason can be proved.

#### Section 15b

(1) The court shall attach the expression of the concerned judges (assessors) to the case and shall submit the case to its superior court to decide on the objection of bias. Only urgent measures shall be taken meanwhile in the proceedings.

(2) The provision of paragraph 1 shall not apply if the objection was raised before the commencement of or in the course of, the meeting during that the case was decided if the court considers the objection ungrounded.

(3) The provision of paragraph shall not even apply if the participant based the objection on the same circumstances that have already been decided on by the superior court (another panel of the Supreme Court) or if the objection is obviously delayed.

#### Section 16

(1) The issue whether the judge or assessor is excluded shall be decided by the superior court in a panel. Exclusion of the Supreme Court judges shall be decided by another panel of the same court.

(2) A delayed objection (Section 15a para. 2) shall be rejected by the court referred to in paragraph 1.

(3) Evidence to prove the reason for exclusion of the judge (assessor) shall be carried out either by the court referred to in paragraph 1 or through the mediation of a requested court. Where no evidence is carried out, the decision under paragraph 1 and 2 may be issued without a meeting.

#### Section 16a

(1) Where the court decided that the judge (assessor) is excluded, the chairman of the court, proceeding according to the work schedule, shall determine another judge (assessor) instead of the excluded judge (assessor); where all members of a panel have been excluded, the chairman of the court shall design the case to another panel; where it is impossible, the chairman of the court shall submit the case to be decided according to Section 12 para. 1.

(2) The provision of paragraph 1 shall apply analogously if a decision was quashed by the court of appeal or by the court of recourse or on the basis of a nullity suit because the case was decided by an excluded judge (assessor) or where the court of appeal or the court of recourse ordered that the case be heard and decided in further proceedings by a different panel (judge).

#### Section 16b

The ruling of the superior court under Section 16 para. 1 and 2 shall be binding upon the court and participants of the proceedings; the provisions of Section 205 para. 2 letter a), Section 221 para. 1 letter b), Section 229 para. 1 letter e) and Section 242 para. 3 second sentence shall not be affected by this rule.

#### Section 17

The issue whether a minutes clerk or other employee of the court as well as an expert or interpreter are excluded shall be decided by the chairman of the panel; the provisions of Section 14 para. 1, Section 15, Section 15a para. 1 and 3 and Section 16 para. 3 shall apply adequately. No remedy shall be admissible against its ruling.

#### Section 17a

(1) Decision on exclusion of a notary from acts of a judicial commissioner shall be issued by the court that entrusted the notary with doing such acts; the provisions of Section 14 to 16a shall apply adequately. No remedy shall be admissible against its ruling.

(2) Decision on exclusion of notary juniors, notary candidates and other notary's employees shall be issued by the court that entrusted the notary with doing acts of a judicial commissioner; in doing so, the court shall proceed analogously according to Section 17.

### CHAPTER THREE

#### PARTICIPATION IN THE PROCEEDINGS

##### Participants

#### Section 18

(1) The participants shall have an equal position in civil judicial proceedings. They shall be entitled to act in their mother language before court. The court must provide them with equal possibilities of asserting their rights.

(2) As soon as it becomes necessary, the court shall appoint an interpreter to a participant whose mother language is not the Czech language. The same rule shall apply to appointment of an interpreter to a participant communicating only by gestures.<sup>54)</sup>

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54) Act No. 155/1998 Sb., on gesture language and on amendment to other acts.

#### Section 19

Capacity to take part in the proceedings shall belong to anyone who is capable to have rights and duties; other entity shall have this capacity only if it is provided by law.

#### Section 20

Everyone may act before the court independently as a participant of proceedings (litigation capacity) within the scope of his capacity to acquire rights and assume duties by his own legal acts.

#### Section 21

(1) A legal entity shall act through

- a) its statutory body; where the statutory body consists of more persons, the legal entity shall act through the chairman of the statutory body or, as the case may be, through a member thereof who was entrusted therewith; or
- b) its employee (member) who has been entrusted therewith by the statutory body;
- c) the head of its branch or chief of another organizational component registered with the Commercial Registry under law as for cases concerning this branch (establishment); or
- d) its proxy entitled to act independently under the granted procurament.

(2) The provision of paragraph 1 shall not apply if this law or another law provides that the legal entity acts through other persons.<sup>55)</sup>

(3) A legal entity under enforced administration shall act through the enforced administrator having the position of a statutory body according to law or, as the case may be, through employees of the legal entity entrusted therewith by the enforced administrator; otherwise, paragraphs 1 and 2 shall apply.

(4) The legal entity must not act through a person whose interests are at variance with interests of the legal entity.

(5) Everyone who acts for the legal entity must prove his powers. The legal entity may act in the same case at the same time only by one person.

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55) Such as Section 72, Section 131 para. 2, Section 131a, Section 182 para. 2, Section 183 para. 1 and Section 199 of the Commercial Code.

#### Section 21a

(1) The state shall take part in proceedings before the court through an organizational component of the state being competent according to a special legal regulation.

(2) The state shall act before the court through the chief of the organizational component of the state or through an employee of this or of another organizational component who was entrusted thereto by him.

(3) The provision of Section 21 para. 4 and 5 shall apply analogously.

#### Section 21b

(1) A municipality and a higher territorial self-governing unit shall act through the person who is entitled to represent them under a special law or through their employee entrusted therewith by this person.

(2) The provision of Section 21 para. 4 and 5 shall apply analogously.

#### Representatives of the participants

a) on the basis of law

##### Section 22

An individual who can not act independently before court must be represented by his or her legal representative.

##### Section 23

Where it is required by the circumstances of the case, the chairman of the panel may decide that an individual not being fully capable to legal acts must be represented in the proceedings by his or her legal representative even if he or she could otherwise act independently in the case.

b) on the basis of a power of attorney

##### Section 24

(1) The participant may chose a representative to represent him in the proceedings. Except for the representation according to Section 26, the chosen representative must be an individual. The participant may have only one representative in one case at the same time.

(2) As for proceedings wherein secret facts protected by a special law are heard,<sup>56)</sup> the participants may be represented only by individuals holding the certification for the relevant level of secrecy of these facts issued according to the special law or who were instructed according to this law (Section 40a para. 1).

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56) Act No. 148/1998 Sb. on protection of secret facts and on amendment of several acts, as subsequently amended.

## Section 25

(1) An attorney of law may always be chosen as a representative. The attorney of law may be granted only a power of attorney for the whole proceedings (hereinafter the "procedural power of attorney").

(2) The attorney of law may be represented by another attorney of law or, except for cases of compulsory representation by an attorney of law, by a junior attorney or by another employer as a substitute.

## Section 25a

(1) Also a notary may be chosen by the participant as a representative; the notary may represent the participant only in the extent of the authorization provided by special regulations.<sup>57)</sup> The notary may be granted only a procedural power of attorney.

(2) The notary may be represented by another notary and, except for cases where this law provides for a compulsory representation by a notary, by a notarial candidate or by a junior notary.

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57) Section 3 of the Act No. 358/1992 Sb., on notaries and their activity (Notarial Code), as amended by the Act No. 30/2000.

## Section 26

(1) Except for commercial cases, a trade union may represent its members before courts.

(2) The Office for International Protection of Youth (hereinafter the "Office") may represent the participant in proceedings concerning care for minors, determination or change of maintenance duty and enforcement of a decision imposing an obligation to pay maintenance where the cases have relations to foreign countries.

(3) If a trade union or the Office assume the representation, they shall act through the person referred to in Section 21.

## Section 27

(1) The participant may be represented also by any individual being fully capable to legal acts. This representative may act only in person.

(2) The court shall decide that the representation according to paragraph 1 is not admissible if the representative is obviously not able to represent the participant properly or if he acts as a representative repeatedly in more cases.

## Section 27a

repealed

## Section 28

(1) The representative chosen by the participant shall be granted a procedural power of attorney or a power of attorney only to certain acts; the power of attorney can be granted either in writing or orally into the minutes.

(2) Recall of the power of attorney by the participant or a termination thereof by the representative are effective as against the court as soon as the court was informed thereof by the participant or by the representative; they shall be effective as against other participants as soon as the participants were informed thereof by the court.

(3) Where the participant chooses another representative, the power of attorney granted to the hitherto representative shall be considered recalled.

(4) Signatures on the power of attorney, on the recall of the power of attorney or on the termination thereof must be officially verified only where it is required by law or where the chairman of the panel decides so.

(5) Where the represented participant loses his capacity to be the participant of the proceedings or if the representative dies or is dissolved, the power of attorney shall become extinct.

(6) Unless anything else follows from the power of attorney, the power of attorney shall become extinct on the day when the decision ending the proceedings for that it was granted became final and conclusive.

## Section 28a

(1) The procedural power of attorney can not be restricted. On the basis of the procedural power of attorney, the representative shall be entitled to all acts that can be done by the participant.

(2) A power of attorney for certain acts shall entitle to representation regarding the acts that are explicitly specified in the power of attorney.

c) on the basis of a decision

## Section 29

(1) If an individual being not capable to act before court independently is not represented, the chairman of the panel shall appoint a curator if there is danger of delay. The same rule shall apply if a special regulation provides so.

(2) The curator shall be appointed by the chairman of the panel also to a legal entity that can not act before court as a participant due to the fact that there is no person entitled to act for it or that it is doubtful who is entitled to act for it (Section 21) and if there is danger of delay.

(3) Unless other measures are done, the chairman of the panel may appoint a curator also to a participant whose residence is not known or if the court failed to deliver a paper

to his known address abroad or who suffers from a mental disorder or where another health reasons disable him to take part in the proceedings for a longer time or who is not able to express him or herself understandably.

(4) Unless the court decided otherwise, the curator appointed according to paragraphs 1 to 3 shall act in the first instance proceedings, in the appellate proceedings and in the recourse proceedings.

## Section 30

(1) If the participant meets the requirements for exemption from judicial charges (Section 138), the chairman of the panel shall appoint upon his request a representative if it is necessary for protection of his interests. The chairman of the panel must instruct the participant about the fact that he may file this request.

(2) Where it is necessary for protection of the participant's interests or in case of a compulsory representation by an attorney of law (by a notary), the chairman of the panel shall appoint an attorney of law as the representative in the case referred to in paragraph 1.

## Section 31

(1) The appointed representative shall have the same position as a representative on the basis of a power of attorney.

(2) Where an attorney of law has been appointed as a representative, he shall have the same position as an attorney on the basis of power of attorney.

## Section 32

### Joint provision

(1) Everyone who acts in the proceedings as a representative of a participant or as his substitute must prove his powers not later than during the first act done by him in the merits.

(2) The participant must not be represented by a person whose interests are at variance with the interests of the represented person.

(3) The duty of the court to instruct, call or notify the participant may be fulfilled by the court also by instructing, calling or notifying the representative; this rule shall not apply where the participant granted his representative a power of attorney only for certain acts.

## Section 33 and 34

repealed

## Section 35

Participation of the state representation

- (1) The state representation may enter commenced proceedings in cases concerning
- a) determination whether an adoption of a child requires the parents' consent;
  - b) imposition of an upbringing measure according to Section 43 para. 1 and 2 of the Family Act;
  - c) ordering an institutional raising and a prolongation thereof;
  - d) suspension, restriction or deprivation of the parental responsibility;
  - e) capacity to legal acts;
  - f) declaration of death;
  - g) whether taking over and keeping a person in a sanitary institution is admissible;
  - h) invalidation of documents;
  - i) Commercial Register, Generally Beneficial Companies Register, Foundation Register and Register of Unit Owners Associations;<sup>57a)</sup>
  - j) several issues of business companies, co-operatives and other legal entities (Section 200e);
  - k) bankruptcy and composition including disputes evoked by these proceedings;
  - l) associations of unit owners.

The right of the state representation or, as the case may be, of the Supreme State Representative to file a petition for commencement of proceedings according to special regulations<sup>58)</sup> shall not be affected by this provision.

(2) In such proceedings, the state representation shall be entitled to all acts that can be done by a participant of proceedings except for acts that can be done only by a participant of a legal relationship.

(3) In cases referred to in paragraph 1 letter b) to d), the state representation may file a petition for initiation of the proceedings where it is in public interest and where the proceedings were not commenced according to Section 81 para. 1 and 2 or where they were not commenced upon another petitioner's petition.

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57a) Act No. 72/1994 Sb., regulating several coownership relations to buildings and several ownership relations to flats and non-residential premises and amending several acts (Flat Ownership Act), as subsequently amended.

58) Such as Section 21 and 29 of the Act No. 2/1991 Sb., on collective bargaining, Section 62 and 62a of the Act No. 94/1963 Sb., on family, as amended by the Act No. 91/1998 Sb.

## CHAPTER FOUR

### ACTS OF COURT AND PARTICIPANTS

Acts of the court

Section 36

(1) In proceedings before the court, the cases shall be heard and decided by a panel or by a single judge. All members of the panel shall have equal position in the course of voting.

(2) The work schedule shall determine which panel or which single judge shall hear the case and decide on it.

#### Section 36a

(1) The district court shall hear and decide in a panel in

a) labour cases;

b) other cases where it is provided by law.

(2) Other cases shall be heard and decided in proceedings before the district court by a single judge.

(3) In proceedings before a regional court being the first instance court, the cases shall be heard and decided by a single judge; in appellate proceedings, the cases shall be heard and decided by a panel.

#### Section 36b

High courts shall hear and decide in panels.

#### Section 36c

The Supreme Court shall hear and decide in panels.

#### Section 36d

(1) In cases belonging to a panel, the chairman of the panel may do only acts by that the court does not decide on the case save where a law provides for anything else.

(2) In cases that are supposed by law to be heard and decided by a single judge, the single judge has both rights and duties of the chairman of the panel and rights that are otherwise reserved only to the panel.

#### Section 37

(1) The panel shall decide after a session; apart from members of the panel and from the minutes clerk, nobody else can be present at the session.

(2) Approval of a decision shall require a majority of votes; all members of the panel must vote. The vote shall be ruled by the chairman of the panel. Assessors shall vote before the judges; younger judges (assessors) shall vote before the older ones; the chairman of the panel shall vote as the last one.

## Section 38

(1) The court shall entrust a notary being a judicial commissioner with doing acts in inheritance proceedings for a remuneration.

(2) The acts according to paragraph 1 shall not include requests for legal assistance abroad and judicial decisions except for rulings regulating the course of proceedings.

(3) The acts done by a notary being a judicial commissioner shall be considered acts of the court.

(4) The entrustment shall not have the form of a judicial decision.

## Section 38a

A special law shall provide for in what simple cases decisions may be made independently and in what other cases individual acts may be done by higher judicial clerks. This special law shall also provide for qualification and other requirements for execution of the office of higher judicial clerk.

## Section 38b

### Assistant of a Supreme Court judge

An assistant of a Supreme Court judge shall do individual acts in civil judicial proceedings on the basis of an entrustment given by the Supreme Court judge. His competence shall be regulated by a special law.

## Section 39

(1) Acts that could be done by the competent court only with difficulties or at increased, useless costs or acts that can not be done in the district of the competent court shall be done by another court upon a request. The required acts shall be done by a district court.

(2) Where the requested court can not do the act within the district thereof, it shall forward the request to the court in whose district the act can be done if this court is known to the requested court; in a contrary case, the requested court shall return the request.

(3) The acts of the requested court shall be done by a single judge.

## Section 40

(1) Acts during that the court communicates with the participants or carries out evidence shall be taken down into minutes. The minutes must in particular identify the case being heard, the attending persons, exemplify the course of evidence and the

contents of what was delivered by the parties, instructions given to the participants, verdicts of decisions and expressions of the parties of whether they waive appeal against the declared decision; where the minutes are to replace a motion, the minutes shall also contain the essentials thereof.

(2) The minutes shall be signed by the chairman of the panel and by the minutes clerk; if the chairman of the panel is not able to sign the minutes, they shall be signed for him by another member of the panel or by another judge determined by the chairman of the court. If the parties have concluded a settlement, an agreement on raising and maintaining a minor, an agreement on contact with the minor, an agreement on settlement of inheritance, an agreement that an overindebted inheritance shall be given to the creditors to cover the debts or in case of an admission of a debt (Section 153a para. 1), the minutes shall be also signed by the parties of the settlement, parents, parties of the agreement on contact with the minor, parties of inheritance proceedings agreements or by the defendant; if they are not able to read or write or to sign the minutes for other reasons, the chairman of the panel shall specify in the minutes the reason and the fact that the act corresponds to their will and shall sign the relevant record. Minutes on vote shall be signed by all members of the panel and by the minutes clerk.

(3) The chairman of the panel shall correct errors in writing and other obvious mistakes of the minutes. The chairman of the panel shall also decide on petitions for amending the minutes and on objections against their text.

#### Section 40a

(1) If secret facts protected by a special act<sup>56)</sup> are heard in the proceedings, the chairman of the panel must instruct the assessors, the participants, the persons entitled to act for them (Section 21 to 21b), the representatives of the participants, experts, interpreters, the persons referred to in Section 116 para. 3 and other persons who are required by law to attend in the proceedings according to this special law about criminal consequences of the breach of secrecy of the secret facts. The instruction carried out shall be recorded in the minutes. After signing the minutes, the instructed persons shall become determined persons in the extent of necessity to learn the secret fact.

(2) The instruction according to paragraph 1 shall not have to be carried out in case of the persons who prove their certification for the relevant level of secrecy of secret facts issued according to the special act.<sup>56)</sup>

(3) The instruction according to paragraph 1 shall be notified in writing by the chairman of the panel to the National Security Office within 30 days.

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56) Act No. 148/1998 Sb., on protection of secret facts and on amendment to several acts.

#### Acts of the participants

#### Section 41

(1) The participants may do their acts in any form unless the law prescribes certain form for several acts.

(2) Every act shall be considered by the court according to its contents even if the act is identified incorrectly.

(3) An act of the participants concerning material law done as against the court shall be effective also as against the other participants; however, it shall be effective as against them after they learnt thereof in the proceedings.

#### Section 41a

(1) Unless the law provides otherwise, the participant may do his act only explicitly.

(2) A participant's act linked to a condition shall not be taken into account.

(3) The act may be recalled only if the recall is delivered to the court not later than together within this act.

#### Section 41b

If a settlement, an agreement on raising and maintaining a minor, an agreement on contact with a minor, an agreement on settlement of inheritance, an agreement that the overindebted inheritance shall be given to the creditors in order to cover the debts or admission of a debt (Section 153a para. 1) done by recording them in the minutes have not yet been signed by the parties of the settlement, parents, parties of the agreement on contact with a minor, participants of the inheritance proceedings or by the defendant, the court shall not take these acts into account.

#### Section 42

(1) A motion may be done either in writing, or orally into the minutes, in an electronic form signed in the electronic way according to special regulations, by telegraph or by fax. The motion may be done orally into the minutes only in cases of a petition for commencement of proceedings on approval to enter into marriage, of proceedings on determination or denial of parenthood, of proceedings on determination whether an adoption of a child requires a consent of the parents, of adoption proceedings and of proceedings that can be commenced even without a petition and in cases of petitions for enforcement of decisions issued in these kinds of proceedings.

(2) Every district court must record the motion into the minutes and forward it to the competent court without undue delay. Such motion shall have the same effects as if it was submitted directly to the relevant court.

(3) A motion containing a petition concerning the merits done by telegraph must be completed in writing within three days; if a written motion was done by fax, it shall be necessary to complete it within the same period by submitting its original or, as the case may be, by submitting a written motion of the identical text. If these motions were not completed during the provided period, they shall not be taken into account by the court. If the chairman of the panel decides so, the participant must provide the court with the original (a written motion of the same text) of even other motions done by fax.

(4) Unless the law lays down further requirements for motion of certain kind, the motion must reveal to what court it is addressed, by whom it is being done, what matter it

concerns and what is the object thereof; it must be signed and dated. If the participant is represented by an attorney of law, the attorney's signature may be replaced with a print of a signature stamp whose specimen is deposited with the court to that the motion is addressed. The motion shall must be submitted with the necessary number of copies and with all annexes so that one copy remains in the court and that each participant obtains one copy where necessary.

#### Section 43

(1) The chairman of the panel shall call the participant by a ruling to correct and complete a motion that does not contain the provided essentials or that is unintelligible or vague. The chairman of the panel shall specify a period for the correction or completion and shall instruct the participant how the correction or completion are to be carried out.

(2) Unless the motion is properly corrected or completed despite the call of the chairman of the panel and this defect prevents the court from continuing in the proceedings, the court shall issue a ruling rejecting a motion commencing the proceedings. Other motions shall not be taken into account by the court unless they are duly corrected or completed. The participant must be instructed about these consequences.

#### Section 44

(1) The participants and their representatives shall have the right to inspect the file kept by the court except for minutes from vote and to make extracts and copies thereof.

(2) Upon an application, the chairman of the panel shall allow anyone who is legally interested therein or who has serious reasons therefor to inspect the file and to make extracts and copies therefrom except for a file whose contents are required by legal regulations to remain secret.

(3) In allowing inspection of files, it shall be necessary to take such measures that secrecy of secret facts protected by a special act<sup>56)</sup> remains preserved.

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56) Act No. 148/1998 Sb., on protection of secret facts and on amendment to several acts.

#### Service

#### Section 45

Papers shall be delivered by a judicial postman or by bodies of the justice watch, through a holder of a post license (hereinafter the "post") or through the relevant police authority and, in cases provided by special regulations, also through the Ministry of Justice.

#### Section 45a

Where it is required by law or where it is ordered by the chairman of the panel, the papers shall be delivered personally.

## Section 46

### Service to individuals

(1) A paper addressed to an individual may be delivered in the flat, place of business, working place or wherever the individual can be met.

(2) Unless the addressee was caught even if he stays in the place of the delivery, the paper shall be delivered to another adult person living in the same flat or in the same house, being active in the same place of business or employed in the same working place if such person is willing to arrange for giving the paper to the addressee. Unless it is possible to deliver even in this way, the paper shall be deposited and the addressee shall be called in a suitable way to collect the paper. Unless the addressee collects the paper within three days after the deposition, the last day of this period shall be presumed to be the day of delivery even if the addressee had no knowledge of the deposition.

(3) If the paper is given according to paragraph 2 to a participant who has a contrary interest in the case, the delivery shall be considered ineffective.

(4) If the paper is to be delivered personally and the addressee was not caught even if he stays in the place of delivery, the paper shall be deposited and the addressee shall be called in a suitable way to collect the paper. Unless the addressee collects the paper within ten days after the deposition, the last day of this period shall be presumed the day of delivery even if the addressee had no knowledge of the deposition.

(5) Unless a contrary is found out, the addressee shall be presumed to have stayed in the place of delivery.

(6) The paper shall be deposited with

- a) the district court in whose district the place of delivery is located or with the court whose seat is located in the place of delivery if the paper is delivered by a judicial postman or by a body of justice watch;
- b) a post office if the paper is delivered by post.

## Section 47

### Service to legal entities

(1) Papers addressed to legal entities shall be delivered to the address of their seat.<sup>59</sup> If the legal entity asks therefor, the paper shall be delivered to it to the address notified to the court.

(2) Papers including papers delivered personally can be received for the legal entity by the bodies and persons referred to in Section 21 or by its employees (members) entrusted with receiving papers.

(3) Unless any person entitled to receive the paper was caught on the address referred to in paragraph 1 even if the legal entity stays in the place of delivery, the paper shall be deposited and the legal entity shall be called in a suitable way to collect the paper. Unless the paper is collected by the person entitled to receive it within three days or, in case of a paper to be delivered personally, within ten days from the deposition, the last day of this

period shall be presumed to be the day of delivery even if the addressee had no knowledge of the delivery.

(4) If the paper could not be delivered to the address referred to in paragraph 1 because of the fact that the legal entity does not stay in the place of delivery and the court has no knowledge of any other address of the legal entity, the paper addressed to this legal entity shall be delivered to an individual entitled to act for it before the court (Section 21) according to the contents of the file; in the course of this delivery, it shall be necessary to proceed analogously according to Section 46. Unless the paper was delivered even in this way and unless the paper could be given to the legal entity even in case of an additional attempt of delivery to the address of its seat specified in the Commercial Register or another register and if the court has no knowledge of any other address of the legal entity, the day of return of the non-delivered paper to the court shall be presumed the day of delivery even if the addressee has no knowledge of the delivery.

(5) The provisions of Section 46 para. 5 and 6 shall apply analogously.

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59) Section 2 para. 3 of the Commercial Code.

#### Section 48

##### Service to state authorities

(1) Paper addressed to state authorities shall be delivered to the address of their seat. If the state authority asks for it, the paper shall be delivered to it to the address notified to the court.

(2) Papers including papers delivered personally can be received for the state authority by the persons referred to in Section 21a para. 2 or by its employees entrusted with receiving papers. If there are no such persons, the paper shall be given to the person entitled to act for the state authority.

#### Section 48a

##### Service to the state

(1) A paper addressed to the state shall be delivered to the competent state authority to the address of its seat. If the state authority asks for it, the paper shall be delivered to it to the address notified by it to the court.

(2) The provision of Section 48 para. 2 shall apply analogously.

#### Section 48b

##### Service to attorneys of law

(1) A paper addressed to attorneys of law shall be delivered to the address of their seat.60) If the attorney of law asks for it, the paper shall be delivered to the address notified to the court.

(2) Papers addressed to an attorney of law including papers to be delivered personally can be received also by a junior or by any other employees of the attorney of law. If the attorney of law executes the bar activity together with other attorneys of law, the paper including a paper to be delivered personally may be given also to these attorney of law, to their juniors or to their other employees. If the attorney of law executes the bar activity as a partner of a general commercial partnership, the paper addressed to the attorney of law including the paper to be delivered personally may be received also by the other partners of this company, by juniors or by other employees of this company.

(3) Unless the attorney of law or any person entitled to receive the paper was caught on the address referred to in paragraph 1, the paper shall be deposited and the attorney of law shall be called in a suitable way to collect the paper. Unless the attorney of law or any other entitled person collects the paper within three days or, in case of a paper to be delivered personally, within ten days after the deposition, the last day of the period shall be presumed to be the day of delivery even if the addressee had no knowledge of the delivery.

(4) The provision of Section 46 para. 6 shall apply analogously.

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60) Section 13 of the Act No. 85/1996 Sb., on the bar.

#### Section 48c

##### Service to notaries

(1) Papers addressed to notaries shall be delivered to the address of their office.61) If the notary asks for it, the paper shall be delivered to him to the address notified to the court.

(2) A paper addressed to a notary including a paper delivered personally may be received also by the notary's juniors, by the notary's candidates and by his other employees. If the notary executes the notarial activity together with other notaries, the paper including a paper to be delivered personally may be given also to the other notaries, their juniors, candidates or other employees.

(3) The provisions of Section 46 para. 6 and Section 48b para. 3 shall apply analogously.

(4) If the paper is delivered to a representative of the notary or to a substitute of the notary, it shall be necessary to proceed adequately according to paragraphs 1 to 3.

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61) Section 13 para. 1 of the Act No. 358/1992 Sb., as amended by the Act No. 30/2000.

#### Section 48d

##### Service to municipalities and higher territorial self-governing units

(1) A paper addressed to municipalities and higher territorial self-governing units shall be delivered to the address of the seat of their bodies. If they ask for it, the paper shall be delivered to the address notified by them to the court.

(2) Papers addressed to municipalities or higher territorial self-governing units including papers to be delivered personally may be received by the persons referred to in Section 21b or by their employees entrusted with receiving papers.

#### Section 49

(1) If the participant has a representative with a procedural power of attorney, the paper shall be delivered only to this representative. However, if the participant is to do anything personally in the proceedings, the paper shall be delivered both to the representative and to the participant.

(2) If a delivery to the participant is connected with difficulties or delays, the chairman of the panel may command that he choose a representative for receiving papers to whom papers can be delivered without difficulties and delays; this rule shall not apply if the papers are to be delivered abroad. Unless the participant chooses the representative, the papers addressed to him shall be deposited for him with the court with the effects of delivery; the participant is to be instructed thereof.

(3) A ruling on appointment of a curator to a participant of an unknown residence shall be delivered to other participants of the proceedings and to the appointed curator and shall be published on the official board of the court.

#### Section 50

If the addressee or, as the case may be, the person entitled to receive papers for the addressee refuses to receive the paper without having any serious reason therefor, the paper shall be presumed delivered on the day when the receipt was refused; the addressee (the entitled person) must be instructed thereof by the delivering person.

#### Section 50a

##### Publication of notices

The duty of the court to publish various particulars in a notice provided in this law or in the Bankruptcy and Composition Act shall be considered fulfilled by publishing them in the Commercial Bulletin<sup>62)</sup> unless a law provides that it shall be sufficient to publish them on the official board of the court; the duty to publish the particulars in daily press shall not be affected by this rule.

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62) Section 769 of the Commercial Code.

#### Section 50b

If an law requires that a decision be published on the official board of the court, the decision shall be presumed to be delivered on the fifteen day after the publication as for participants not known to the court or for participants of unknown residence.

## Summoning and attachment

### Section 51

Summoning to the court shall be carried out usually in writing; in urgent cases, it may happen also by telegraph, phone or fax. The summoning may happen also orally at the meeting or in another act of the court where the summoned person is present.

### Section 52

(1) If the summoned person does not appear in the examination or at the expert without apologize, the chairman of the panel may have him attached if the summoned person was warned of the possibility of the attachment. The chairman of the panel shall decide on the attachment by a ruling that shall be delivered to the summoned person at the moment of the attachment.

(2) The court shall ask the competent police authority to carry out the attachment; in case of a minor, the court shall ask the police authority for the attachment only if the attachment can not be arranged for otherwise. In case of soldiers in active service and members of armed corps, the court shall ask their commander or, as the case may be, the competent service authority for the attachment.

(3) The costs of the attachment shall be covered by the attached person. The chairman of the panel shall decide on it by a ruling upon the petition of the person who carried out the attachment.

## Disciplinary measures

### Section 53

(1) If a person grossly aggravates the proceedings in particular by not appearing in the court without any serious reason or by not obeying an order of the court or by disturbing the discipline or by submitting a grossly offensive motion or by not fulfilling the duties referred to in Section 294 and 295, the chairman of the panel may impose upon such person a disciplinary fine of up to 50 000 Czech crowns.

(2) The chairman of the panel may subsequently, even after the stay of the proceedings, remit the imposed disciplinary fine if it is justified by the behaviour of the person upon whom the fine was imposed.

(3) Disciplinary fines shall forfeit to the state.

### Section 54

If a person grossly disturbs the discipline, the chairman of the panel may banish him from the place where the meeting is taking place. If a participant is banished, the meeting may go on without his attendance.

## Periods

### Section 55

Unless this law provides for a period for carrying out an act, the period shall be determined by the chairman of the panel where necessary. The chairman of the panel may prolong the period determined by him.

### Section 56

(1) The period shall not run in case of a person who lost the capacity to be a participant of the proceedings or the capacity to act in the court or if the court has decided that a person has to be represented by his legal representative (Section 23).

(2) As soon as another participant, legal representative or curator of the participant enters into the proceedings in such case, a new period shall run from the moment when they entered into the proceedings.

### Section 57

(1) The course of a period shall not include the day when it came to the fact determining the start of the period; this rule shall not apply to a period specified in hours.

(2) Periods specified in weeks, months or years shall end after the lapse of the day whose identification is identical to the day when it came to the fact determining the start of the period; if there is no such day in the month, the period shall end after the lapse of the last day of the month. If the end of the period falls to Saturday, Sunday or a public holiday, the nearest following work day shall be considered the last day of the period. Periods specified in hours shall end after the lapse of the hour whose identification is identical to the hour when it came to the fact determining the start of the period.

(3) The period shall be observed if on the last day of the period, an act is done in the court or a motion is handed to the authority that has to deliver it.

### Section 58

(1) The court shall pardon missing a period if the participant or his representative missed it for a pardonable reason and was therefore excluded from an act he is entitled to. The petition must be submitted within fifteen days after the impediment feel away; the missed act must be affixed to the petition.

(2) Upon the petition of the participant, the court may grant a deferring effect to the petition to pardon missing the period.

PART TWO  
ACTIVITY OF THE COURT BEFORE THE COMMENCEMENT  
OF THE PROCEEDINGS

Section 59 to 66  
repealed

CHAPTER ONE  
PRELIMINARY PROCEEDINGS

Settlement proceedings  
Section 67

If it is admitted by the nature of the case, any court that would be competent to hear the case may be asked to carry out an attempt for a settlement (settlement proceedings) and to decide on the approval of a settlement that has been concluded. If a regional court would be competent to hear the case, the settlement proceedings may be carried out and the settlement may be approved also by any district court.

Section 68

- (1) Where the case is to be heard and decided by a panel, the settlement proceedings shall be carried out by the chairman of the panel.
- (2) Cooperation or attendance of the participants can not be enforced in any way.

Section 69

The purpose of the settlement proceedings is to conclude a settlement. The provision of Section 99 shall apply also to this settlement.

Section 70 to 72  
repealed

Section 73  
Proceedings on determination of fatherhood  
by an agreeing statement of parents

- (1) If a child is born whose fatherhood is determined neither by the legal presumption that the husband of the mother is presumed to be the father nor by an agreeing statement of the parents before an authority keeping the records, the chairman of the panel shall

hear the man identified by the mother to be the father and ask him whether he admits himself to be the father. The court referred to in Section 88 letter c) shall be competent to hear the case.

(2) If it comes to an agreeing statement of parents concerning the fatherhood, the statement shall be recorded in the minutes and notified to the authority keeping the record of births where the child is recorded.

(3) If the fatherhood is not determined in this way and if the mother does not file a petition for determination of fatherhood within an adequate period, the chairman of the panel shall appoint a curator for the child to file such petition and to represent the child in the proceedings.

## CHAPTER TWO

### PRELIMINARY MEASURES AND CONSERVATION OF EVIDENCE

#### Preliminary measures

##### Section 74

(1) Before the commencement of the proceedings, the chairman of the panel may order a preliminary measure if it is necessary to regulate provisionally the relationships of the participants or if there is a danger that the enforcement of a judicial decision could be jeopardized.

(2) Those who would be participants of proceedings on the merits shall be the participants of the preliminary proceedings.

(3) The competence to order a preliminary measure shall be exercised by the court who is competent to hear the case unless an law provides otherwise.

(4) The competence to decide on a petition for a preliminary measure according to Section 76 shall be exercised by the district court that is locally competent for the district of the petitioner. If the preliminary measure is ordered, after enforcing it, the court shall forward the case without undue delay to the court competent according to Section 88 letter c). If the court to that the case was forwarded considers itself not to be competent according to Section 88 letter c), it shall submit the case to its superior court to decide on the competence; this decision shall be binding upon the court whose competence was determined.

##### Section 75

(1) The preliminary measure shall be ordered by the chairman of the panel upon a petition. The petition shall not be necessary in case of a preliminary measure where the proceedings may be commenced by the court even without a petition.

(2) The preliminary measure according to Section 76a may be ordered by the chairman of the panel only upon a petition of a district authority; apart from the general essentials of a motion (Section 42 para. 4), the petition must also contain the name of the minor, names, professions and residence of the other participants if the petitioner has knowledge thereof, explanation of the decisive facts justifying ordering the preliminary measure and specification of the person into whose custody the child is to be put; the petition must

reveal that the petitioner asks for ordering the preliminary measure according to Section 76a.

(3) The participants shall not have to be heard.

(4) A petition for a preliminary measure according to Section 76a must be decided on without undue delay within 24 hours after it was submitted. Another preliminary measure must be decided on without undue delay within seven days after it was submitted unless the law provides for another period.

(5) The state of affairs at the moment of proclamation (issuance) of the ruling of the first instance court shall be decisive for a preliminary measure.

#### Section 75a

(1) A petition for the preliminary measure that does not contain all essentials or that is not intelligible or vague shall be rejected by the chairman of the panel if these defects prevent the court from continuing in the proceedings; the provision of Section 43 shall not apply.

(2) The provision of paragraph 1 shall not apply to a petition for a preliminary measure according to Section 76a.

#### Section 76

(1) A preliminary measure may command that the participant in particular

- a) pay maintenance in a necessary extent;
- b) put the child into the custody of the other parent or into the custody of the person identified by the court;
- c) pay at least a part of a remuneration for work in case of duration of labor relationship and the petitioner does not work for serious reasons;
- d) deposit a sum of money or a thing with the custody of the court;
- e) not dispose of certain things or rights;
- f) do something, omit something or suffer from something.

(2) The preliminary measure may impose a duty upon somebody else than upon the participant only if such duty is fair to demand from him.

(3) In ordering the preliminary measure, the chairman of the panel shall impose upon the petitioner to file a petition for commencement of the proceedings with the court within a specified period; this rule shall not apply if the proceedings on the merits may be commenced even without a petition. The court may also decide that the preliminary measure shall last only for a specified period.

#### Section 76a

(1) If a minor finds himself without any care or if his life or positive growth are seriously jeopardized or violated, the chairman of the panel shall order in a preliminary measure that the child be put into the custody of the person identified in the ruling.

(2) The ruling ordering the preliminary measure according to paragraph 1 shall be delivered to the participants at the moment of the enforcement thereof. In case of participants who were not present at the moment of the enforcement, the ruling shall be delivered them subsequently by the court competent according to Section 88 letter c) together with a notification that the ruling was enforced.

(3) In case of ordering the preliminary measure according to paragraph 1, the minor child shall not have to be represented; unless the minor has a legal representative or unless his legal representative is allowed to represent him in the proceedings,33b) the court competent according to Section 88 letter c) shall appoint a curator without undue delay after the enforcement of the preliminary measure.

(4) The preliminary measure according to paragraph 1 shall last for three months after it became enforceable; if the proceeding in the merits have been commenced before the lapse of this period, the preliminary measure shall last until the moment when the decision terminating these proceedings becomes enforceable.

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33b) Section 37 para. 3 of the Act No. 94/1963 Sb., on family, as subsequently amended.

## Section 77

(1) The preliminary measure shall cease to exist if

- a) the petitioner did not file a petition to commence the proceedings within the period specified by the court;
- b) the petition on the merits was not granted;
- c) the petition on the merits was granted and there elapsed fifteen days after the enforceability of the decision on the merits;
- d) the specified period for that the measure was to last has elapsed.

(2) The chairman of the panel shall quash the preliminary measure if the reasons for that it was ordered have fallen out; the preliminary measure according to Section 76a shall be quashed by the chairman of the panel of the court competent according to Section 88 letter c).

(3) If the preliminary measure ceased to exist or was quashed for a reason other than because the petition in the merits was granted or because the petitioner's right was satisfied, the petitioner shall compensate the damages to the person to whom they were caused due to the preliminary measure; this rule shall not apply to the preliminary measure according to Section 76a. This duty shall be decided upon a petition by the court who ordered the preliminary measure.

## Section 78

### Conservation of evidence

(1) Before the commencement of the proceedings on the merits, it shall be possible upon a petition to conserve evidence if there is a danger that the evidence will later not be possible to carry out at all or that it will be possible to carry out only with great difficulties.

(2) The conservation of evidence will be carried out by the court that would be competent to hear the merits or by the court in whose district the means of evidence is located.

(3) The conservation of evidence shall be carried out by the chairman of the panel in the way prescribed for the concerned evidence. Unless there is a danger of default, the participants of the proceedings on merits shall have the right to be present at the conservation of evidence.

## Section 78a

The evidence may be conserved also by a notarial or executorial record of a factual process or of a state of a thing if the factual process happened in the presence of the notary or executor or if the notary or the executor verified the state of the thing.

## PART THREE

### FIRST INSTANCE PROCEEDINGS

#### CHAPTER ONE

#### COURSE OF THE PROCEEDINGS

##### Commencement of the proceedings

##### Section 79

(1) The proceedings shall be commenced on the basis of a petition. Apart from the general essentials (Section 42 para. 4), the petition must also contain the name, surname and residence of the participants (commercial name or name and seat of a legal entity, identification of the state and of the relevant state authority acting for the state before the court), or, as the case may be, also of their representatives, explanation of the decisive facts, identification of the evidence invoked by the petitioner; the petition must reveal what the petitioner demands. In cases following from business relationships, the petition must also contain the identification number of the legal entity, the identification number of the individual being a businessman, and, as the case may be, also other particulars necessary for identification of the participants of the proceedings. If this petition concerns bilateral relationships between the actor and the defendant (Section 90), the petition shall be called a lawsuit.

(2) The actor (petitioner) must attach to the petition documentary evidence invoked by him.

(3) The court shall deliver the lawsuit (petition for commencement of proceedings) to the other participants of the proceedings personally. The actor (petitioner) may inform the defendant (other participants of the proceedings) of the contents of the petition by sending him another copy of the lawsuit (petition) besides the copy of the lawsuit (petition) delivered by the court.

##### Section 80

A lawsuit (petition for commencement of the proceedings) may demand that the court decide in particular on

- a) the personal status (divorce, nullity of marriage, determination whether a marriage exists or not, determination of fatherhood, adoption, capacity to legal acts, declaration of death);
- b) fulfillment of a duty following from law, from a legal relationship or from violation of a right;
- c) determination whether a legal relationship or a right exists or not where there is an urgent legal interest therein.

## Section 81

(1) The court may commence the proceedings even without a petition in case of care for minors, declaration of admissibility of assuming into or keeping somebody in a sanitary institution, capacity to legal acts, appointment of a curator, declaration of death, inheritance, determination whether a marriage exists or not and other proceedings where it is admitted by law.

(2) If a preliminary measure according to Section 76a was ordered, the court competent according to Section 88 letter c) shall even without a petition commence the proceedings on care for the minor without undue delay after the case was forwarded to it or after it was decided that this court is competent (Section 74 para. 4).

(3) The chairman of the panel shall issue a ruling on commencement of the proceedings without a petition; the ruling shall be delivered to the participants personally unless an law provides otherwise.

## Section 82

(1) The proceedings shall be considered commenced on the day when a petition for the commencement thereof was delivered to the court or when a ruling on commencement of the proceedings without a petition was issued.

(2) If proceedings before another authority preceded the proceedings before the court, the proceedings before the court shall be commenced on the day when the forwarded case was delivered to the court.

## Section 83

Commencement of the proceedings shall prevent other proceedings concerning the same case from being conducted before a court.

## Local competence

## Section 84

The local competence to the proceedings shall be exercised by the court of general jurisdiction of the participant against whom the petition is directed (defendant) unless anything else is provided.

## Section 85

(1) Unless the law provides anything else, the court of general jurisdiction of an individual shall be defined as the district court in whose district the participant has his residence; unless the participant has any residence, the district court in whose district the individual stays. If an individual has his residence in more places, all district courts in whose districts he lives with the intention to stay there permanently shall be considered the court of his general jurisdiction.

(2) In cases following from business relationships, the court of general jurisdiction of an individual being a businessman shall be defined as the district court in whose district the individual has his place of business;<sup>59)</sup> if the individual has no place of business, the court of general jurisdiction shall be determined according to paragraph 1.

(3) The court of general jurisdiction of a legal entity shall be defined as the district court in whose district the legal entity has its seat.<sup>59)</sup>

(4) The court of general jurisdiction of the state shall be defined as the district court in whose district the seat of the organizational component being competent according to a special legal regulation is located; unless a locally competent court can be ascertained in this way, the court in whose district it came to the fact establishing the exercised right.

(5) The court of general jurisdiction of a municipality shall be defined as the district court in whose district the municipality has its territory.

(6) The court of general jurisdiction of a higher territorial self-governing unit shall be defined as the district court in whose district its bodies have their seat.

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<sup>59)</sup> Section 2 para. 3 of the Commercial Code.

## Section 85a

Where a regional court is materially competent to the first instance proceedings and the local competence is to be determined by the court of general jurisdiction of the participant, the local competence shall be exercised by the regional court in whose district the court of general jurisdiction of the participant is located.

## Section 86

(1) If the defendant being a citizen of the Czech Republic has no court of general jurisdiction or has no court of general jurisdiction in the Czech Republic, the local competence shall be exercised by the court in whose district he had his last known residence.

(2) Property rights against somebody who has no other competent court in the Czech Republic may be exercised before the court in whose district his assets are located.

(3) A lawsuit (petition for commencement of proceedings) against a foreign person may be brought also before the court in whose district in the Czech Republic its enterprise or an organizational component of the enterprise are located.

#### Section 87

Apart from the court of general jurisdiction of the defendant or, as the case may be, from the court referred to in Section 85a, the proceedings may be conducted also by the court in whose district

- a) the defendant has his steady working place;
- b) it came to the fact establishing the right to compensation for damages;
- c) the organizational component of enterprise of an individual or a legal entity being the defendant is located if the dispute relates to this component;
- d) repealed;
- e) the place of payment is located in case of exercise of a right from a bill of exchange, promissory note or another security;
- f) the seat of the stock exchange is located in case of a dispute from a stock exchange transaction.

#### Section 88

Instead of the court of general jurisdiction or, as the case may be, instead of the court referred to in Section 85a, the proceedings shall be conducted by the court

- a) in whose district the spouses had their last common residence in the Czech Republic in case proceedings on divorce, nullity of marriage or determination of whether a marriage exists or not; if there is no such court, the local competence shall be exercised by the court of general jurisdiction of the defendant and, if there is no such court, by the court of general jurisdiction of the actor;
- b) who decided on divorce in case of proceedings on settlement of spouses after the divorce relating to their joint property or another assets or to cancellation of the joint lease of a flat;
- c) in whose district the minor has his residence on the basis of an agreement of parents or of a decision of court or, as the case may be, on the basis of another decisive facts in case of proceedings on care for minors, on determination whether an adoption of a child requires the consent of his parents, on adoption or on approval of entering into marriage by a minor;
- d) being the court of general jurisdiction of the individual in case of proceedings on his capacity to legal acts; if this individual has been put into an institutional medical custody without his consent, the local competence shall be exercised by the court in whose district this sanitary institution is located. In case of proceedings on determination of admissibility of assuming and individual into and keeping an individual in an institution of medical care, the local competence shall be exercised by the court in whose district this institution is located;
- e) in whose district the protected person has its residence in case of appointment of a curator or of approval of entering into marriage by the protected person; however, in case

of appointment of a curator for persons of unknown residence or for absent persons, the local competence shall be exercised by the court in whose district these persons have their assets;

f) that was the last court of general jurisdiction in the Czech Republic of the person who is to be declared dead;

g) in whose district the real property is located if the proceedings concern rights thereto except for the local competence according to letter b);

h) in whose district inheritance proceedings are conducted if the matter is decision of a dispute relating to the inheritance proceedings;

ch) carrying out an enforcement of a decision if the matter is exclusion of a thing from the enforcement or decision on existence, amount, group or order of claims filed into the distribution;

i) carrying out bankruptcy or composition if the matter is disputes evoked thereby except for settlement of the joint property or of another assets of spouses;

j) in whose district an organizational unit of a railway transporter is located if the dispute on the defendant's side relates to this unit;

k) in whose district the deceased person had his last residence if the matter are inheritance proceedings; unless the deceased person had any residence or unless the residence can be identified, the local competence shall be exercised by the court, in whose district he had his last stay; if there is no such court, the local competence shall be exercised by the court in whose district the deceased person's assets are located; if there are more competent courts, the proceedings shall be conducted by the first court to carry out the act;

l) in whose district the place of performance is located if the matter are custody proceedings; if the places of performance are located in the districts of more courts, the custody proceedings shall be conducted by the first court to commence the proceedings;

m) in whose district the petitioner has the court of his general jurisdiction if the matter are invalidation proceedings; if the petitioner has no court of general jurisdiction in the Czech Republic, the local competence shall be exercised by the court in whose district the place of payment is located; in case of proceedings on invalidation of a security issued by an inland bank, the local competence shall be exercised by the court in whose district the bank has its seat;

n) conducting the proceedings if the matter is the lawsuit under Section 91a.

## Section 89

The court being competent to proceedings on certain case shall be also competent to proceedings on cases connected therewith and on cross petitions of the defendant except for the cases referred to in Section 88.

## Section 89a

Participants of proceedings on a business case may agree in writing on a local competence of another first instance court unless the law provides for an exclusive

competence. Such agreement or a certified copy thereof must be attached to the lawsuit (petition for commencement of the proceedings).

## Participants

### Section 90

The actor and the defendant are the participants of the proceedings.

### Section 91

(1) If there are more actors or defendants in one case, each of them shall act in the proceedings only for himself.

(2) However, if the case concerns such joint rights or duties where the judgment has to apply to all participants acting on one side, acts of one of them shall apply also to the others. However, a change of the petition, a withdrawal thereof, admission of the claim and conclusion of the settlement shall require a consent of all participants acting on one side.

### Section 91a

A person who fully or partially claims himself to have a right to the thing or right being subject to proceedings between other persons may file a lawsuit against these participants until the final and conclusive termination of the proceedings.

### Section 92

(1) Upon the actor's petition, the court may admit that a further participant accedes to the proceedings. The consent of the person who is to enter into the proceedings in this way shall be required if he is to act on the side of the actor.

(2) Upon the actor's petition and with the defendant's consent, the court may admit that the actor or the defendant withdraws from the proceedings and that somebody else enters into the proceedings instead of him. If the actor is to be changed in this way, it shall be necessary to obtain also the consent of the person who is to enter into the proceedings instead of him.

(3) The provision of paragraphs 1 and 2 shall not apply in cases referred to in Section 107a.

### Section 93

(1) A person who has a legal interest in the result of the proceedings may take part in the proceedings as a subsidiary participant besides the actor or the defendant; such participation shall not be admissible in proceedings on divorce, on nullity of marriage or on determination whether the marriage exists or not.

(2) The subsidiary participant shall enter into the proceedings either at its own instance or upon a call of any of the participants done through the mediation of the court. The court may decide on admissibility of the subsidiary participation only upon a petition.

(3) The subsidiary participant shall have the same right and duties in the proceedings as a participant. However, he shall act only for himself. If his acts are at variance with the acts of the supported participant, the court shall consider them after taking account of all circumstances.

#### Section 94

(1) If the proceedings can be commenced even without a petition, the petitioner and those whose rights or duties are to be heard in the proceedings shall be participants of the proceedings. However, if the matter are proceedings on nullity of marriage or on determination whether a marriage exists or not, only the spouses shall be the participants.

(2) Also the petitioner and those who are identified by law as participants shall be the participants of the proceedings.

(3) If somebody of those whose rights or duties are to be heard in the proceedings does not take part in the proceedings from the moment of their commencement, the court shall, as soon as it learn thereof, issue a ruling including such person to the proceedings.

(4) If there takes part in the proceedings a person whose rights or duties are not heard in the proceedings, the court shall issue a ruling terminating his participation in the proceedings.

#### Acts of the participants concerning the merits

#### Section 95

(1) With the consent of the court, the actor (petitioner) may during the proceedings change the petition for commencement of the proceedings. The changed petition must be delivered to the other participants personally unless they were present at the meeting when the petition was changed.

(2) The court shall not admit the change of the petition if the results of the hitherto proceedings could not be a base for the proceedings on the changed petition. In such case, the court shall continue in the proceedings on the original petition after the ruling becomes final and conclusive.

#### Section 96

(1) In the course of the proceedings, the actor (petitioner) may withdraw from the petition for commencement of the proceedings either fully or in part.

(2) If the petition was withdrawn, the court shall stay the proceedings either fully or within the scope of the withdrawal. If the petition for commencement of the proceedings was withdrawn after the court decided on the case but before the decision becomes final and conclusive, the court shall within the scope of the withdrawal decide also on quashing the decision.

(3) If the other disagree for serious reasons to withdrawing from the petition, the court shall decide that the withdrawal is not effective. If the case has not yet been decided, the court shall continue in the proceedings after the decision becomes final and conclusive.

(4) The provision of paragraph 3 shall not apply if the petition was withdrawn before a meeting was commenced or if the petition concerns divorce, nullity of marriage or determination whether a marriage exists or not.

(5) If the petition for commencement of the proceedings was withdrawn after the decision on the case became final and conclusive, the court shall decide that withdrawing the petition was not effective.

## Section 97

(1) The defendant may exercise his rights against the actor also by a cross petition.

(2) The court may exclude the cross petition to a separate proceedings if there are not conditions for connection of cases.

(3) The cross petition shall be governed adequately by the provisions on the petition for commencement of the proceedings, on a change thereof and on withdrawing therefrom.

## Section 98

An expression of the defendant's will setting off his receivable against the actor shall be considered a cross petition if the defendant asks the court to adjudge more than what has been sued by the actor. Otherwise, the court shall consider such expression to be merely a defense against the petition.

## Section 99

(1) If it is allowed by the nature of the case, the participants may end the proceedings by a settlement. The court shall always have to attempt at a settlement.

(2) The court shall decide on whether it approves the settlement; the settlement shall not be approved if it is contrary to legal regulations. In such case, the court shall continue in the proceedings after the ruling becomes final and conclusive.

(3) An approved settlement shall have the effects of an approved judgment. However, the court may quash by a judgment the ruling on approval of the settlement if the settlement is null according to the provisions of substantive law. The petition may be submitted within three years after the ruling on approval of the settlement became final and conclusive.

## Course of the proceedings

### Section 100

(1) As soon as the proceedings were commenced, the court shall proceed even without other petitions so that the case is heard and decided as quickly as possible. In doing so, the court shall see to it that the dispute is resolved in a peaceful way.

(2) In proceedings on divorce, the court shall lead the person to remove the causes of the breakdown and shall try hard to conciliate them.

(3) Where a participant of the proceedings is a minor child being able to express his opinions, the court shall proceed so that also his opinion on the case is found out. The opinion of the minor child shall be found out either through the mediation of his representative or the competent authority of socio-legal protection of children or by examination of the child; the examination may be carried out even without the presence of the parents or another persons responsible for raising the child. The court shall take account of the opinion of the child with respect to his age and intellectual maturity.

## Section 101

(1) In order to reach the goal of the proceedings, the participants shall particularly have to

a) assert all facts important for the decision on the case; unless either the lawsuit (petition for commencement of proceedings) or a written statement thereto contain all the necessary facts, the participants shall mention them in the course of the proceedings;

b) fulfill the duty of proof (Section 120 para. 1) and other procedural duties imposed upon them by law or by the court;

c) respect the instructions of the court.

(2) Unless a law provides otherwise, the court shall continue in the proceedings even if the participants are inactive.

(3) If a timely summoned participant fails to appear at the meeting and if he did not ask for adjournment for a serious reason, the court may hear the case and decide even if such participant is absent; in doing so, the court shall proceed from the contents of the files and from the evidence carried out.

(4) If the court calls a participant to express his opinion about certain petition concerning the course of and conducting the proceedings, the court may attach a clause saying that unless the participant expresses his opinion within a certain period, he shall be presumed to have no objections.

## Section 102

(1) If after the commencement of the proceedings it is necessary to regulate the relationships of the participants provisionally or if after the commencement of the proceedings there is a danger that enforcement of the decision that is to be issued in the proceedings could be jeopardized, the court may order a preliminary measure.

(2) After the commencement of the proceedings, the court may conserve certain evidence even without a petition if there is a danger that the evidence could not be later carried out at all or that it could be later carried out only with great difficulties.

(3) In cases belonging to the panel, the preliminary measure shall be ordered and the evidence shall be conserved by the panel; the chairman of the panel may do so only if

there is a danger of default. The provisions of Section 75 para. 1, 3, 4 and 5, Section 75a, 76, Section 77 para. 1 letter b), c) and d), Section 77 para. 2 and 3 and Section 78 para. 3 shall apply analogously.

## Examining the conditions of the proceedings

### Section 103

At any time of the proceedings, the court shall take account of whether the conditions under that it can decide on the merits are met (conditions of the proceedings).

### Section 104

(1) If the lack of a condition of the proceedings can not be removed, the court shall stay the proceedings. Unless the case falls within the jurisdiction of courts or if a prior proceedings of a different type is required, the court shall forward the case to the relevant authority after the ruling on stay of the proceedings becomes final and conclusive; legal effects connected with filing the lawsuit (petition for commencement of the proceedings) shall remain preserved.

(2) If the lack of a condition of the proceedings can be removed, the court shall take measures suitable thereto. In doing so, the court usually may continue in the proceedings but must not decide on the merits. If the court fails to remove the lack of the condition of the proceedings, the court shall stay the proceedings.

### Section 104a

(1) Material competence shall be examined by the court at any time during the proceedings.

(2) If a district or regional court holds itself not to be materially competent, it shall submit the case with a report thereon to his superior high court if it holds the case to the case to fall within the material competence of district, regional or high courts or, as the case may be, of courts created to hear and decide cases of certain type, or to the Supreme Court if it holds the case to fall within the material competence of the Superior Court. The participants of the proceedings shall have the right to express their opinion to this step and to the reasons mentioned by the court. The high court (Supreme Court) shall decide which courts are competent to hear and decide the case in the first instance unless the high court (Supreme Court) itself is materially competent.

(3) If the proceedings were commenced before a high court that holds itself not to be materially competent to the case, it shall decide which courts are competent to hear and decide the case in the first instance. This rule shall not apply if the high court is of the opinion that the case falls within the material competence of the Supreme Court; in such case, the high court shall forward the case with a report thereon to the Supreme Court. The participants shall have the right to express their opinion on the issue of material competence.

(4) If the proceedings were commenced before the Supreme Court or if the case was forwarded thereto by a high court, the Supreme Court shall decide which courts are

competent to hear and decide the case in the first instance unless the Supreme Court itself is materially competent.

(5) The steps according to paragraph 2 to 4 shall be taken analogously if the objection of the lack of material competence was raised by a participant of the proceedings.

(6) The ruling by which the court decided that courts other than those before which the proceedings were commenced are competent to hear and decide the case in the first instance shall also specify the court to which the case shall be forwarded to further proceedings; the provision of Section 105 shall not be affected by this rule.

(7) The participants of the proceedings and the courts shall be bound by the ruling of a high court or of the Supreme Court concerning the material competence.

## Section 105

(1) The local competence shall be examined by the court before starting hearing the merits. If the court has decided on the merits without a meeting, the local competence shall be examined before issuing the decision; this rule shall not apply if the matter is an order to pay. In later phases of the proceedings, the court shall examine the local competence only upon an objection of the participant raised at the moment of the first act to which the participant is entitled. In examining the local competence, the court shall not take account of meetings and acts done before a materially incompetent court and of decisions issued by a locally incompetent court.

(2) If the court declares itself incompetent, after the ruling becomes final and conclusive, the court shall forward the case to the relevant court or shall submit the case under the conditions referred to in Section 11 para. 3 to the Supreme Court.

(3) If the court to which the case was forwarded disagrees to the forwarding, it shall submit it to its superior court unless the issue of the competence has already been decided by the court of appeal; the decision of the superior court shall be binding also upon the court that forwarded the case.

(4) If a participant of the proceedings raises a timely and well-grounded objection of the lack of the local competence, the court shall proceed analogously according to paragraphs 2 and 3; otherwise, the court shall dismiss the objection by a ruling.

## Section 106

(1) As soon as the court upon the defendant's objection raised not later than at the moment of his first act concerning the merits finds out that according to an agreement of the participants, the case is to be heard in arbitration proceedings, the court shall not go on hearing the case and shall stay the proceedings; however, it shall hear the case if the participants state that they do not insist on the agreement. The court shall hear the case also if it finds out that according to the Czech law, the case can not be subject to an arbitration agreement or that the arbitration agreement is null or that it does not exist at all or that hearing the case before the arbitrators exceeds the scope of the jurisdiction conferred upon them by the agreement or that the court of arbitration refused to deal with the case.

(2) If the proceedings before the court according to paragraph 1 were stayed and if a petition for commencement of arbitration proceedings concerning the same case was filed, the legal effects of the original petition shall remain preserved if the petition for

commencement of arbitration proceedings is filed within 30 days after the delivery of the ruling of the court on stay of the proceedings.

(3) If the arbitration proceedings were commenced before it came to the proceedings before the court, the court shall interrupt the proceedings on non-existence, nullity or extinction of the agreement until the jurisdiction or the merits are decided in the arbitration proceedings.

## Impediments of the proceedings

### Section 107

(1) If the participant loses after the commencement of the proceedings the capacity to be the participant before the proceedings were finally and conclusively terminated, the court shall consider according to the nature of the case whether it is possible to continue in the proceedings. Unless it is possible to continue in the proceedings immediately, the court shall interrupt the proceedings. The court shall issue a ruling on with whom the proceedings are to be continued.

(2) If an individual loses his capacity to be the participant of the proceedings and if the nature of the case allows continuation of the proceedings, the procedural successors, unless the law provides otherwise, shall be the heirs or those of them who assumed in the inheritance proceedings the right or duty being subject to the proceedings.

(3) If a legal entity loses its capacity to be the participant of the proceedings and if the nature of the case allows continuation of the proceedings, the procedural successors, unless a law provides otherwise, shall be those who entered into the rights and duties of the dissolved legal entity or, as the case may be, those who assumed the rights or duties of the dissolved legal entity that are the subject to the proceedings.

(4) The person who enters into the proceedings instead of the hitherto participant of the proceedings must accept the state of proceedings existing at the moment of the entrance into the proceedings.

(5) Unless the nature of the case allows continuation of the proceedings, the court shall stay the proceedings. The court shall stay the proceedings in particular if the spouse dies before a final and conclusive termination of proceedings on divorce, nullity of a marriage or determination whether the marriage exists or not unless the law allows continuation of the proceedings; if the case has already been decided, the court shall simultaneously quash the proceedings.

### Section 107a

(1) If the actor is of the opinion that after the commencement of the proceedings it came to a fact with that legal regulations connect a transfer or transition of the participant's right or duty being subject to the proceedings, the actor may suggest that the acquirer of the right or duty enter into the proceedings instead of the hitherto participant if the court has not yet decided on the case; this rule shall not apply in the cases referred to in Section 107.

(2) The court shall grant the petition by a ruling if it is proved that it came to the legal fact referred to in paragraph 1 and if the person who is to enter into the proceedings instead of the actor agrees to it; the consent of the defendant or of the person who is to

enter into his position shall not be required. Legal effects connected with submission of the lawsuit shall remain preserved.

(3) The provision of Section 107 para. 4 shall apply analogously.

## Section 108

The court shall stay the proceedings on determination of fatherhood if the fatherhood was determined by an agreeing statement of the parents or if it came to an irrevocable adoption of the child.

## Section 109

(1) The court shall interrupt the proceedings where

- a) the participant lost the capacity to act before the court and is not represented by a representative with the procedural power of attorney;
- b) the decision depends on an issue that the court is not authorized to solve in these proceedings;
- c) the court is of the opinion that the act to be applied in hearing or deciding the case or an individual provision thereof is at variance with a constitutional law or with an international agreement to be preferred to the act<sup>33a)</sup> and if it filed with the Constitutional Court a petition for repeal of this law or its individual provision.

(2) Unless the court takes another suitable measures, it may interrupt the proceedings where

- a) the participant is not able to take part in the proceedings due to an impediment of a permanent nature or if the court has no knowledge of the participant's residence;
- b) the legal representative of the participant died or lost his capacity to act before the court;
- c) there are pending proceedings concerning an issue that may have an importance for the decision of the court or if the court has given a motion to such proceedings; this rule shall not apply to proceedings on approving a registration with the Commercial Register.

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33a) Art. 10 of the Constitution of the Czech Republic.

## Section 110

If it is proposed by both participants or if they fail to appear at a meeting without a prior apologize or if it is proposed by at least one participant and the others fail to appear at the meeting without a prior apologize, the court shall interrupt the proceedings unless it is contrary to the purpose of the proceedings. As for divorce proceedings, the court shall always interrupt the proceedings in these cases.

## Section 111

(1) If the proceedings have been interrupted, no meetings shall take place and the periods according to this law shall not run. If the proceedings are continued, the periods shall start running again.

(2) If the proceedings have been interrupted according to Section 109, the court shall take all measures necessary to remove the impediments that caused the interruption or due to that the interruption exists. As soon as the impediment due to that the proceedings were interrupted has fallen out, the court shall continue in the proceedings even without a petition.

(3) If the proceedings have been interrupted according to Section 110, the court shall continue in the proceedings upon a petition after the lapse of three months; except for divorce proceedings, the court may upon a petition continue in the proceedings even before the lapse of this period if there are serious reasons therefor. Unless the petition for continuation in the proceedings is filed within one year, the court shall stay the proceedings.

## Section 112

### Joining cases

(1) In order to make the proceedings more economical, the court may join cases commenced therewith and related to one another on the factual basis or concerning the same participants and may hear them in joint proceedings.

(2) If a petition for commencement of proceedings deals with cases not being suitable to join or if the reasons for that more cases were joined by the court have fallen out, the court may exclude any of the cases to separate proceedings.

## Section 113

Proceedings on raising and maintaining a minor child shall be joined with proceedings on determination of fatherhood.

## Section 113a

Proceedings on declaration of nullity of a resolution of a general meeting of a business company or of a members' meeting of a cooperative shall be joined with proceedings on compensation of damage arisen from this null resolution.

### Preparing the meeting

## Section 114

(1) After the proceedings were commenced, the chairman of the panel shall particularly examine whether conditions of the proceedings are met and whether eventual defects of the lawsuit (petition for commencement of the proceedings) have been

removed.

(2) If the court stays the proceedings due to an irremovable lack of a condition of proceedings (Section 104 para. 1) or due to the fact that the court failed to remove a lack of a condition of the proceedings (Section 104 para. 2) or, as the case may be, due to other reasons provided by an act<sup>63</sup>) or if the court rejects a petition (Section 43 para. 2), the proceedings shall be thereby terminated.

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63) Such as Section 9 of the Act No. 549/1991 Sb., on judicial fees, as amended by the Act No. 271/1992 Sb.

#### Section 114a

(1) Unless the court decided according to Section 114 para. 2, the chairman of the panel shall prepare a meeting so that the case may be decided usually in one only meeting.

(2) For that purpose, the chairman of the panel shall

- a) call the defendant or the other participants of the proceedings who have not filed the petition for commencement of proceedings to make a written statement to the case and to send the court documentary evidence invoked by them unless such step appears to be useless with regard to the nature of the case;
- b) usually provisionally attempt at a conciliatory resolution of the case;
- c) see to it that the necessary evidence may be carried out at the meeting; where necessary, the court may carry out the evidence through the mediation of a required court;
- d) take other suitable measures.

#### Section 114b

(1) If it is required by the nature of the case or by circumstances of the case and except for the cases where no settlement can be concluded and approved (Section 99 para. 1 and 2), cases referred to in Section 118b and Section 120 para. 2, instead of the call according to Section 114a para. 2 letter a) or if such call has not been complied with, the chairman of the panel may impose upon the defendant by a ruling a duty to make a written statement on the case and, unless the defendant fully admits the claim exercised by the lawsuit, to explain in the statement the decisive facts being the base of his defense and to attach to the statement documentary evidence invoked by him or to identify the evidence to prove his statements. The court shall specify a period for submission of the statement; the period must not be shorter than 30 days after the delivery of the ruling.

(2) The ruling according to paragraph 1 may be issued even if the court has decided on the base by an order to pay. In this case, the period for submission of the statement shall be specified by the court as running from the day of filing an opposition against the order to pay.

(3) The ruling according to paragraph 1 can not be issued or delivered after the first meeting of the case.

(4) The ruling according to paragraphs 1 and 2 must be delivered to the defendant personally; a substitute service shall be inadmissible. The ruling must not be delivered to the defendant before the delivery of the lawsuit.

(5) If the defendant neither makes any statement upon the call of the court according to paragraph 1 without having any serious reason therefor nor informs the court within the specified period about what serious reason prevents him from doing so, the defendant shall be presumed to have admitted the claim exercised against him in the lawsuit; the defendant must be warned against this consequence (Section 153a para. 3).

## Meeting

### Section 115

(1) Unless a law provides for anything else, the chairman of the panel shall order a meeting in the case; the chairman of the panel shall summon to the meeting the participants and all persons whose presence at the meeting is necessary.

(2) The writ of summons must be delivered to the participants so that they have a sufficient time to a preparation, usually at least ten days or, in the cases referred to in Section 118b, at least thirty days before the day when the meeting is to take place.

### Section 115a

A meeting to hear the case shall not have to be ordered if the case can be decided only on the basis of documentary evidence submitted by the participants and of the participants have waived their right to take part in the meeting or if they agree that the case shall be decided without a meeting; this rule shall not apply to the cases referred to in Section 120 para. 2.

### Section 116

(1) The meeting shall be public except for a meeting carried out by notaries being judicial commissioners.

(2) The public may be excluded either from the whole meeting or from a part thereof only if public hearing the case jeopardizes secrecy of secret facts protected by a special act,<sup>56)</sup> a commercial secret, an important interest of the participants or morals.

(3) If the public has been excluded, the court may allow certain individuals to be present at the meeting or at a part thereof; at the same time, the court shall instruct them that they have to maintain confidentiality of what they learn at the meeting concerning secret facts, commercial secret or interests of the participants.

(4) Even if the public has not been excluded, the court may deny the access of minors or individuals where there is a danger that they can disturb a dignified course of the meeting.

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56) Act No. 148/1998 Sb. on protection of secret facts and on amendment of several acts, as subsequently amended.

## Section 117

(1) The chairman of the panel shall commence, rule and terminate the meeting; he can rule the persons in and out of order, carries out evidence, takes necessary measures so that the purpose of the meeting is fulfilled and declares the decision. The chairman of the panel shall see to it that the meeting proceeds in a dignified and undisturbed way and that the case can be heard completely, equitably and without delays.

(2) In cases belonging to the panel, the individual acts in the course of evidence may be carried out also by the members of the panel with the approval of the chairman of the panel.

(3) If the case falls within the competence of the panel and if somebody disagrees to a measure of the chairman of the panel taken at a meeting, such person may ask the panel to decide.

## Section 118

(1) After the commencement of the meeting, the chairman of the panel shall call the actor (petitioner) to read the lawsuit (petition for commencement of the proceedings) or to inform of the contents thereof and shall call the defendant (other participants of the proceedings) to read the submitted written statements on the case or to inform of the contents thereof; the chairman of the panel shall read the motions of absent participants or shall inform of the contents thereof. If the defendant (other participant of the proceedings) has not yet submitted any written motion, the chairman of the panel shall call him to express his opinion on the case. The chairman of the panel shall, where necessary, call the participant also to complete his statements and to propose evidence to prove his statements.

(2) After taking the steps according to paragraph 1, the chairman of the panel shall inform of the results of preparation of the meeting.

(3) Unless the acts provides for anything else, further course of the meeting shall be ruled by the chairman of the panel with regard to the circumstances of the case.

## Section 118a

(1) If the course of the proceedings reveals that the participant has not explained all the decisive facts or that he has specified them incompletely, the chairman of the panel shall call him to complete his statements and shall instruct him by what the statements are to be completed and what are the consequences of non-fulfillment of this call.

(2) If the chairman of the panel is of the opinion that to the legal point of view, the case can be considered otherwise than according to the participant's legal opinion, the chairman of the panel shall call the participant to complete the explanation of the decisive facts within the necessary extent; in doing so, the chairman of the panel shall proceed analogously according to paragraph 1.

(3) If the chairman of the panel finds out in the course of the meeting that the participant has not yet proposed the evidence necessary to prove all his contentious

statements, the chairman of the panel shall call him to identify this evidence without undue delay and shall instruct him of the consequences of non-fulfillment of this call.

(4) In the course of the meeting, the chairman of the panel shall provide the participants also with instructions concerning their other procedural rights and duties; this rule shall not apply if the participant is represented by an attorney of law or by a notary within the scope of his authorization provided by special regulations.<sup>57)</sup>

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57) Section 3 of the Act No. 358/1992 Sb., on notaries and their activity (Notarial Code), as amended by the Act No. 30/2000.

#### Section 118b

(1) In cases concerning protection of personhood according to the Civil Code, concerning protection against publicizing information being a misuse of the freedom of expression, word and press or, as the case may be, concerning protection of rights of third parties according to legal regulations on mass information means, concerning disputes evoked by bankruptcy or composition, concerning the base of the case in disputes on protection of economic competition, concerning the base of the case in disputes on protection of rights violated or jeopardized by an unfair competition conduct, concerning the base of the case in disputes on violation or jeopardize of a right to a commercial secret and in other cases provided by an act, the participants may specify the decisive facts concerning the merits and identify evidence to prove them not later than until the end of the first meeting that took place in such cases; facts and evidence identified later shall not be taken into account. This rule shall not apply to facts and evidence that is to throw doubts on credibility of the evidence already carried out or that occurred (arose) after the first meeting or that the participant could not specify without his fault.

(2) In the writ of summons to the first meeting of the case, the participants must be instructed of the duties according to paragraph 1 and on consequences of non-fulfillment of these duties.

#### Section 118c

(1) If there are delays in hearing the case because a participant is inactive or because he has not explained all decisive facts or because he has not identified the necessary evidence in spite of a call of the court, the court may, if it is necessary and if the matter is not a case referred to in Section 120 para. 2, decide by a ruling issued upon a petition of another participant that the decisive facts concerning the merits and evidence to prove them can be specified not later than after the lapse of a period specified by the court and that facts and evidence specified later shall not be taken into account; the period must not be shorter than fifteen days after the delivery of the ruling.

(2) After the lapse of the period specified by the court, the participants may specify further facts or identify the evidence only if it is to throw doubts on the evidence already carried out or if the participant was called to complete the explanation of the decisive facts according to Section 118a para. 2 as well as if they occurred (arose) after the lapse of the period or that the participant could not specify without his fault.

(3) The ruling under paragraph 1 shall be delivered to the participants personally.

## Section 119

(1) The meeting may be adjourned only for important reasons that must be notified. Unless it is impeded by the circumstances of the case, the chairman of the panel shall, in adjourning the meeting, inform the participants of the day when the next meeting shall take place; the provision of Section 115a shall apply here analogously.

(2) The participants must be summoned to the next meeting usually at least five days in advance.

(3) If the personal composition of the court has changed, the chairman of the panel shall, at the beginning of the next meeting, inform about the contents of what was delivered by the parties and of the evidence that has been carried out.

## Section 119a

(1) Before the end of the meeting, the chairman of the panel must, except for the cases referred to in Section 120 para. 2, instruct the participants being present at the meeting that all the decisive facts must be specified and the evidence must be identified before the court declares the decision as facts and evidence specified later shall be considered a reason for appeal only under the conditions referred to in Section 205a. The provision of Section 118b, 118c and Section 175 para. 4 first sentence before the semicolon shall not be affected.

(2) Unless the participants specify new facts or evidence even after the instruction according to paragraph 1, if the new facts and evidence were specified at variance with Section 118b, 118c or 175 para. 4 first sentence before the semicolon or if the court has decided not to carry out the proposed evidence, the chairman of the panel shall call the participants to sum up their petitions and to make a statement on the evidence and on the factual and legal point of view of the case.

## CHAPTER TWO

### EVIDENCE

#### Duty of proof

##### Section 120

(1) The participants must specify the evidence to prove their statements. The court shall decide which of the proposed evidence shall be carried out.

(2) In cases where the proceedings can be commenced even without a petition as well as in proceedings on approval of entrance into a marriage, in proceedings on determination or denial of parenthood, in proceedings of determination whether adoption of a child requires a consent of his parents, in adoption proceedings, in proceedings on appointment of an arbitrator or of a presiding arbitrator, in Commercial Register proceedings, in proceedings on approval of a termination of the lease of a flat, in proceedings on winding-up a political party or a political movement or suspending or renewing the activities thereof, in proceedings on lawfulness of arrest of a foreigner and

on his release and in proceedings on several issues of business companies, cooperatives and other legal entities (Section 200e), the court has to carry out even other evidence necessary to find out the factual state than the evidence proposed by the participants.

(3) If the matter is not the proceedings referred to in paragraph 2, the court may carry out evidence other than the evidence proposed by the participants if the necessity of carrying them out to find out the factual state has occurred in the proceedings. Unless the participants specify the evidence necessary to prove their statements, the court shall, in finding out the factual base, proceed from the evidence carried out.

(4) The court may consider identical statements of the participants to be the court's own factual ascertainties.

## Section 121

It shall not be necessary to prove generally known facts or facts known to the court from its activity or legal regulations published or notified in the Collection of Laws of the Czech Republic.

## Carrying out the evidence

### Section 122

(1) The evidence shall be carried out by the court in a meeting.

(2) Where it is useful, another court may be asked to carry out the evidence; the chairman of the panel being empowered thereto by the panel may carry out the proof outside the meeting. The participants shall have the right to be present at the evidence carried out in this way. The results thereof must be always notified in the meeting.

(3) The panel may always decide that the evidence carried out must be completed or repeated before the panel.

### Section 123

The participants shall have the right to express their opinion on the proposals of evidence and on all evidence that has been carried out.

### Section 124

The evidence must be carried out in the manner that the duty to maintain confidentiality of secret facts protected by a special act<sup>56</sup>) and another duty to maintain confidentiality provided by law or recognized by the state are preserved. In these cases, the examination may be carried out only if the examined person has been relieved of the duty to maintain confidentiality by the competent authority or by the person in whose favor the duty is; this rule shall analogously apply where the evidence is carried out otherwise than by way of examination.

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56) Act No. 148/1998 Sb. on protection of secret facts and on amendment of several acts, as subsequently amended.

## Means of evidence

### Section 125

Every means by that the state of the case can be ascertained may serve as evidence: in particular examination of witnesses, an expert's report, reports and statements of authorities, individuals or legal entities, notarial or executorial records and other documents, checking over and examination of the participants. Unless the way of carrying out the evidence is prescribed, it shall be specified by the court.

### Section 126

(1) Every individual not being a participant of the proceedings must appear in the court upon a writ of summons and bear testimony as a witness. The witness must tell the truth and conceal nothing. The witness may deny the testimony if it could result in a danger of criminal prosecution of the witness himself or by the persons close to him; the court shall decide whether the denial of testimony was justified.

(2) At the beginning of the examination, it shall be necessary to find out identity of the witness and the circumstance being able to influence his credibility. Furthermore, it shall be necessary to instruct the witness of the importance of the testimony, of his rights and duties and on criminal consequences of a false testimony.

(3) The chairman of the panel shall call the witness to explain coherently what he knows of the subject to the examination. Subsequently, the chairman of the panel shall put him questions necessary to complete or clarify his testimony. The questions may be put also by the members of the panel; with the consent of the chairman of the panel, the questions may be put also by the participants and by experts.

(4) An individual being a statutory body of a legal entity (or a member of such body) may be examined in proceedings whose participant this legal entity is only according to Section 131.

### Section 127

(1) If the decision depends on consideration of facts requiring professional knowledge, the court shall appoint an expert after examining the participants. The court shall examine the expert; the court may also order that the expert make the report in writing. Where more experts have been appointed, they may elaborate a common report. Instead of examining an expert, the court may be in well-grounded cases satisfied by a written report of the expert.

(2) The court may have the expert's report verified by another expert, by a scientific institute or by another institution.

(3) The court may order that a participant or, as the case may be, also somebody else appear at the expert, give him the necessary items, submit necessary explanation, submit

to a medical examination or a blood test or do something or omit something if it is necessary for submission of the expert's report.

(4) Instead of the expert's report, the court may use a certificate or a professional statement if the court has no doubts about the correctness thereof. A financial reimbursement for submission of the certificate or professional statement shall be paid if it is provided by a special regulation.

## Section 128

Everybody must upon a request inform the court gratuitously of facts being of importance for the proceedings and deciding. The provision of Section 139 para. 3 shall not be affected by this rule. Providing the information may be denied only by the person who could do so as a witness according to Section 129 para. 1.

## Section 129

(1) A proof by a document shall be carried out in manner that the chairman of the panel reads its contents or informs the participants thereof in a meeting.

(2) The chairman of the panel may order that the person having a document necessary to the evidence should submit it; the chairman of the panel may arrange for the document on his own with another court, authority or legal entity.

## Section 130

(1) Checking over an item that can be transported to the court shall be carried out in the meeting. For that purpose, the chairman of the panel may order that the person having the necessary item should submit it.

(2) In other cases, the checking over shall be carried out on the spot. The persons who are to be summoned to a meeting must be summoned also to the checking over.

## Section 131

(1) Evidence by examining the participants may be ordered if the given fact can not be proved otherwise and if the participant agrees to the examination; this rule shall not apply to proceedings referred to in Section 120 para. 2 and to divorce proceedings.

(2) If the court orders examination of the participants, the participants must appear in the examination. In being examined, the participants must tell the truth and must not conceal anything; they must be instructed thereof.

(3) The provision of Section 129 para. 3 shall apply analogously.

## Weighing the evidence

## Section 132

The court shall weigh the evidence at its own discretion; the court shall weigh each proof individually and all proofs in their mutual connection; in doing so, the court shall take account of all that was revealed in the proceedings including what was stated by the participants.

### Section 133

If a law provides that certain fact shall be presumed and that such presumption shall admit a proof of the contrary, such fact shall be considered proved by the court unless the contrary has been revealed in the proceedings.

### Section 133a

A statement that a participant was directly or indirectly discriminated due to sex shall be considered proved by the court in labor cases unless a contrary has been revealed in the proceedings.

### Section 134

Documents issued by courts of the Czech Republic or by another state authorities within the scope of their competence as well as documents declared public by special regulations shall certify that they are an order or statement of the authority that issued the document and, unless a contrary has been proved, the truthfulness of what is verified or certified therein.

### Section 135

(1) The court shall be bound by the decision of the competent authorities that somebody has committed a crime, trespass or another administrative offence that can be prosecuted according to special regulations and who has committed them as well as by a decision of personal status; however, the court shall not be bound by a decision issued in block proceedings.

(2) Other issues falling within the competence of another authority may be considered by the court on its own. However, if a decision on such issue has already been issued by the competent authority, the court shall proceed therefrom.

### Section 136

If the amount of the claims can be ascertained only with inadequate difficulties or if it can not be ascertained at all, the court shall ascertain them according to its own consideration.

## CHAPTER THREE

### COSTS OF PROCEEDINGS

#### Kinds of costs of proceedings

##### Section 137

(1) Costs of proceedings are in particular as follows: cash expenses of the participants and their representatives including the judicial fee, lost earnings of the participants and their legal representatives, costs of evidence, remuneration of a notary for acts of the judicial commissioner and his cash expenses, remuneration of inheritance trustee and his cash expenses, interpreter's remuneration and remuneration for representation.

(2) The remuneration for representation shall be considered costs of proceedings only if the participant is represented by an attorney of law or by a notary within the scope of his authorization provided by special regulations.<sup>57)</sup>

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57) Section 3 of the Act No. 358/1992 Sb., on notaries and their activity (Notarial Code), as amended by the Act No. 30/2000.

##### Section 138

(1) Upon a petition, the chairman of the panel may grant a participant a full or partial exemption from judicial fees if it is justified by the participant's condition and unless the matter is an obviously unsuccessful exercise or defense of a right. Unless the chairman of the panel decides otherwise, the exemption shall apply to the entire proceedings and shall have a retroactive validity; however, fees paid before the decision on exemption shall not be returned.

(2) The chairman of the panel shall withdraw the awarded exemption at any moment during the proceedings even with a retroactive effect if it is revealed until the final and conclusive termination of the proceedings that the participant's condition do not or did not justify the exemption.

(3) If a representative was appointed for a participant exempted from judicial fees, the exemption shall apply within the granted scope even to cash expenses of the representative and to a remuneration for representation.

##### Section 139

(1) Witnesses shall have the right to a reimbursement of cash expenses and of the lost earnings (witness payment). This right shall become extinct unless it is exercised within three days from the examination or from the day when the witness was notified that the examination shall not take place. The court must instruct the witness thereof.

(2) An expert who submitted a report or an who interpreter provided his service shall have the right to a reimbursement of cash expenses and to a remuneration (expert's payment and interpreter's payment). Special regulations shall provide to whom and in what sum the expert's payment and the interpreter's payment shall be given.

(3) If the court imposed upon a person a duty relating to evidence, in particular to submit a document, such person shall have the same rights as a witness unless he is a participant. The entitled person must exercise his rights under the same conditions as a witness.

(4) The chairman of the panel shall decide on the rights referred to in paragraphs 1 to 3 in the form of a ruling.

#### Paying the costs of proceedings

##### Section 140

(1) Every participant shall pay the costs of proceedings occurred to him and the costs of his representative. Common costs shall be paid by the participants according to the proportion of their participation in the case and in the proceedings; unless the proportion of the participation can be ascertained, the costs shall be paid share and share alike. The participants referred to in Section 91 para. 2 shall pay the common costs jointly and severally.

(2) If the court appointed an attorney of law for a participant, his cash expenses and a remuneration for representation shall be paid by the state; in justified cases, the state shall provide the attorney of law upon his request with an adequate advance payment.

(3) In inheritance proceedings, the notary's remuneration and his cash expenses shall be paid by the heir who acquired the inheritance that is not overindebted; if there are more heirs, they shall pay these costs according to the proportion of the net value of their portions of inheritance. In other cases, these costs shall be paid by the state.

##### Section 141

(1) The chairman of the panel may order that a participant not meeting the conditions for exemption from judicial fees deposit an advance payment of costs of a proof proposed by him or ordered by the court if the proof concerns the facts specified by the participant or is in his interest.

(2) The costs of the proof not covered by the advance payment as well as cash expenses of an appointed representative being no attorney of law and costs connected with the fact that a participant acts in his native language or by gestures shall be paid by the state.

#### Reimbursement of the costs of proceedings

##### Section 142

(1) A participant who had a full success in the case shall be awarded by the court a reimbursement of costs necessary to a useful exercise or defense of a right against the participant who has had no success in the case.

(2) If the participant had only a partial success in the case, the court shall divide the reimbursement of the costs in a proportionate way; as the case may be, the court shall decide that none of the participants has a right to the reimbursement of costs.

(3) Even if the participant had only a partial success in the case, the court may award him a full reimbursement of costs of the proceedings if the participant failed only in an inappreciable part or if the decision on the amount of the performance depended on an expert's report or on the court's consideration.

(4) Where the proceedings were commenced upon a petition of the Supreme State Representative or of a state representation according to special regulations,<sup>58)</sup> under conditions referred to in paragraphs 1 to 3, the reimbursement of the costs shall be awarded by the court to the defendant against the state.

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58) Such as Section 21 and 29 of the Act No. 2/1991 Sb., on collective bargaining, Section 62 and 62a of the Act No. 94/1963 Sb., on family, as amended by the Act No. 91/1998 Sb.

#### Section 143

A defendant who lost the case shall have the right to a reimbursement of costs of the proceedings against the actor if the defendant's behavior was not the cause of submission of the petition for commencement of the proceedings.

#### Section 144

The participants shall not have the right to reimbursement of costs of proceedings on divorce or on nullity of marriage or on determination whether the marriage exists or not. However, the court may award even reimbursement of these costs or a part thereof if it is justified by the circumstances of the case or by the condition of the participants.

#### Section 145

If the court has awarded a participant reimbursement of costs of proceedings, the court shall award him also reimbursement of costs of a preliminary measure or of conservation of evidence.

#### Section 146

(1) None of the participants shall have the right to reimbursement of costs of proceedings according to the results thereof if the proceedings

- a) could have been commenced even without a petition; this rule shall not apply if the circumstances of the case justify awarding the reimbursement;
- b) ended by concluding a settlement unless anything else was agreed therein concerning the reimbursement of the costs;
- c) were stayed.

(2) If a participant has caused by his intention or negligence that the proceedings had to be stayed, such participants shall reimburse the costs thereof. However, if a well-

grounded petition was withdrawn due to the behavior of the defendant (another participant of the proceedings), the costs of the proceedings shall be reimbursed by the defendant (another participant of the proceedings).

(3) If the court rejects the lawsuit or another petition for commencement of proceedings, the actor (petitioner) must give the other participants a reimbursement of their costs.

#### Section 147

(1) The court may order that a participant or his representative reimburse costs of the proceedings that would not have arisen otherwise if they caused them by their intention or negligence or by a chance occurred to them.

(2) If witnesses, experts, interpreters or those who had any duty related to carrying out evidence have caused by their intention or negligence costs of proceedings that would not have arisen otherwise, the court may order that they give the participants a reimbursement thereof.

#### Section 149

(1) According to the results of the proceedings, the state shall have a right against the participants to reimbursement of costs of the proceedings paid by the state unless the participants meet the requirements for exemption from judicial fees.

(2) If witnesses, experts, interpreters or those who had any duty related to carrying out evidence have caused by their intention or negligence costs of proceedings that would not have arisen otherwise, the court may order that they pay the reimbursement to the state.

#### Section 150

(1) If an attorney of law represented a participant who was awarded a reimbursement of proceedings, the person upon whom the reimbursement was imposed shall pay it to the attorney of law.

(2) If an appointed attorney of law represented a participant who was awarded reimbursement of costs of proceedings, the person upon whom the reimbursement of these costs was imposed shall pay the state the reimbursement of cash expenses of the attorney of law and a remuneration for representation.

(3) The provision of paragraph 1 shall apply analogously if the participant was represented by a notary within the scope of his authorization provided by special regulations.<sup>57)</sup>

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57) Section 3 of the Act No. 358/1992 Sb., on notaries and their activity (Notarial Code), as amended by the Act No. 30/2000.

#### Section 150

If there are reasons deserving a special regard, exceptionally, the court shall not have to award a reimbursement of costs of proceedings fully or in part.

## Deciding on the costs of proceedings

### Section 151

(1) The duty to reimburse the costs of proceedings shall be decided by the court even without a petition in the decision by that the proceedings before the court are terminated; in case of the reimbursement of the costs of proceedings according to Section 147 and Section 148 para. 2, the court may do so even in the course of the proceedings; in this case, the court shall usually decide as soon as these costs arise.

(2) In deciding on the reimbursement of costs of proceedings, the amount of remuneration for representation by an attorney of law or by a notary in the framework of his authorization provided by a special regulation<sup>57)</sup> shall be decided by the court according to lump rates provided by a special regulation for proceedings in one instance; however, if the matter is awarding a reimbursement of costs of proceedings according to Section 147 or if it is justified by the circumstances of the case, the court shall proceed according to the provisions of a special legal regulation concerning extracontractual remuneration.<sup>64)</sup> Reimbursement of wage (salary) and reimbursement of cash expenses shall be determined by the court according to special legal regulations. Otherwise, the court shall proceed from the costs that have provable occurred to the participant.

(3) The chairman of the panel may determine the amount of the costs in the written execution of the decision.

(4) Even if the court has decided on the reimbursement of costs of proceedings by a separate decision, the period of performance shall start running from the moment when the decision awarding the reimbursement became final and conclusive.

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57) Section 3 of the Act No. 358/1992 Sb., on notaries and their activity (Notarial Code), as amended by the Act No. 30/2000.

64) Section 6 ff. of the Ordinance No. 177/1996 Sb., on remuneration of attorneys of law and reimbursements of attorneys of law for provision of legal services (Bar Tariff).

### Section 151a

The issue who and in what sum has to pay the remuneration of a notary and his cash expenses shall be decided in the inheritance proceedings by the court in the ruling terminating the proceedings before the court.

## CHAPTER FOUR

### THE DECISION

#### Judgment

### Section 152

(1) The court shall decide on the merits of the case by a judgment. The law shall provide in what cases, the court shall decide on the merits by a ruling.

(2) The judgment should deal with the whole heard case. However, if it is useful, the court may first issue a judgment dealing only with a part of the case or with the base thereof.

### Section 153

(1) The court shall decide on the basis of the ascertained factual base of the case.

(2) The court may exceed the petitions of the participants and adjudge something else or more than what is demanded by them if the proceedings could be commenced even without a petition or if a legal regulation provides for a certain way of settlement of the relationship between the participants.

### Section 153a

(1) If the defendant admits in the proceedings the claim or a part thereof that has been exercised against him by a lawsuit, the court shall decide by a judgment according to this admission. If a claim exercised against the defendant by a lawsuit is admitted by the defendant only in a part, the court shall decide by a judgment according to this admission only if it is proposed by the actor.

(2) The admission judgment can not be issued in cases where no settlement can be concluded and approved (Section 99 para. 1 and 2).

(3) The admission judgment shall be issued also if the defendant is presumed to have admitted the claim exercised against him by the lawsuit (Section 114b para. 5).

(4) A meeting shall not have to be ordered only for issuing the admission judgment.

### Section 153b

(1) If the lawsuit and the writ of summons were duly and personally (Section 45) delivered to the defendant at least ten days or, in the cases referred to in Section 118b, thirty days before the day when the meeting is to take place, if the defendant was warned against the consequences of non appearing in the meeting and if he misses the first meeting to take place in the case without a well-grounded and timely apology, the actor's statements in the lawsuit concerning factual circumstances of the dispute shall be considered indisputable; on that basis, the court may decide on the lawsuit by a default judgment if it is proposed by the actor.

(2) If there are more defendants in one case who have joint duties making the judgment apply to all of them (Section 91 para. 2), the default judgment may be issued only unless all the duly summoned defendants appear in the meeting.

(3) A default judgment can not be issued in cases where no settlement can be concluded and approved (Section 99 para. 1 and 2) or if such judgment would lead to establishment, change or cancellation of a legal relationship between the participants.

(4) If the defendant misses for excusable reasons the first meeting of the case where a default judgment was issued, the court shall upon the defendant's petition quash the judgment by a ruling and order a meeting. The participant may file such petition until the day when the default judgment becomes final and conclusive.

(5) If the defendant filed the petition for quashing the judgment of the first instance court for the reason referred to in paragraph 4 and simultaneously appealed against and if the petition for quashing the judgment was granted by a final and conclusive ruling, the appeal shall not be taken into account.

#### Section 154

(1) The state of affairs at the moment of declaration shall be decisive for the judgment.

(2) In case of repeating performance, it shall be possible to impose even a duty to perform allowances to become due in the future.

#### Section 155

(1) The contents of the decision on the merits of the case shall be pronounced by the court in the verdict of the judgment. In the verdict, the court shall also decide on the duty to reimburse the costs of proceedings; if the court decides only on the base of a reimbursement of costs of proceedings, the amount thereof shall be determined in a separate ruling.

(2) A verdict concerning money performance may be expressed in a foreign currency unless it is contrary to the circumstances of the case and if

a) the performance follows from a legal act where the performance is expressed in a foreign currency, the actor (petitioner) requires a performance in the foreign currency and foreign exchange regulations<sup>65</sup> allow the exchange resident<sup>66</sup> being to perform to give the performance in the proposed foreign currency without the necessity of a special approval; or

b) any of the participants is an exchange foreigner.<sup>67</sup>)

(3) Unless the requirements for awarding a performance in the foreign currency referred to in paragraph 2 are met, the court shall even without a petition specify the performance in the currency of the Czech Republic.

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65) Act No. 219/1995 Sb., Foreign Exchange Act.

66) Section 1 letter b) of the Act No. 219/1995 Sb.

67) Section 1 letter c) of the Act No. 219/1995 Sb.

#### Section 156

(1) The judgment shall be always declared in a public way; it shall be declared by the chairman of the panel in the name of the Republic. In doing so, the chairman shall specify the verdict of the judgment together with the reasons and with an instruction of the appeal and of the possibility of enforcement of the decision. After declaring the

judgment, the chairman of the panel shall usually call the participants to state whether they waive an appeal against the declared judgment.

(2) The judgment shall be declared usually immediately after the end of the meeting that preceded the judgment; unless it is possible, the court shall adjourn the meeting for the purpose of declaring the judgment; the meeting may be adjourned for maximally ten calendar days. The provisions of Section 119 para. 2 and 3 shall not apply in this case.

(3) The court shall be bound by the judgment as soon as it was declared.

## Section 157

(1) Unless anything else is provided, a written execution of the judgment shall contain the words "In the name of the Republic", identification of the court, names and surnames of judges and assessors, an exact identification of the participants and their representatives, participation of a state representation, identification of the heard case, text of the verdict, reasons, instruction of whether there is a remedy admissible except for a lawsuit for retrial and for nullity and the period and place where such remedy can be filed, instruction about the possibility of enforcement of the decision and the day and place of the declaration. Where possible, identification of the participants shall also contain their date of birth (identification number).

(2) Unless anything else is further provided, in the reasons of the judgment, the court shall state what and for what reasons was demanded by the actor (petitioner) and what was the statement of the defendant (another participant of the proceedings); the court shall briefly and clearly explain which facts were considered proved and which not, which evidence supported the factual ascertainments and what considerations were decisive in weighing the evidence; the court shall also explain why no further evidence was carried out, what conclusion about the factual state was made and how the case was considered to the legal point of view; the court must not copy factual statements of the participants and evidence from the file. The court shall see to it that the reasons of the judgment are convincing.

(3) The reasons of an admission judgment or a default judgment shall specify only the merits of the proceedings and briefly explain the reasons why the court decided by issuing an admission judgment or a default judgment.

(4) If no appeal is admissible against a judgment or if the participants have waived an appeal (Section 207 para. 1), the reasons of such judgment shall identify only the merits of the proceedings, the conclusion concerning the factual state and a brief legal consideration of the case; this rule shall not apply to administrative justice.

## Section 158

(1) A written execution of a judgment shall be signed by the chairman of the panel. Unless he is able to sign it, the written execution shall be signed by another member of the panel and if it was issued by a single judge, by another judge entrusted therewith by the chairman of the court; the reason shall be marked in the written execution.

(2) A copy of the written execution of a judgment shall be personally delivered to the participants or, as the case may be, to their representatives.

(3) If the participants waived the appeal after the end of the meeting that preceded the judgment, the copy of the judgment shall be usually delivered at the end of the meeting.

(4) Unless a copy of the judgment was delivered according to paragraph 3, it must be delivered to the participants or, as the case may be, to their representatives within thirty days from the day when the judgment was declared. The chairman of the panel may prolong this period by up to sixty days.

#### Section 159

(1) A delivered judgment shall be considered final and conclusive (*res judicata*) if it can not be appealed.

(2) A verdict of a final and conclusive judgment shall be binding upon the participants and upon all authorities; other persons than the participants shall be bound by it only in cases provided by law and within the scope referred to therein. A verdict of a final and conclusive judgment on personal state shall be binding upon everyone.

(3) As soon as a case has been finally and conclusively decided, the same case can not be heard again within the binding of the verdict of the judgment.

#### Section 160

(1) A duty imposed by the court in a judgment must be fulfilled within three days or, in case of eviction of a flat, within fifteen days after the judgment became final and conclusive; the court may specify a longer period or decide that a money performance may happen by instalments in a specified amount and under specified payment conditions.

(2) If the court has adjudged to a repeating performance of allowances to become due in the future, the allowances must be paid as soon as they become due according to the judgment.

(3) If a final and conclusive judgment of the court imposed a duty to evacuate a flat after obtaining security for an adequate compensatory flat, a compensatory flat, a compensatory accommodation or a shelter, the period for eviction of the flat shall start running from the day when the provided housing compensation or shelter was assured.

(4) In case of provisionally enforceable judgments, the court shall specify the period of performance from the delivery thereof to the person being to perform.

#### Section 161

(1) The judgment shall be enforceable as soon as the period for performance elapsed.

(2) Unless the judgment imposes a duty to a performance, the judgment shall be enforceable as soon as it became final and conclusive.

(3) Final and conclusive judgments imposing an expression of a will shall replace such expression.

#### Section 162

(1) Judgments adjudging to payment of maintenance or of a work remuneration for the last three months before declaration of the judgment shall be provisionally enforceable.

(2) Upon a petition, the court may pronounce a provisional enforceability in the verdict of the judgment if the participant would be otherwise endangered by a hardly reparable or serious injury.

#### Section 163

(1) A judgment adjudging to a payment of allowances to become due in the future or to payment in instalments may be changed upon a petition in case of an essential change of the conditions decisive for the amount and further duration of the allowances or instalments. Unless a law provides otherwise, the change of the judgment shall be admissible from the moment when it came to the change of the conditions.

(2) Judgments on raising and maintaining minor children and judgments awarding, restricting or depriving a parental responsibility or suspending the exercise thereof may be changed even without a petition if the conditions change.

#### Section 164

At any time and even without a petition, the chairman of the panel shall correct mistakes in writing or numbers in the judgment as well as any other obvious mistakes. If the correction concerns the verdict of the decision or unless the correction can be carried out in copies of the decision, the court shall issue a correcting ruling that shall be delivered to the participants; in case of correction of a verdict of a decision, the court may put off enforceability of the judgment until the correcting ruling becomes final and conclusive.

#### Section 165

(1) Unless the reasons of a judgment have no basis in the ascertained factual state, the participant may propose a correction of the reasons until the judgment becomes final and conclusive.

(2) Unless the first instance court grants the petition, it shall submit the case to the court of appeal that shall decide on the correction.

(3) The decision on the correction shall have the form of a ruling; where the case falls within the competence of a panel, the decision shall be issued by the chairman of the panel. A meeting shall not be necessary to order.

#### Section 166

(1) Unless the court has decided in a judgment on a part of the case, on the costs of proceedings or on the provisional enforceability, the participant may within fifteen days after the delivery of the judgment propose that the judgment be completed. A judgment

that has not yet become final and conclusive may be completed by the court even without a petition.

(2) Completing the judgment by a part of the case shall be done by the court by a judgment governed analogously by the provisions on a judgment; in other cases, the judgment shall be completed by a ruling. Unless the court grants the participant's petition for completing the judgment, the court shall dismiss the petition by a ruling.

(3) The petition for completing shall affect neither finality and conclusivity nor enforceability of verdicts of the original judgment.

## Ruling

### Section 167

(1) Unless a law provides otherwise, the court shall decide in the form of a ruling. In the form of a ruling, the court shall decide in particular on the conditions of the proceedings, on stay or interruption of the proceedings, on rejection of a petition, on a change of a petition, on a withdrawal from a petition, on a settlement, on the costs of proceedings as well as on the matters of conducting the proceedings.

(2) Unless anything else is further provided, the provisions concerning a judgment shall adequately apply to a ruling.

### Section 168

(1) The ruling shall be declared by the chairman of the panel to the present participants.

(2) The court shall deliver the ruling to the participant if the ruling can be appealed or contested by a recourse or if the delivery is necessary for conducting the proceedings or if the ruling imposes any duty upon the participants.

### Section 169

(1) Unless anything else is provided, a written execution of a ruling shall contain specification of the court that has issued it, the names and surnames of the judges and assessors, identification of the participants and their representatives and identification of the case, a verdict, reasons, instruction on whether there is a remedy against the ruling except for a lawsuit for retrial and for a nullity suit, on the period and place where it can be submitted and the day and place of issuance of the ruling.

(2) A written execution of a ruling completely granting a petition opposed by nobody, a written execution of a ruling concerning conducting the proceedings and a written execution of a ruling according to Section 104a shall not have to contain reasons.

(3) Unless a ruling is not delivered, a written execution thereof may contain only the verdict and the date of issuance.

(4) The provision of Section 157 para. 2 and 4 shall apply analogously to the reasons of a ruling by that the court decided on the merits of the case.

## Section 170

(1) The court shall be bound by a ruling as soon as it was declared; unless the ruling was declared, the court shall be bound by it as soon as it was delivered; unless the ruling is necessary to deliver, the court shall be bound by it as soon as it was executed.

(2) However, the court shall not be bound by a ruling regulating the conduct of the proceedings.

## Section 171

(1) The period of performance shall start running from the delivery of the ruling; after the lapse of this period, the ruling shall become enforceable.

(2) Unless the ruling imposes a duty to certain performance, the ruling shall be enforceable as soon as it was delivered; unless the ruling is necessary to deliver, the ruling shall become enforceable as soon as it was declared or executed.

(3) If the law or a decision of the court determine that a ruling shall be enforceable after it becomes final and conclusive, the period of performance shall start running from the moment when the ruling becomes final and conclusive.

(4) A ruling ordering a preliminary measure according to Section 76a shall be enforceable as soon as it was declared; unless it was declared, it shall be enforceable as soon as it was executed.

## Order to pay

### Section 172

(1) Even without an explicit request of the actor and without examining the defendant, the court may issue an order to pay if the lawsuit exercises a right to payment of a sum of money and if the exercised right follows from the facts stated by the actor. In the order to pay, the court shall order that the defendant either pay the actor the exercised receivable and the costs of proceedings within 15 days after the delivery of the order to pay or file within the same period a protest with the court that has issued the order to pay.

(2) The order to pay can not be issued

- a) where the case is to be heard and decided by a panel;
- b) if the defendant's residence is unknown;
- c) if the order to pay is to be delivered to the defendant abroad.

(3) Unless the court issues an order to pay, it shall order a meeting.

### Section 173

(1) The order to pay must be delivered to the defendant personally; a substitute service shall be inadmissible.

(2) If the order to pay can not be delivered even to one of the defendants, the court shall completely quash it by a ruling.

#### Section 174

(1) An order to pay against that no protest has been filed shall have the effects of a final and conclusive judgment.

(2) If even one of the defendants files a protest, the order to pay shall be thereby completely quashed and the court shall order a meeting. However, a remedy only against the verdict on costs of proceedings shall have also here the form of an appeal.

(3) A delayed protest shall be rejected by the court in the form of a ruling; the protest can not be rejected due to the lack of reasons. A filed protest shall be rejected by the court also if it has been filed by a person not being entitled to file a protest.

(4) In correcting mistakes in writing and numbers as well as in correcting another obvious mistakes of an order to pay, the court shall proceed according to Section 164.

#### Section 175

(1) If the actor submits an original of a bill of exchange, promissory note or a check and if there are nor reasons to doubt about their authenticity and if the actor submits also other documents necessary for exercise of the right, the court shall upon the actor's petition issue a bill-of-exchange (check) order to pay; in the bill-of-exchange (check) order to pay, the court shall order that the defendant either pay the demanded sum and the costs of proceedings within three days or raise in the same period objections containing everything that the defendant objects to the order to pay. The bill-of-exchange (check) order to pay must be delivered to the defendant personally. Unless the petition for issuing the order to pay can be granted, the court shall order a meeting.

(2) The provisions of Section 173 para. 2 and Section 174 para. 4 shall apply analogously.

(3) If the defendant fails to raise timely objections or if he withdraws from them, the bill-of-exchange (check) order to pay shall have the effects of a final and conclusive judgment. The court shall reject delayed objections or objections containing no reasons. The court shall reject raised objections also if they were raised by a person not being entitled to raising them.

(4) If the defendant raises timely objections, the court shall order a meeting to hear them; however, objections raised later shall not be taken into account. In a judgment, the court shall pronounce whether the bill-of-exchange (check) order to pay shall remain valid or whether it shall be quashed and in what extent.

(5) If the defendant withdraws from the objections, the court shall by a ruling stay the objection proceedings; no meeting shall have to be ordered.

(6) A remedy only against the verdict on costs of proceedings shall have the form of an appeal.

## CHAPTER FIVE

### SPECIAL PROVISIONS

## Inheritance proceedings

### Section 175a

(1) The competent authority of state administration entrusted with keeping the record shall inform the court competent to hear the inheritance about a decease occurred in the record district of such authority.

(2) The court shall commence the proceedings even without a petition as soon as it learns that somebody has died or has been declared dead. The ruling on commencement of proceedings shall not have to be delivered.

(3) The court shall decide by a ruling; the ruling according to Section 175k para. 1 and 2, Section 175l, 175p, 175q and 175t shall be delivered personally.

### Section 175b

The participants of the proceedings shall be those who can be reasonably deemed to be the deceased person's heirs; if there are no such persons, the state. A deceased person's creditor shall take part in the proceedings in the case referred to in Section 175p, in case of settlement of his receivable and in case of liquidation of the inheritance. The participant of the proceedings according to Section 175h shall be only the person who arranged for the burial.

### Section 175c

The court shall find out whether the Register of Wills maintained according to special regulations contains the deceased person's will, document on disinheritance or a document recalling these acts (hereinafter the "will"); the court shall also find out with which notary or court, the will is deposited.

### Section 175d

(1) In the preliminary proceedings, the court shall in particular arrange for particulars necessary to identify the heirs and the deceased person's assets and debts and to find out whether the heirs whose legal representative the deceased person was need an appointed curator.

(2) If the deceased person left a will, the court shall ascertain the condition and contents thereof; upon a request of the court, this ascertainment shall be done by the notary with whom the will has been deposited.

(3) If the condition and contents of the will have been ascertained, the original thereof shall be put into the collection of proclaimed wills maintained by the court unless the will has been drawn up in the form of a notarial record.

### Section 175e

(1) If it is required by a general interest or by an important interest of the participants, the court shall take even without a petition urgent measures; in particular, the court shall conserve the inheritance, give items of personal use to the deceased person's spouse or to another member of the household, arrange for the sale of things that can not be saved without a danger of damage or inadequate costs and, as the case may be, appoint an administrator of the inheritance or of a part thereof (hereinafter the "administrator").

(2) Conservation of the inheritance shall be carried out in particular by depositing the inheritance with the court or with a depositor, by sealing it in the deceased person's flat or in another suitable place, by enjoining the deceased person's debtor from paying or by drawing up a list on spot.

(3) In selling movable things, the court shall proceed analogously according to the provisions on enforcement of a decision by selling movable things unless the court has chosen another way of sale.

(4) The administrator shall be chosen by the court in particular from the ring of heirs or from the ring of persons close to the deceased person; the office of administrator may be executed even by a notary who is not a judicial commissioner in these proceedings. If the inheritance includes an enterprise, the court shall appoint a person who has experience with managing an enterprise. The office of administrator may be executed only by a person who agrees to the appointment.

#### Section 175f

(1) In the course of the inheritance proceedings and within the scope specified by the court, the administrator shall take measures necessary to save the property values falling into the inheritance. In exercising his office, the administrator must proceed with a professional care and shall be liable for the damage caused by breach of duties imposed upon him by law or by the court. If the court decides so, the administrator shall give the court periodic reports on his activities.

(2) For important reasons, the court may recall the administrator from his office. Where necessary, the court shall appoint a new administrator. The administrator's liability according to paragraph 1 shall not become extinct by recalling him. The recalled administrator must duly inform the new administrator and give him all documents.

(3) After the end of the inheritance proceedings, the administrator shall submit a final report on his activities; the report shall be submitted to the heirs through the mediation of the court. Subsequently, the court shall decide on remuneration and reimbursement of cash expenses of the administrator; these sums shall be paid by the heir who acquired an inheritance not being overindebted; if there are more heirs, they shall pay these costs according to the mutual proportion of the net value of the portions of inheritance. In other cases, these costs shall be paid by the state.

#### Section 175g

In arranging for a complete basis for decision, in the course of the preliminary investigation, of conservation of the inheritance, in particular in the course of the protection thereof against unlawful infringements, in the course of sale of things, of ascertaining the value of the deceased person's assets and of drawing up a list on the spot,

the relevant authority of state administration or of self-governance shall provide the court with co-operation upon the court's request.

#### Section 175h

- (1) Unless the deceased person has left any assets, the court shall stay the proceedings.
- (2) If the deceased person has left only assets of a marginal value, the court may surrender them to the person who arranged for the burial and stay the proceedings.
- (3) The rulings according to paragraphs 1 and 2 can not be appealed and shall not have to be delivered.

#### Section 175i

- (1) Unless the proceedings were stayed according to Section 175h, the court shall inform those who can be reasonably deemed to be heirs about their right of succession and about the possibility to waive the inheritance within the period of one month from the day when the heir was informed by the court about the right to waive the inheritance; for importance reasons, the court may extend this period. At the same time, the court shall instruct the heir about the essentials and effects of waiving the inheritance.
- (2) The court shall either deliver the information including the instruction personally or deliver them orally and record in the minutes that the oral delivery was done.

#### Section 175j

If the court confirms acquisition of the inheritance by a single heir or if the inheritance forfeited to the state according to Section 462 of the Civil Code, hearing the inheritance shall not require ordering a meeting.

#### Section 175k

- (1) If somebody claims himself to be a heir before the confirmation of acquisition of the inheritance and contests the right of succession of somebody else who has not waived the inheritance, the court shall examine the conditions of the right of succession of both persons and shall go on proceeding with the person whom the court considers to be a heir.
- (2) However, if the decision on the right of succession depends on ascertainment of contentious facts, after a vain attempt to resolve the dispute by a settlement of the participants, the court shall refer the heir whose right of succession appears to be less probable to exercising his right by a lawsuit. The court shall specify a period for filing the lawsuit. Unless the lawsuit is filed during the period, the court shall go on proceedings without a respect to this heir.
- (3) If assets and liabilities are at issue between the participants, the court shall confine to ascertaining the fact that they are at issue; in determining the common price of assets, the sum of debts and the net value of the inheritance or, as the case may be, the sum of

the overindebtedness thereof, the court shall not the account of the assets and liabilities at issue.

#### Section 175l

(1) If the deceased person had assets in joint property with the surviving spouse, the court shall decide on the common price of these assets at the moment of the death and shall determine according to the principles referred to in the Civil Code what part of these assets belongs to the inheritance and what part belongs to the surviving spouse. If the decision depends on a fact that remained subject of dispute between the surviving spouse and some of the heirs, the court shall proceed according to Section 175k para. 3.

(2) If the court finds out further assets belonging to the joint property before the inheritance proceedings are finally and conclusively terminated, the court shall decide on these assets additionally according to paragraph 1; in doing so, the court shall proceed from the original decision.

#### Section 175m

The court shall find out the deceased person's assets and debts and shall draw up a list of assets and liabilities. The provisions of Section 175k para. 3 and Section 175l para. 1 shall not be affected by this rule.

#### Section 175n

Upon a petition of the heirs, the court shall issue a ruling calling the creditors to notify their receivables to the court within a period specified in the ruling; the court shall instruct the creditors that the heirs shall not be liable to the creditors who did not notify their claims timely if the price of the inheritance acquired by the heirs is exhausted by satisfying the receivables of the other creditors. The court shall publish the ruling by placing it to the official board of the court.

#### Section 175o

(1) On the basis of what was found out according to Section 175m, the court shall calculate the common price of the assets, the amount of debts and the net value of the inheritance or, as the case may be, the amount of the overindebtedness thereof at the moment of the deceased person's death.

(2) If the court learns of new facts before a final and conclusive termination or the inheritance proceedings and if these facts require a change of this ruling, the court shall carry out the necessary correction by a new ruling.

#### Section 175p

(1) The participants may agree that an overindebted inheritance shall be given to the creditors for the purpose of covering the debts. This agreement requires an approval of the court; the court shall approve it unless it is contrary to law; unless the court approves the agreement, the court shall go on proceeding after the decision becomes final and conclusive.

(2) If further assets are revealed after the final and conclusive termination of the proceedings, it shall be necessary to proceed according to paragraph 1. If a surplus of assets remains, the court shall hear it as an inheritance.

#### Section 175q

(1) In a ruling on the inheritance, the court shall

- a) confirm acquisition of the inheritance by one heir; or
- b) confirm that inheritance not acquired by any heir was forfeited to the state; or
- c) approve an agreement on settlement of the inheritance or an agreement on giving the overindebted inheritance to the creditors for the purpose of covering the debts; or
- d) confirm acquisition of the inheritance according to the portions if no agreement is entered into by the heirs.

(2) The ruling according to paragraph 1 may contain also the ruling according to Section 175l and 175o.

(3) Unless the court approves by a ruling the agreement on settlement of the inheritance, the court may go on proceeding after this ruling becomes final and conclusive.

#### Section 175s

On the basis of a ruling according to Section 175p and 175q, the hearing of inheritance shall be terminated. After this ruling becomes final and conclusive, the court shall cancel the realized conservation of inheritance unless it has been cancelled already during the inheritance proceedings; the court shall particularly cancel all bans on payment of deposits, insurance and other values that were ordered during the inheritance proceedings or carried out according to law. At the same time, the court shall inform banks or other persons with whom these values have been deposited of the person to whom they are to be surrendered; if this person is unknown or if he has an unknown residence, the court shall proceed adequately according to Section 185g. The period according to Section 185g para. 1 shall start running from the day when the ruling terminating the proceedings became final and conclusive.

#### Section 175t

(1) If the inheritance is overindebted and if no agreement according to Section 175p is entered into, the court shall order a liquidation of the inheritance by a ruling issued upon a petition; the same step shall be taken if the state has proposed the liquidation of inheritance because a creditor refused to accept a thing from the inheritance for the

purpose of satisfying his receivable. The court may order the liquidation of inheritance even without a petition.

(2) The liquidation of inheritance shall be ordered by a ruling; in this ruling, the court shall call the creditors to inform the court of their receivables within a period specified in the ruling and warn them that receivables that will not be satisfied in the liquidation shall become extinct. The court shall publish this ruling on the official board of the court.

(3) As soon as the ruling ordering the liquidation of inheritance becomes final and conclusive, the provisions of Section 175p to 175s shall no longer apply.

#### Section 175u

(1) The liquidation of inheritance shall be carried out by the court by turning into cash all the deceased person's assets according to the provisions on enforcement of a decision by sale of movable things and real property or by a sale outside an auction adequately according to a special regulation.<sup>34a)</sup>

(2) The court shall decide that the assets that could not be turned into cash in this way shall forfeit to the state at the moment of the deceased person's death.

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34a) Section 27 para. 2 of the Act No. 328/1991 Sb., on bankruptcy and composition.

#### Section 175v

(1) The court shall distribute among the creditors the proceeds of turning the deceased person's assets into cash (hereinafter the "proceeds").

(2) The court shall use the proceeds to covering the receivables subsequently according to the groups as follows:

- a) receivables of costs of proceedings caused to the state in connection with turning the assets into cash;
- b) receivables of costs of the deceased person's sickness and of adequate costs of his burial;
- c) receivables secured by a lien, by a right or retention, by an assignment of a right<sup>68)</sup> or by an assignment of a receivable;<sup>69)</sup>
- d) receivables of maintenance arrears;
- e) receivables of taxes and fees, public health insurance premium and social security insurance premium and contribution to the state employment policy unless they have been satisfied according to letter c);
- f) other receivables.

(3) Unless the receivables belonging to the same group can be fully satisfied, they shall be satisfied proportionally; however, in the c) group, the receivables shall be satisfied according to their order; receivables secured by a right of retention shall be satisfied before the other receivables. The order of a receivable shall be determined by the day when the right securing the receivable arose.

(4) By a final and conclusive termination of the liquidation, the creditors' unsatisfied receivables against the heirs shall become extinct. However, if further assets of the

deceased person are revealed, the court shall distribute them up to the sum of their unsatisfied receivables regardless of this extinction. If a surplus of assets remains, the court shall hear it as the inheritance.

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68) Section 553 of the Civil Code.

69) Section 554 of the Civil Code.

#### Section 175w

If the court finds out later that the deceased person is alive or if a declaration of his death was quashed, the court shall quash the ruling on inheritance according to Section 175p and 175q.

#### Section 175x

If some assets and, as the case may be, also a debt of the deceased person are discovered after the moment when the ruling terminating the inheritance proceedings became final and conclusive, the court shall conduct inheritance proceedings concerning these assets. If only a debt of the deceased person is discovered, the inheritance proceedings shall not be conducted.

#### Section 175y

(1) The fact that certain assets or debts were not included to the assets and liabilities of the inheritance due to the procedure according to Section 175k para. 3 or according to Section 175l para. 1 second sentence shall not prevent the participants of the proceedings from exercising their right by a lawsuit outside the inheritance proceedings.

(2) Except where the inheritance was liquidated, the ruling of the court shall not prevent a person not being a participant of the inheritance proceedings where the ruling was issued from exercising his right by a lawsuit.

#### Section 175z

(1) Where hearing the inheritance does not fall within the jurisdiction of courts of the Czech Republic, the court shall carry out preliminary investigation and give the participants upon their request an official certificate about the results of this investigation.

(2) If the assets are to be surrendered abroad, the court shall notify it to the inland heirs and creditors by a notice that shall be published on the official board of the court for fifteen days; this notification shall be delivered to known participants.

#### Activity of notaries in inheritance proceedings

#### Section 175za

Notaries with their seat in the district of the district court shall be equably entrusted with acts in inheritance proceedings according to a schedule issued by the chairman of the district court for each calendar year upon a proposal of the relevant chamber of notaries.

#### Section 175zb

(1) The court may deprive the entrusted notary of the case if the notary despite a prior warning causes unnecessary delays of the judicial proceedings. Subsequently, the court shall according to the work schedule entrust another notary with the acts in inheritance proceedings.

(2) The deprivation of a case according to paragraph 1 shall not be considered judicial decision.

(3) Deprivation of a case shall lead to extinction of the notary's right to a remuneration for the acts having been done so far.

#### Section 175zc

(1) A representative or a substitute appointed according to a special regulation or a newly appointed notary shall take over the cases where the court has already granted entrusting.

(2) If a candidate of a notary has been appointed according to a special regulation, this candidate shall be for the purpose of this law considered a notary during the representation. However, the court shall decide on a remuneration and reimbursement of cash expenses of the notary represented by the representative. A special regulation shall provide the way the representative's share of the notary's remuneration shall be determined.

#### Section 175zd

(1) The notary shall prepare all necessary documents for issuing a ruling of the court, proposals of the ruling of the court and shall account his remuneration and cash expenses. Unless the documents are complete, the court may return the case to the notary and ask him to complete the proceedings or do the necessary acts on its own. The instructions of the court shall be binding upon the notary.

(2) The notary may appeal from a verdict on remuneration and cash expenses.

#### Judicial care for minors

#### Section 176

(1) In merits of cases of care for minors, the court shall decide by a judgment on raising and maintaining minors, on contact of parents, grand parents and brothers or sisters with them, on returning a child, on awarding, restricting or depriving of the

parental responsibility or on suspending the exercise thereof, on guardianship, on approving important acts of the minor and on matters where the parents are unable to agree. Apart from it, the court shall decide by a judgment on extending an institutional raising after achieving majority and on setting such measure aside.

(2) In other cases, the court shall decide by a ruling.

#### Section 177

(1) Unless the competent court is known or unless it is able to proceed timely, the measures shall be taken by the court in whose district the minor stays. However, as soon as it is possible, this court shall forward the case to the competent court.

(2) In case of change of circumstances according to that the competence is considered, the competent court may transfer its competence to another court where it is in the interest of the minor child. If the court to that the competence was transferred does not agree to the transfer, it shall submit the case to its superior court unless the issue of competence has not yet been decided by the court of appeal; the decision of this court shall be binding also upon the court that has transferred the competence.

#### Section 178

(1) The court shall encourage the parents or, as the case may be, the guardians of minors to a due fulfillment of duties concerning the care of a minor. The court shall attend to motions and notifications of individuals and legal entities concerning raising the minor and shall take suitable measures.

(2) As for whether the proposed or intended measures, the court shall usually find out the opinion of an authority of socio-legal protection of children that is informed about the conditions.

#### Section 179

Where validity of an act done in the name of a minor requires an approval of the court, the court shall approve the act if it is in the interest of the minor.

#### Section 180

(1) A guardian of a minor appointed by the court shall take an oath into the hands of the chairman of the panel that he shall duly fulfill his duties and respect the instructions of the court. After the oath was taken, the chairman of the panel shall give him the powers to raise and represent the child and definition of the scope of rights and duties following from these powers.

(2) The court shall watch over the administration of the minor's assets executed by a guardian or a curator; in doing so, the court shall proceed according to a special regulation.<sup>70)</sup>

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70) Section 37b, 78 ff. of the Act No. 94/1963 Sb., as subsequently amended.

Proceedings on determination whether adoption of a child  
requires a consent of his parents

Section 180a

(1) the participants of the proceedings are the child and his parents if they are his legal representatives; a minor parent of the child shall be the participant of the proceedings even if he is not the legal representative of the child.

(2) A minor parent shall have a litigation capacity in these proceedings. The provision of Section 23 may apply only if the parent has not yet achieved the age of sixteen years.

(3) A special law shall provide who is entitled to file a petition for commencement of these proceedings and for what reasons the adoption of a child does not require the consent of his parents.<sup>71)</sup>

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71) Section 68 of the Act No. 94/1964 Sb., as subsequently amended.

Section 180b

(1) If the conditions change, the court shall quash upon a petition a final and conclusive judgment pronouncing that the adoption of a child does not require a consent of the parents. The petition may be filed not earlier than after the lapse of one year after the moment when the judgment became final and conclusive.

(2) The provision of paragraph 1 first sentence shall not apply if the child has already been adopted or if proceedings concerning his adoption have already been commenced or if the child has been put into custody of the future adoptive parent or if proceedings concerning putting the child into custody of the future adoptive parent have already been commenced.

Adoption proceedings

Section 181

(1) The participants of the proceedings shall be the adopted child, his parents or, as the case may be, a guardian, the adoptive parent and his spouse. The provision of Section 180a para. 2 shall apply analogously.

(2) The parents of the adopted child shall not be participants of the adoption proceedings if

a) they have been deprived of their parental responsibility; or

b) they have been deprived of their capacity to legal acts or if their capacity to legal acts has been restricted; or

c) they have agreed to the adoption in advance without a relation to certain adoptive parents;<sup>38)</sup> or

d) the court has finally and conclusively decided that the adoption of the child does not require their consent.

(3) The spouse of the adoptive parent shall not be participant of the proceedings of the adoption does not require his consent.

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38) Section 68a of the Act No. 94/1963 Sb.

## Section 182

(1) The court shall examine the adopted child only if the adoption requires his consent.72) Unless the adopted child is to be examined, the child shall not be summoned to the meeting.

(2) Other participants must be always examined by the court; where possible, they must be examined personally.

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72) Section 67 para. 1 of the Act No. 94/1963 Sb., as amended by the Act No. 91/1998 Sb.

## Custody proceedings

### Section 185a

(1) The following items may be put into a custody with the court: money, securities and other movable things suitable to the custody for the purpose of performing an obligation.

(2) A petition for receipt a thing into the custody must contain a statement of the person puts the money, securities or other things into the custody (hereinafter the "depositor") that the obligation whose subject the values being put into the custody are can not be performed because the creditor is absent or in delay or because the depositor has reasonable doubts who the creditor is or because the depositor does not know the creditor.

(3) The court shall decide without a meeting by a ruling that shall be delivered to the participants personally.

### Section 185b

The depositor shall be the participant of the proceedings. After the ruling on receiving the thing into the custody becomes final and conclusive, the ring of participants of the proceedings shall comprise also the person for whom the money, securities or other things are determined (hereinafter the "receiver") and the person who claims a right to the subject of the custody.

### Section 185c

If the custody requires costs, the court shall order that the depositor deposit an adequate advance payment of the costs. Unless the deposit is paid within the specified period, the court shall dismiss the petition for receiving the thing into the custody; the court shall dismiss the petition for receiving a thing into the custody also if the thing is not suitable to the custody or if the court finds no suitable way of the custody.

#### Section 185d

(1) The subject of the custody shall be surrendered to the receiver upon his request. If the thing was put into custody because somebody else than the receiver claims a right to surrendering the subject of the custody or that somebody else whose consent is necessary disagreed to surrendering the subject of the custody to the receiver, surrendering the subject of the custody shall require a consent of all participants of the proceedings and of the person for whose dissention to the performance the thing was put into the custody. However, the consent of the depositor shall be necessary only if the performance has been deposited for an unknown creditor.

(2) The court shall surrender the subject of the custody to the depositor upon his petition

- a) if the receiver agrees to such step; or
- b) if the receiver notifies to the court that he does not accept the subject of the custody; or
- c) if the receiver does not express his opinion within a period specified by the court despite being warned against such consequences.

(3) If another somebody else than the persons referred to in paragraph 1 and 2 asks for surrendering the subject of the custody, the court shall surrender it only with a consent of the depositor and the receiver.

#### Section 185e

If the consent to surrendering the subject of the custody was denied, this consent may be replaced with a final and conclusive judgment of the court by that the court decided that the person who opposed the surrendering must agree to surrendering the subject of the custody to the applicant.

#### Section 185f

If the court receives into custody things in cases provided by special legal regulations, the court shall proceed according to the provisions of the relevant regulation and, if there are not such provisions, according to Section 185a to 185h adequately according to the nature of the custody and the purpose thereof.

#### Section 185g

(1) After the lapse of a period of three years from the moment when the ruling on receiving a thing into the custody became final and conclusive or, as the case may be,

from the day when the subject to the custody was to be surrendered to the depositor according to a petition, the court shall decide that the subject to the custody shall forfeit to the state if nobody claims his right thereto within three days after the declaration of this ruling. The court shall publish this ruling on the official board of the court.

(2) If a request for surrendering the subject to the custody is delivered after the issuance of the ruling according to paragraph 1, the court shall proceed according to Section 185d.

(3) After the lapse of the period specified in the ruling according to paragraph 1, the subject to the custody shall forfeit to the state if no request for surrendering the subject to the custody was filed during this period. The state shall acquire the subject to the custody after the lapse of this period even if a filed request was not granted by a final and conclusive ruling.

#### Section 185h

If the subject to the custody forfeits to the state, rights of the participants and of other persons to the subject of the custody shall become extinct.

#### Invalidation proceedings

##### Section 185i

(1) A lost or destroyed document that is to be submitted in exercising a right may be invalidated.

(2) If a law provides that a legal entity is authorized to invalidate a document issued thereby, such document can not be invalidated in judicial proceedings.

(3) The invalidation shall not apply to money, lottery tickets, betting tickets, tickets and stamps of daily circulation (entrance tickets, transport tickets and so on), coupons and talons of securities, documents incorporating a right to pay certain legal entity in inland the price of goods and services as well as documents on the basis of which only a right to an accessory performance can be exercised.

##### Section 185j

(1) A petition for invalidation of a document may be filed by anyone who has a legal interest in the invalidation thereof.

(2) The court shall decide without a meeting by a ruling that shall be delivered personally.

##### Section 185k

The participants of the proceedings are the petitioner, the person who is obliged to pay according to the document, the person who holds the document and the person who raised the objections according to Section 185m para. 2.

## Section 185l

(1) The petition for invalidating a document must contain the facts proving that certain right can be exercised from the document or on the basis thereof. The petition must contain a copy of the document or a specification thereof and identify the issuer of the document and, as the case may be, also other persons obliged from the document; the petition must also contain the particulars differentiating the document from another documents of the same kind.

(2) If there is a sum specified in the document, the petition must contain also this sum.

## Section 185m

(1) If the court finds out that the document whose invalidation was proposed was not issued or that it has been neither lost nor destroyed, the court shall dismiss the petition.

(2) In other cases, the court shall issue a decision containing a command that the person who holds the document should report with the court that issued the ruling within one year after the issuance of the ruling and submit the document or raise objections against the petition. This ruling shall be published on the official board of the court.

(3) In case of invalidation of a bill of exchange, promissory note or a check, the court's ruling according to paragraph 2 shall specify a two-month period; at the same time, the court shall ban payment according to the documents being invalidated.

(4) If the document being invalidated has not yet become due, the period according to paragraph 3 shall be reckoned from the first due day. If the document has already become due, this period shall be reckoned from the day of publication of the ruling.

## Section 185n

In case of a bearer document except for bearer insurance policies, the period according to Section 185m shall end after the lapse of one year after the receivable from the document became due.

## Section 185o

(1) From the commencement of the proceedings until the final and conclusive termination thereof, neither a limitation period, nor a period of extinction of a right nor a period for payment of the sum of money according to the document being invalidate shall not run as against the petitioner.

(2) The person to whom the ruling was delivered or who could have learnt thereof with a due care must neither dispose of the rights following from the document being invalidated nor carry out payments or another performance according thereto nor transfer it nor carry out any changes thereof; these acts shall be null. The person obliged according to the document must retain the submitted document and inform the court of the person who submitted it.

## Section 185p

If proceedings on invalidation of a bill of exchange, promissory note or check have been commenced, the petitioner who submits the ruling and gives an adequate security may demand payment of the bill of exchange, promissory note or check if the bill of exchange, promissory note or check have not yet been invalidated. Unless the petitioner gives the security, he may demand by a lawsuit that the sum due be put into the judicial custody.

## Section 185q

The court shall examine the application of the person holding the document and find out his objections. If the court finds out that the document has not been lost or destroyed, the petition shall be dismissed.

## Section 185r

(1) If the period according to Section 185m para. 2 or 3 has elapsed and if the petition has not been dismissed, the court shall upon an additional petition declare the document invalidated.

(2) Unless the additional petition according to paragraph 1 has been filed within one month after the lapse of the period referred to in Section 185m para. 2 or 3, the court shall stay the proceedings. The petitioner must be warned against this consequence in the ruling according to Section 185m para. 2 or 3.

## Section 185s

A ruling on invalidation of a document shall supersede the invalidated document until the person obliged according to the document gives the entitled person a substitute document.

## Proceedings on capacity to legal acts

### Section 186

(1) A petition for commencement of proceedings on capacity to legal acts (deprivation, restriction or renewal of the capacity to legal acts) may be filed also by a sanitary institution; this sanitary institution shall be a participant of the proceedings in such case.

(2) Unless the petition for commencement of proceedings was filed by a state authority or by a sanitary institution, the court may order that the petitioner submit within an adequate period a medical report on the mental condition of the examined person; if no medical report is submitted during this period, the court shall stay the proceedings.

(3) A petition for returning the capacity to legal acts may be submitted also by the person who has been deprived of the capacity to legal acts. However, if the court dismissed his petition and if no improvement of his condition can be expected, the court may decide that this right can not be exercised for certain period of time that must not be longer than three years.

#### Section 187

(1) The court shall appoint a procedural curator for the person whose capacity to legal acts is subject to the proceedings.

(2) The court may abstain from meeting the examined person if this examination either can not be carried out at all or can not be carried out without a detriment to the health condition of the examined person.

(3) Regarding the health condition of the examined person, the court shall always hear an expert. Where it is necessary for examining the health condition, the court may order upon the expert's petition that the examined person be examined in a sanitary institution for maximally tree months.

#### Section 188

(1) If there are conditions for restricting the capacity to legal acts due to an immoderate consumption of alcoholic beverages or narcotics (addictive matters) or poisons and if the condition of the examined person can be expected to improve, the court may interrupt the proceedings for a specified period; at the same time, the court may decide that the examined person must submit to a necessary medical care.

(2) Before the lapse of the specified period, the court shall go on proceeding only if no improvement appeared.

#### Section 189

(1) The chairman of the panel shall not have to order a meeting if the meeting is not suitable.

(2) The court may decide to abstain from delivering the decision on capacity to legal acts if such delivery could have a negative influence on the addressee due to his mental illness or if the addressee is not able to understand the meaning of the decision.

#### Section 190

The court shall quash the issued judgment if it is subsequently revealed that there were no conditions for deprivation or restriction of the capacity to legal acts.

#### Section 191

(1) The costs of the proceedings shall be paid by the state. Where it can be reasonably demanded, the court shall award the state the reimbursement thereof against the person whose capacity to legal acts was subject to the proceedings.

(2) A person who files an obviously unreasonable petition for deprivation or restriction of capacity to legal acts shall compensate the detriments caused by the proceedings to the examined person, to his representative and to the state.

Proceedings on declaration of admissibility of taking somebody into  
and keeping somebody in, a sanitary institution

#### Section 191a

(1) An institution executing medical care (hereinafter the "institution") in which persons are placed for reasons referred to in a special regulation must within 24 hours inform the court in whose district the institution is located of taking over everybody who was placed therein without his written consent (hereinafter the "sick person").

(2) If a free movement or a contact with the outside world of person who was taken over into the medical care with his written consent was restricted in the course of the medical care, the institution must inform the court according to paragraph 1 within 24 hours after such restriction occurred.

#### Section 191b

(1) The court in whose district the institution is located shall commence proceedings on declaration of admissibility of taking over into the institution anyone of whom the institution must inform the court according to Section 191a; the proceedings shall not be commenced if taking over into and keeping in the institution were ordered by a court in another proceedings.

(2) If the person who has been taken over by the institution has no other representative, the court shall appoint a curator for these proceedings.

(3) The court shall carry out evidence necessary for consideration whether the sick person was taken over (Section 191a para. 1 and 2) for lawful reasons; the court shall also examine the sick person and the attending doctor. A meeting shall usually not have to be ordered.

(4) Within seven days after the restriction according to Section 191a occurred, the court shall decide whether the taking over occurred for lawful reasons (Section 191a para. 1).

#### Section 191c

(1) The ruling according to Section 191b para. 4 shall be delivered to the person who has been taken over unless he is unable to understand the contents of such decision according to the opinion of the attending doctor; the ruling shall be also delivered to his representative (curator) and to the institution.

(2) An appeal against this ruling shall have no deferring effect. The appeal may be filed also by the institution if the court has decided that the taking over did not occurred for lawful reasons.

(3) The institution may release the placed person even if the court has declared that the taking over occurred for lawful reasons.

#### Section 191d

(1) If the court has stated that the taking over was in accordance with lawful reasons and if the contact of placed person with the outside world is restricted or excluded, the court shall continue in the proceedings of declaration of admissibility of further keeping of such person in the institution.

(2) In order to examine the health condition of the placed person, the court shall appoint an expert. The task of the expert is to state whether a further keeping the placed person in the institution and restricting or excluding his contact with the outside world are necessary. A doctor who works in the institution where the places person is kept can not be appointed as expert.

(3) The court shall order a meeting to which the court shall summon the placed person (if he is able to perceive the course and meaning of the meeting according to a statement of the attending doctor or to a written expert's report) and his representative (curator). In the meeting, the court shall examine the expert and, with regard to circumstances, the attending doctor and the placed person; as the case may be, the court shall carry out also another suitable evidence.

(4) In a judgment that must be declared within three months after the verdict on admissibility of taking over into the institution, the court shall decide whether the further keeping is admissible and for what period. The provisions of Section 191c para. 2 and 3 shall apply analogously.

#### Section 191e

(1) The effects of the judgment according to Section 191d para. 4 shall expire after the lapse of one year after the declaration thereof unless a shorter period was determined therein. If the keeping in the institution is to be prolonged over this period, it shall be necessary to carry out a new examination and the court must decide again on admissibility of the further keeping. The provisions of Section 191c para. 2 and 3 shall apply here analogously.

(2) The judgment according to paragraph 1 shall prevent neither the institution from releasing the person kept in the institution before the lapse of the period referred to in paragraph 1 nor the custodian court from taking another measures.

#### Section 191f

The person being kept in the institution and capable to legal acts, his representative (curator) and persons close to him may even before the lapse of the period during that the keeping is admissible require a new examination and decision on release if there is a justified presumption that further keeping in the institution is not well-grounded. If the

court dismisses the petition for release, the court may decide that further examination shall not be carried out before the lapse of the period for that keeping in the institution was approved.

#### Section 191g

The costs of proceedings shall be paid by the state. However, the state shall not pay costs of legal representation except for the cases referred to in Section 30 para. 2 of this Act.

#### Proceedings on appointing a curator

##### Section 192

(1) The chairman of the panel shall see to appointing a curator for persons who must have him according to law.

(2) In the ruling on appointment of a curator, the court shall also specify the scope of the curator's rights and duties.

##### Section 193

(1) The court shall watch over administration of assets executed by the curator and shall take necessary and suitable measures to ascertain and conserve these assets.

(2) After the end of the representation, the curator shall give the court a final account of the administration of assets; the court may also order that the curator submit regular reports on his activities during the representation.

(3) The provisions of Section 176 to 179 and Section 180 para. 1 relating to the guardianship over a minor shall apply here analogously.

#### Proceedings on approval of entrance into marriage

##### Section 194

(1) The court shall decide on approval of entrance into marriage upon a petition that may be filed by the person who intends to enter into the marriage.

(2) The person who intends to enter into the marriage and his legal representatives shall be the participants of the proceedings. Before issuing the decision, the court shall examine the person who intends to enter into marriage about whether he really wants to enter into the marriage; the court shall also examine the person with whom the marriage is to be entered into.

(3) A judgment approving the entrance into marriage must contain also an exact identification of the person with whom the marriage is to be entered into.

#### Proceedings on declaring somebody dead

## Section 195

- (1) The petition may be filed by anyone who has a legal interest in the case.
- (2) If the court recognizes that the particulars of the petition testify to the conditions for declaring the missing person dead, the court shall appoint a curator for the missing person.

## Section 196

- (1) In the form of a notice or in another suitable way, the court shall call the missing person to report himself within one year and anyone who has knowledge of him to send within the same period a report on the missing person to the court or the curator or, as the case may be, to the representative of the missing person. At the same time, the court shall carry out all necessary investigation of the missing person.
- (2) The notice of the court shall contain the importance circumstances of the case and shall announce that after the lapse of the period specified in the notice, the court shall decide on declaring the missing person dead unless the missing person reports himself or if no report that he is alive is delivered. The court shall specify a period of one year from the publication of the notice. The notice must identify the day when the period ends.

## Section 197

If the court finds out during the proceedings that the conditions for declaring somebody dead are not met, the court shall stay the proceedings.

## Section 198

After the lapse of the period specified in the notice, the court shall issue a judgment on declaring the missing person dead. In the judgment, the court shall specify the day that is to be presumed the day of the death of the missing person or, as the case may be, the day that missing person did not survive.

## Section 199

- (1) If the court finds out that the person who has been declared dead is alive or lived on the day from that a period adequate to declaring him dead has not yet elapsed, the court shall quash its decision on declaring the missing person dead.
- (2) Upon a petition of a participant, the court shall correct the day specified in the decision as the day of death if it is subsequently revealed that the person who has been declared dead died on another day or that he could not have lived until this day or that he survived this day. The court may do so even without a petition.

## Section 200

If it is sure that an individual died but his dead can not be proved in the provided way, the court shall issue a decision declaring the individual dead.

## Commercial Register proceedings

### Section 200a

(1) The proceedings shall be conducted by the court (hereinafter the "Register court") in whose district the court of general jurisdiction of the individual or the legal entity is located whom the registration with the Register concerns (hereinafter the "businessman"). In case of a foreign person, the proceedings shall be conducted by the court in whose district its enterprise or an organizational component thereof are located.

(2) The court being competent to registration proceedings according to paragraph 1 shall be competent also the proceedings on another registration if special regulations provide that the court must decide on these registrations at the same time.

(3) If the circumstances according to that local competence is considered have changed, the court shall by a ruling transfer its competence to the court being newly competent; if this court disagrees to the transfer of the competence, the superior court thereof shall decide. After the ruling on transfer of the local competence becomes final and conclusive, the relevant registrations shall be transferred to the Commercial Register of the newly competent court.

### Section 200b

(1) The proceedings shall be commenced upon a petition.

(2) If it is necessary to reach an accordance between the registration with the Commercial Register and the true state of affairs, the proceedings may be commenced even without a petition.

(3) Withdrawing from a petition for commencement of the proceedings shall not be effective if the registration is to establish an accordance between the registration with the Commercial Register and the true state of affairs.

### Section 200c

(1) The businessman shall be the participant of the proceedings; in matters of registration of persons who are registered with the Commercial Register according to special regulations in the framework of registration of the businessman, also these persons shall be participants of the proceedings. The provision of Section 94 para. 1 first sentence shall not apply.

(2) Special regulations shall provide which businessmen and what facts concerning them shall be registered with the Commercial Register, who is entitled to file the petition for registration and what must be attached to the petition.

(3) Within fifteen days after the petition was filed, the court must do acts directed to deciding the case.

## Section 200d

(1) In the registration proceedings, the court must examine whether the requirements for making the registration provided by special regulations are met; the provision of Section 101 para. 1 letter a) shall not be affected by this rule.

(2) The court may decide on the contents of the registration without ordering a meeting if the court completely grants a petition opposed by nobody or if the petition may be decided without carrying out evidence only on the basis of the documents proving the registered facts according to special regulations. The court shall always order a meeting of the decision on the registration depends on ascertaining disputable facts or if it is necessary to carry out evidence to find out whether the requisites for making the registration required by special regulations are met.

(3) The court shall decide on the contents of the registration by a ruling; in the verdict of the ruling, the court shall specify the day of registration. Unless it is possible to decide without a meeting on the whole contents of the registration and unless it is not contrary to the nature of the registration, the court may rule that the rest shall be decided by a separate ruling.

(4) The court shall make the registration with the Commercial Register within ten days after the ruling on the contents of the registration becomes final and conclusive. If the decision is to reach an accordance with the true state of affairs, the court may decide that the registration shall be made even on the basis of an enforceable ruling.

(5) The chairman of the panel may impose upon the businessman a disciplinary fine also if the businessman does not obey the call of the court to inform it of the facts or to submit the documents necessary to deciding on the contents of the registration according to Section 200b para. 2 or to send the court documents belonging to the collection of documents<sup>73)</sup> or if the businessman has not filed a petition for approving a registration with the Commercial Register despite being obliged to filing it according to a special legal regulation. In doing so, the court shall proceed analogously according to Section 53.

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73) Section 27a para. 2 of the Commercial Code.

## Section 200e

Proceedings on several issues of business companies,  
cooperatives and other legal entities

(1) The proceedings in the cases referred to in Section 9 para. 3 letter b), d), e), f) and g) shall be conducted by the regional court with that the business company, cooperative or other legal entity is registered with the Commercial Register, with the Generally Beneficial Companies Register or with the Foundation Register. In case of a person not registered with these registers, the proceedings shall be conducted by the regional court deciding on business cases in whose district this person has the court of his general jurisdiction.

(2) Unless the law provides that the proceedings referred to in paragraph 1 shall be commenced only upon a petition, they may be commenced even without a petition.

(3) Participating in the proceedings in the cases referred to in paragraph 1 shall be governed by the provision of Section 94 para. 1 first sentence. The court shall decide by a ruling.

(4) The court may decide even without ordering a meeting only in the cases referred to in Section 9 para. 3 letter b), d), e) and f) and only if no evidence is carried out.

#### Capital market proceedings

##### Section 200f

(1) A petition in capital market cases according to a special act<sup>74)</sup> may be filed only by the Securities Commission (hereinafter the "Commission").

(2) The participants of the proceedings are the Commission as the actor and those who are identified in the Commission's petition as defendants.

(3) The proceedings shall be conducted by the court in whose district the court of general jurisdiction of the actor is located.

(4) The court shall decide by a ruling. A meeting shall not have to be ordered.

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74) Section 11 of the Act No. 15/1998 Sb., on the Securities Commission and on amendment to other acts, as amended by the Act No. 30/2000 Sb.

##### Section 200g

(1) In deciding the case, the court shall proceed in particular from the documents and other evidence submitted by the actor. The participants shall not have to be examined.

(2) The first instance court must decide on the petition within ten days after the commencement of the proceedings. If the court called the actor to remove defects of the motion (Section 43), this period shall start running again from the day when the defects were removed or when the period specified thereto elapsed in vain; the same rule shall apply if the court ordered that the actor give the court documents and other evidence importance for deciding.

(3) A ruling granting the petition shall cease to exist on the day when the relevant authority finally and conclusively decided on the case according to special regulations.<sup>75)</sup> Even before the lapse of this period, the court shall quash the ruling if the reasons for that the petition was granted have fallen out.

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75) Act No. 15/1998 Sb., as amended by the Act No. 30/2000.

#### Proceedings on associating in political parties and political movements

##### Section 200h

(1) If a preparatory committee or a political party or a political movement disagrees to a notification of the competent ministry that the petition for registration does not meet the requirements demanded by law or that the petition contains incomplete or inaccurate data, the preparatory committee may demand that the court determine that the petition for registration has no defects.

(2) The preparatory committee and the relevant ministry shall be the participants of the proceedings.

(3) The proceedings shall be conducted by the regional court in whose district the preparatory committee has its seat.

(4) The court shall decide by a ruling. The decision can not be appealed.

#### Section 200i

Proceedings on winding-up a political party or a political movement,  
on suspending and renewing their activities

The court shall decide by a ruling. No remedies shall be admissible against the decision.

#### Section 200j

(1) Unless the relevant authority of state administration removes mistakes or defects in a steady electoral register and in its annex or of a special electoral register, the person affected thereby may send the court competent according to the election district with a petition for issuing a decision on carrying out a correction or completion of this register.

(2) The petitioner and the municipality shall be the participants of the proceedings.

(3) The court shall decide without a meeting by a ruling within three days.

(4) The proceedings in cases of mistakes or defects of steady electoral registers and their annexes or in special electoral registers shall be conducted by a district court.

#### 200k

(1) If an entrusted municipal authority or a municipal authority in a municipality where at least two departments are established (registration authority)<sup>34b</sup> decided on

a) rejecting a list of candidates for election of the board of representatives of the municipality, the election party who has submitted the list of candidates to contact the court with a petition for issuing a decision registering this list;

b) removing a candidate from the list of candidates for election of the board of representatives of the municipality, both the election party that submitted this list and the candidate may contact the court with a petition for issuing a decision leaving the candidate on the list of candidates;

c) registering a list of candidates for election of the board of representatives of a municipality, the other election parties that submitted a list of candidates may contact the court with a petition for issuing a decision canceling the registration.

(2) The petitioner and the relevant municipality whose authority executes the task of a registration authority shall be the participants of the proceedings; in the case referred to in paragraph 1 letter c), the participant of the proceedings shall also be the election party whose registration has been contested.

(3) The court shall decide by a ruling within fifteen days without ordering a meeting.

(4) No remedies shall be admissible against the decision of the court.

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34b) Section 25 and 28 of the Act No. 152/1994 Sb., on election of municipal board of representatives and on amendment to several other acts, as subsequently amended.

## Section 2001

(1) Every person registered with a steady electoral register and its annex in the election district where the member of the boards of representatives was elected as well as every election party whose list of candidates was registered for the election of this board may contact the court<sup>34c)</sup> with a petition for issuing a decision on

a) nullity of the vote;

b) nullity of the election;

c) nullity of the election of a candidate.

(2) The participants of the proceedings according to paragraph 1 letter a) and b) shall be the petitioner and the municipality whose authority executes the task of a registration authority according to a special legal regulation.<sup>34b)</sup> The participant of the proceedings according to paragraph 1 letter c) shall be the petitioner, the relevant municipality whose authority executes the task of a registration authority and the person whose election as a member of the board of representatives has been contested.

(3) The court shall decide on the petition within twenty days by a ruling without ordering a meeting. The ruling according to paragraph 1 letter a) and b) shall be delivered to the participants of the proceedings and to the Ministry of Interior; the ruling according to paragraph 1 letter c) shall be delivered to the participants of the proceedings; the ruling of the court shall become final and conclusive on the day of publishing it on the official board of the court.

(4) Where the board of representatives of the municipality, the chief of the district office or the Minister of Interior declared expiration of the mandate of a member of the board of representatives of the municipality, the member of the board of representatives of the municipality whose mandate is the matter or the election party who submitted a list of candidates in the municipality may contact the court and ask for quashing the resolution of the board of representatives of the municipality or the decision of the chief of the district office or of the Ministry of Interior whereby the expiration of the mandate has been declared.

(5) The participants of the proceedings under paragraph 4 shall be the petitioner and the relevant municipality the board of representatives whereof declared the expiration of the mandate, the district office where the expiration of the mandate was declared by the chief of the district office or the Ministry of Interior where the expiration of the mandate was declared by the Minister of Interior.

(6) The court shall decide on the petition within 20 days by a ruling without ordering a meeting. The ruling under paragraph 4 on quashing the resolution of the board of

representatives of the municipality, the decision of the chief of the district office or of the Ministry of Interior whereby expiration of the mandate has been declared shall be delivered to their participants of the proceedings; where the relevant district office is not a participant of the proceedings, the ruling shall be delivered even to this entity.

(7) No remedies shall be admissible against the decision of the court.

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34b) Section 21 and 23 of the Act No. 491/2001 Sb., on election of municipal board of representatives and on amendment to several other acts.

34c) Section 59 of the Act No. 491/2001 Sb.

Election proceedings

Section 200m

(1) If the district authority located in the seat of the electoral region provided by a special legal regulation<sup>34d)</sup> decided on

a) rejecting a list of candidates for election of the Assembly of Deputies, the political party, political movement or the coalition that has submitted the list may contact the court with a petition for issuing a decision on registration of this list;

b) removing a candidate from a list of candidates for election of the Assembly of Deputies, the political party, political movement or coalition that has submitted the list of candidates as well as this candidate may contact the court with a petition for issuing a decision leaving the candidate in the list of candidates;

c) registering a list of candidates for election of the Assembly of Deputies, the other political parties, political movements or coalitions that have submitted a list of candidates may contact the court with a petition for issuing a decision on canceling the registration.

(2) If a district authority located in the seat of an electoral district provided by a special legal regulation<sup>34d)</sup> decided on

a) rejecting an application for registration for election of the Panel, the candidate, the political party, political movement or coalition that has submitted the application for registration may contact the court with a petition for issuing a decision registering this application;

b) registering an application for registration for election of the Panel, the other candidates, political parties, political movements or coalitions that have submitted an application for registration may contact the court with a petition for issuing a decision on canceling the registration.

(3) The participants of the proceedings according to paragraph 1 shall be the petitioner and the relevant district authority located in the seat of the electoral region; in the case referred to in paragraph 1 letter c), the ring of participants shall include also the political party, political movement or coalition whose registration has been contested.

(4) The participants of the proceedings according to paragraph 2 shall be the petitioner and the relevant district authority located in the seat of the electoral region; in the case referred to in paragraph 2 letter b), the ring of participants shall include also the political party, political movement or coalition whose registration has been contested.

(5) The court shall decide within fifteen days by a ruling without ordering a meeting.

(6) No remedies shall be admissible against the decision of the court.

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34d) Act No. 247/1995 Sb., on election of the Parliament of the Czech Republic and on amendment to several other acts.

#### Section 200n

(1) Every citizen registered with a steady electoral register in the electoral district where a deputy was elected, every political party, political movement or coalition whose list of candidates was registered in the electoral region for the election of the Assembly of Deputies of the Parliament of the Czech Republic may contact the court with a petition for issuing a decision on nullity of the election of a candidate.

(2) Every citizen registered with a steady electoral register in the electoral district where a senator was elected as well as every candidate, every political party, political movement or coalition whose application for registration was registered in the electoral district for election of the Panel of the Parliament of the Czech Republic may contact the court with a petition for

- a) issuing a decision on nullity of the vote;
- b) issuing a decision on nullity of the election;
- c) issuing a decision on nullity of the election of a candidate.

(3) The participants of the proceedings according to paragraph 1 shall be the petitioner, the State Election Commission and the person whose election as a deputy has been contested. The participants of the proceedings according to paragraph 2 letter a) and b) shall be the petitioner and the district authority located in the seat of the electoral district. The participants of the proceedings according to paragraph 2 letter c) shall be the petitioner, the relevant district authority located in the seat of the electoral district and the person whose election as a senator has been contested.

(4) The court shall decide on the petition within twenty days by a ruling without ordering a meeting; the ruling shall become final and conclusive by publishing to on the official board of the court.

(5) No remedies shall be admissible against the decision of the court.

(6) A ruling of the court on nullity of the vote and on nullity of the election according to paragraph 1 shall be delivered to the participants of the proceedings, to the President of the Republic and to the Ministry of Interior.

Proceedings on lawfulness of arresting a foreigner  
and on releasing him

#### Section 200o

(1) If a body of the Police of the Czech Republic (hereinafter the "Police") has finally and conclusively decided on arresting a foreigner according to a special legal regulation,<sup>34e</sup> the foreigner may contact the court with a petition to examine the lawfulness of the final and conclusive decision on arrest and to order releasing him. Filing the petition shall not have a deferring effect on the enforceability of the decision.

(2) If arresting a foreigner according to a special legal regulation<sup>34e)</sup> has not yet ended, the foreigner may contact the court with a petition for ordering a release due to the fact that the conditions of duration of the arrest provided by a special legal regulation are not met.

(3) Apart from the general requirements (Section 42 para. 4, Section 79 para. 1), the petition according to paragraph 1 must also contain identification of the participants of the proceedings, identification of the contested decision, specification of the reasons for unlawfulness of the decision, identification of evidence invoked by the petitioner and must reveal what is demanded by the petitioner.

(4) Apart from the general requirements (Section 42 para. 4, Section 79 para. 1), the petition according to paragraph 2 must contain identification of the final and conclusive decision on arresting the petitioner, specify what facts are considered by the petitioner to be the cause of the unlawfulness of duration of the arrest, identification of the evidence invoked by the petitioner and must reveal what is demanded by the petitioner.

(5) The petitioner must attach to the petition documentary evidence invoked by him and concerning the issued decision except for documentary evidence finding itself in the files of the defendant

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34e) Act No. 326/1999 Sb., on residence of foreigners in the territory of the Czech Republic and on amendment to several acts.

#### Section 200p

(1) The proceedings shall be conducted by the court in whose district an establishment for arresting foreigners (hereinafter the "establishment") where the foreigner has to stay is located; if the petitioner has not been placed in the establishment at the moment of filing the petition, the proceedings shall be conducted by the court in whose district the seat of the Police body is located that decided on arresting the foreigner.

(2) The petitioner and the relevant Police body that decided on arresting the foreigner shall be the participants of the proceedings.

#### Section 200q

(1) The petition shall be filed with the competent court or through the mediation of the Police body that issued the decision of arresting the foreigner.

(2) The court shall ask for the files concerning arresting the foreigner. The Police body must immediately submit it to the court. If the petition is being filed through the mediation of the Police body, this body must attach to the petition the files concerning the petitioner and deliver them with the petitioner to the competent court within 24 hours.

#### Section 200r

(1) The relevant Police body that issued the contested decision must enable the petitioner to be present at the meeting.

(2) A meeting shall not have to be ordered if the contents of the file doubtlessly reveals that that the decision on arresting is unlawful or that the legal requirements for duration of the arrest have not been met.

#### Section 200s

(1) If a petition according to Section 200o para. 1 has been filed, the court shall carry out the evidence necessary for considering the correctness of the contested decision and for considering whether the reasons for the arrest still exist; the reason of the arrest can not be changed. The evidence carried out in the proceedings preceding the contested decision may be considered the court's own factual ascertainments unless the petitioner has thrown doubts on them in his petition.

(2) The factual state that existed at the moment of issuing the contested decision shall be decisive for examining the lawfulness of the decision. Defects of proceedings before the Police body shall be taken into account by the court only if the occurred defects could have influenced the lawfulness of the contested decision.

(3) If the court comes to the conclusion that the contested decision is lawful, the court shall decide that the petition is dismissed; otherwise, the court shall quash the contested decision and order releasing the petitioner. If the petition was dismissed but the reasons for that the contested decision was issue have fallen off, the court shall decide on releasing the petitioner.

#### Section 200t

If the court after hearing the petition according to Section 200o para. 2 comes to the conclusion that the conditions for duration of arresting provided by a special legal regulation are not met, the court shall decide on releasing the petitioner. If the petition was dismissed, the petitioner may demand a new examination of lawfulness of duration of the arrest for the same reasons after the lapse of three weeks after the moment when the decision becomes final and conclusive.

#### Section 200u

(1) The court must hear the petition with a preference to other petitions and as quickly as possible.

(2) The court shall decide by a ruling.

(3) No remedies shall be admissible against the ruling of the court.

(4) The ruling shall become enforceable after delivering it to the petitioner.

(5) If the court ordered by a ruling releasing the petitioner in a meeting, this ruling shall be delivered to the participants of the proceedings immediately after it was declared. If the court has decided without a meeting, the court shall deliver the ruling to the participants of the proceedings within 24 hours after issuing it. The Police body that issued the decision on arrest shall in both cases immediately after the delivery of the ruling take measures so that the Police body operating the establishment where the petitioner is being arrested releases the petitioner without delays.

## Section 200v

(1) If a district authority located in the seat of a region provided by a special legal regulations<sup>34f)</sup> decided on

a) rejecting a list of candidates for election of the board of representatives of the region, the political party, political movement or the coalition that has submitted the list may contact the court with a petition for issuing a decision on registration of this list;

b) removing a candidate from a list of candidates for election of the board of representatives of the region, the political party, political movement or coalition that has submitted the list of candidates as well as this candidate may contact the court with a petition for issuing a decision leaving the candidate in the list of candidates;

c) registering a list of candidates for election of the board of representatives of the region, other political parties, political movements or coalitions that have submitted a list of candidates may contact the court with a petition for issuing a decision on canceling the registration.

(2) The participant of the proceedings according to paragraph 1 shall be the petitioner and the relevant district authority located in the seat of the region; in the case referred to in paragraph 1 letter c), the ring of participants shall include also the political party, political movement or coalition whose registration has been contested.

(4) The court shall decide within fifteen days by a ruling without ordering a meeting.

(5) No remedies shall be admissible against the decision of the court.

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34f) Act No. 130/2000 Sb., on election of boards of representatives of regions and on amendment to several acts.

## Section 200w

(1) Every citizen registered with the electoral register in the electoral district where the member of board of representatives of the region was elected as well as every political party, political movement or coalition whose list of candidates was registered for the election of this board may contact the court with a petition for

a) issuing a decision on nullity of the vote;

b) issuing a decision on nullity of the election;

c) issuing a decision on nullity of the election of a candidate.

(2) The participants of the proceedings according to paragraph 1 letter a) and b) shall be the petitioner and the district authority located in the seat of the region. The participants of the proceedings according to paragraph 1 letter c) shall be the petitioner, the relevant district authority located in the seat of the region and the person whose election as a member of the board of representatives of the region has been contested.

(3) Where the board of representatives of a region or the Minister of Interior gave a verdict that the mandate of the member of the board of representatives of a region ceased to exist, the member of the board of representatives of the region whose mandate ceased to exist in this way as well as the political party, political movement and coalition that

have submitted a list of candidates in the region may contact the court with a petition for quashing the resolution of the board of representatives of the region or of the decision of the Minister of Interior by that the extinction of the mandate was pronounced.

(4) The participants of the proceedings according to paragraph 3 shall be the petitioner and the relevant region whose board of representatives pronounced the extinction of the mandate or the Ministry of Interior if the extinction of the mandate was pronounced by the Minister of Interior.

(5) The court shall decide on the petition within twenty days by a ruling without ordering a meeting.

(6) The ruling on nullity of vote and the ruling on nullity of the election according to paragraph 1 shall be delivered to the participants of the proceedings and to the Ministry of Interior. The ruling according to paragraph 3 quashing the resolution of the board of representatives of the region or the decision of the Minister of Interior shall be delivered to the participants of proceedings; unless either the relevant region or the Ministry of Interior is a participant of the proceedings, the ruling of the court shall be delivered also to this entity.

(7) No remedies shall be admissible against the decision of the court.

#### Section 200x

Proceedings in cases of election of the board of employees or election of representatives in the field of security and protection of health at work

(1) A petition for declaring nullity of election of a member of the board of employees or of election of a representative in the field of security and protection of health at work<sup>34g)</sup> shall be decided by the court within ten days from the day of delivery of the petition; the court shall decide by a ruling without ordering a meeting.

(2) The participants of the proceedings shall be petitioner, the member of the board of employees or the representative in the field of work security whose election has been contested and the relevant election commission.

(3) The proceedings shall be conducted by the district court competent according to the location of the seat of the employer.

(4) None of the participants shall have the right to reimbursement of the costs of proceedings.

(5) No remedies shall be admissible against the decision of the court.

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34g) Section 25b of the Labor Code.

Proceedings on judicial sale of a pledge

#### Section 200y

(1) Proceedings on a judicial sale of a pledge shall be commenced on the basis of a lawsuit by that the pledgee demands that the court order a judicial sale of the pledge; this rule shall not apply if special regulations do not allow the judicial sale of the pledge.

(2) The pledgee and the pledgor shall be the participants of the proceedings.

## Section 200z

(1) The court shall order a sale of the pledge if the pledgee proves the secured receivable, the existence of the right of pledge (mortgage) and who is the pledgor.

(2) The court may decide on the case without ordering a meeting only under the conditions referred to in Section 115a or if the facts referred to in paragraph 1 are proved by documents issued or certified by state authorities or by public documents of a notary.

(3) The court shall decide by a ruling.

## Section 200za

(1) A ruling ordering the sale of a pledge shall become enforceable on the day when it became final and conclusive.

(2) A final and conclusive decision ordering the sale of a pledge shall be binding upon everyone against whom the right of pledge (mortgage) to this pledge is effective according to special regulations.

(3) On the basis of an enforceable ruling on ordering the sale of a pledge, the court may upon the petition of the pledgee order an enforcement of a decision by selling the pledge.

## PART FOUR

### REMEDIES

#### CHAPTER ONE

##### APPEAL

#### Filing the appeal

##### Section 201

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.

##### Section 202

- (1) No appeal shall be admissible against a ruling by that
- a) the court regulates the course of the proceedings;
  - b) a further participant was taken to the proceedings (Section 94 para. 3);
  - c) proceedings were commenced without a petition;

- d) a participant was called to complete or correct an incomplete, unintelligible or vague motion (Section 43 para. 1);
- e) missing a period was pardoned;
- f) a change of a petition was or was not admitted;
- g) the court decided on a witness payment or on the claims according to Section 139 para. 3;
- h) a settlement was approved;
- i) the court decided on a petition of a citizen for correcting or completing an electoral register;
- j) a petition for interruption of the proceedings according to Section 109 or Section 110 was dismissed;
- k) the defendant was called to submit a written statement in the case (Section 114b);
- l) the court corrected a decision unless the correction concerns a verdict of the decision.

(2) No appeal shall be admissible against a judgment by that the court decided on a money performance not exceeding 2 000 Czech crowns; the attribution of the receivable shall not be taken into account; this rule shall apply neither to an admission judgment nor to a default judgment.

(3) An appeal only against the reasons of a decision shall not be admissible.

## Section 203

(1) A subsidiary participant may appeal only if he entered into the proceedings not later than within fifteen days after the delivery of the decision to the participant supported by him in the proceedings. The appeal of a subsidiary participant shall not be admissible if the supported participant waived the appeal or is the supported participant does not agree to the appeal of the subsidiary participant.

(2) The state representation may file an appeal only in the cases referred to in Section 35 para. 1 and only if it entered into the proceedings before the period of appeal of all participants elapsed.

## Section 204

(1) The appeal may be filed within fifteen days after the delivery of a written execution of a decision with the court against whose decision the appeal is directed. If the court issued a correcting ruling concerning a verdict of a decision, this period shall start running again after the correcting ruling became final and conclusive.

(2) The appeal shall be considered timely if it was filed after the lapse of the fifteen-day period because the appealing person followed an incorrect instruction of the court concerning the appeal. If the decision contains no instruction about the appeal, about the appeal period or about the court with whom the appeal is to be filed or if the decision contains an incorrect instruction that no appeal is admissible, the appeal may be filed within three months after the delivery.

(3) Pardoning missing the period of appeal shall be decided by the first instance court. Missing the period of appeal shall not be pardoned in case of an appeal against a decision

pronouncing that a marriage is divorced, null or non-existent; the provision of paragraph 2 second sentence shall not apply to these cases.

## Essentials of the appeal

### Section 205

(1) Apart from the general requisites (Section 42 para. 4), the appeal must specify against which decision it is directed, in what extent the decision is contested, for what reason this decision or the procedure of the court is considered incorrect (reason of appeal) and what is demanded by the appealing person (petition of appeal).

(2) An appeal against a judgment or a ruling by that the court decided on the merits of the case may be grounded only by the circumstances as follows:

a) the conditions of the proceedings were not met, the decision was issued by a first instance court being not materially competent, the decision of the first instance court was issued by an excluded judge (assessor) or the first instance court was composed incorrectly except where a panel decided instead of a single judge;

b) the first instance court has not taken account of the facts asserted by the appealing person or of the evidence identified by him although the requirements therefor according to Section 118b and Section 118c eventually Section 175 para. 4 the part of the first sentence before the semicolon were not met;

c) the procedure is affected by another defect that could have caused an incorrect decision on the merits of the case;

d) the first instance court ascertained the factual basis incompletely because it did not carry out the proposed evidence necessary to prove the decisive facts;

e) the first instance court came on the basis of the evidence to incorrect factual ascertainties;

f) the factual basis ascertained so far can not stand the examination as there are additional facts or other evidence that have not yet been invoked (Section 205a);

g) the decision of the first instance court is based on an incorrect legal consideration of the case.

(3) The appealing person may even without a consent of the court change the petitions of appeal or reasons of appeal even after the lapse of the period of appeal-

(4) The extent in that the decision is being contested may be changed by the appealing person only during the period of appeal.

### Section 205a

(1) Facts or evidence that were not invoked before the first instance court shall be considered a reason of appeal against a judgment or a ruling concerning the merits of the case only if

a) they concern the conditions of proceedings, material competence of the court, exclusion of a judge (assessor) or composition of the court;

b) they are to prove that the procedure was affected by defects that could have caused an incorrect decision on the merits of the case;

- c) they are to throw doubts on credibility of the evidence on that the decision of the first instance court is based;
- d) the appealing person was not properly instructed according to Section 119a para. 1;
- e) they occurred (arose) after the declaration (issuance) of the decision of the first instance court.

(2) The restriction according to paragraph 1 shall not apply to the cases referred to in Section 120 para. 2.

## Section 205b

In case of an appeal against an admission judgment or a default judgment, the appeal may be grounded only by the defects referred to in Section 205 para. 2 letter a) and the facts and evidence that are to prove that the conditions for the issuance thereof (Section 153a, 153b) were not met.

## Effects of the appeal

### Section 206

(1) If a person being entitled thereto files timely an admissible appeal, the decision shall not become final and conclusive until the court of appeal finally and conclusively decides on the appeal.

(2) However, if the decision deals with more rights with a separate factual basis or if the decision concerns more participants each of which acts in the proceedings independently (Section 91 para. 1) and if the appeal explicitly relates only to several rights or to several participants, the appeal shall not affect final and conclusive verdicts not contested by the appeal. This rule shall not apply to cases where a verdict that has not been explicitly contested by the appeal depends on the contested decision or is certain was of settlement of the relationship between the participants follows from a legal regulation.

(3) Other verdicts shall remain final and conclusive also if the appeal is directed only against a verdict on costs of proceedings, on attribution of a receivable, on a period for performance or on a provisional enforceability of a judgment.

## Waiving the appeal and withdrawing from the appeal

### Section 207

(1) The appeal may be waived only as against the court after the declaration (issuance) of the decision.

(2) If the court has not yet decided on the appeal, the appeal may be withdrawn from; in such case, the court shall stay the appellate proceedings. A person who has withdrawn from the appeal can not file it again.

## Acts of the first instance court

## Section 208

(1) If the appeal is delayed, the chairman of the panel of the first instance court shall reject the appeal by a ruling.

(2) An appeal can not be rejected as being delayed if it was filed timely with the court of appeal or into the minutes with an incompetent court. The same rule shall apply if an appeal against a decision on a preliminary measure according to Section 766a was filed timely with the court competent according to Section 88 letter c).

## Section 209

The chairman of the panel of the first instance court shall see to removing eventual defects of a timely appeal (Section 43). If he fails to remove the defects or if he considers the appeal to have been filed by a person not entitled thereto or to be inadmissible, he shall submit the case with a report thereon to the court of appeal after the lapse of the period of appeal.

## Section 210

(1) Except for the cases referred to in Section 208 or 209, the chairman of the panel shall deliver the appeal directed against a judgment or a ruling on the merits of the case to the other participants.

(2) Where necessary, the chairman of the panel shall investigate whether the conditions of the proceedings are met, shall arrange for reports and documents invoked by the appealing person or by the other participants and shall carry out another similar investigation.

(3) As soon as the period of appeal of all participants elapses and as soon as the investigation according to paragraph 1 has been carried out, the chairman of the panel shall submit the case to the court of appeal; in the report, the chairman of the panel shall mention that he considers the appeal to have been filed within the period.

## Section 210a

A ruling on a duty to pay a judicial fee or a ruling from that no other person than the appealing person has acquired a right or a ruling imposing a disciplinary measure (Section 53) or a ruling on rejecting a lawsuit or, as the case may be, on rejecting another petition for commencement of proceedings (Section 43 para. 2, Section 75a para. 1) or a ruling on rejecting an appeal (Section 208) or a ruling on a preliminary measure according to Section 76a may be changed on the basis of an appeal by the first instance court if it completely grants the appeal.

Proceedings before the court of appeal

## Section 211

The proceedings before the court of appeal shall be adequately governed by the provisions on proceedings before the first instance court unless anything else is provided.

#### Section 211a

Other participants of the proceedings than the appealing person may invoke before the court of appeal facts or evidence not invoked before the first instance court only under the conditions referred to in Section 205a or if the restriction of reasons of appeal according to Section 205a para. 1 does not apply to the appealing person.

#### Section 212

The court of appeal shall hear the case within the limits within that the appealing person demand examining the decision. The court of appeal shall not be bound by these limits

- a) in cases where the proceedings can be commenced without a petition;
- b) where a verdict not affected by the appeal depends on a decision on a verdict contested by the appeal;
- c) where the matter is such joint rights or duties that the decision must apply to all the participants on one side and where acts of one of them apply also to the other participants (Section 91 para. 2) even if the appeal has been filed only by one of the participants;
- d) where certain way of settlement of the relationship between the participants follows from a legal regulation.

#### Section 212a

(1) Unless anything else is further provided, the decision of the first instance court may be examined also with regard to the reasons that have not been invoked in the appeal (Section 205 para. 2).

(2) A judgment or a ruling concerning the merits of the case can not be examined according to paragraph 1 if the appeal contains no reasons of appeal in the cases not referred to in Section 120 para. 2 despite a call of the court (Section 43 and 209).

(3) Except for the cases referred to in Section 120 para. 2, new facts and evidence (Section 205a para. 1 and Section 211a) may be taken into account by the court of appeal only if they have been invoked.

(4) An admission judgment and a default judgment shall be examined by the court of appeal only with regard to the reasons referred to in Section 205b.

(5) The court of appeal shall also take account of the defects referred to in Section 229 para. 1, Section 229 para. 2 letter a) and b) and Section 229 para. 3. Ather defects of proceedings before the first instance court shall be taken into account by the court of appeal only if they could have caused an incorrect decision on the case.

#### Section 213

(1) The court of appeal shall not be bound by the factual state ascertained by the first instance court.

(2) The court of appeal may repeat the evidence or complete it if the completion is not too extensive and if it can be done without delays. The court of appeal shall complete the evidence either on its own or through the mediation of the first instance court or of a requested court.

(3) In ascertaining the factual state, the court of appeal shall not take account of facts and evidence invoked by the participants at variance with Section 205a or Section 211a.

#### Section 214

(1) For the purpose of hearing the appeal, the chairman of the panel of the first instance court shall order a meeting.

(2) The meeting shall not have to be ordered if

a) the appeal is being rejected;

b) the appellate proceedings are being stayed or interrupted;

c) the appeal is directed against a ruling of the first instance court that is to be issued according to law without ordering a meeting or by that the first instance court has not decided on the merits of the case;

d) a decision is being quashed according to Section 221 para. 1;

e) the appeal concerns only costs of proceedings, a period of performance or a provisional enforceability.

(3) The meeting shall not have to be ordered also if the appeal has been filed only for the reason of an incorrect legal consideration of the case and the participants have waived the right to take part in hearing the appeal or, as the case may be, have agreed to deciding the case without ordering a meeting; this rule shall not apply if the court of appeal proceeds according to Section 213.

#### Section 215

At the beginning of the meeting, the chairman of the panel or an entrusted member of the panel shall read a report on the hitherto course of the proceedings. Subsequently, the participants shall express their opinions and read their proposals.

#### Section 216

(1) The provisions of Section 92, 97 and 98 shall not apply to appellate proceedings.

(2) No new claim can be exercised in the appellate proceedings.

(3) The proceedings shall not be interrupted if the participants or any of them fail to appear in a meeting before the court of appeal.

## Section 217

repealed

## Decision on the appeal

### Section 218

The court of appeal shall reject an appeal that

- a) repealed
- b) has been filed by a person not entitled to filing the appeal;
- c) is directed against a decision against that no appeal is admissible.

### Section 218a

Unless the chairman of the panel of the first instance court has decided according to Section 208 para. 1 even if the appeal is delayed, the appeal shall be rejected due to the delay by the court of appeal. Where necessary, the court of appeal shall carry out the necessary investigation either on its own or through the mediation of the first instance court or of the requested court.

### Section 219

The court of appeal shall confirm the decision if it is materially correct.

### Section 220

(1) The court of appeal shall change the decision if the first instance court decided incorrectly even if it has correctly ascertained the factual state.

(2) The court of appeal may change the decision also if after the evidence being completed, the factual state is ascertained in the manner that it is possible to decide on the case.

(3) The court of appeal shall change the decision also if it approves a settlement.

### Section 221

(1) Unless the conditions for confirming or for changing the decision are given, the court shall quash the decision. The court shall do so in particular if

a) ascertaining the factual state requires additional evidence (Section 120) that can not be carried out in the appellate proceedings (Section 213 para. 2); the provision of Section 213 para. 3 must not be affected;

b) there are such defects that the proceedings should not have been conducted due to a lack of conditions of the proceedings or if the decision was issued by a materially

incompetent court or if the case was decided by an excluded judge or if the court was composed incorrectly except where a panel decided instead of a single judge;

c) the judgment can not be examined because it is unintelligible or because it lacks reasons;

d) a person who should be the participant has not been taken by the court to the proceedings as a participant;

e) the court did not continue in the proceedings with a person being a procedural successor of a participant who lost his capacity to be a participant of the proceedings after the commencement of the proceedings.

(2) If the court of appeal quashes the decision, it shall

a) return the case to the first instance court to further proceedings; or

b) forward the case to the materially competent district court or regional court or, as the case may be, to a court established for hearing and deciding cases of certain type; or

c) stay the proceedings if there is a lack of conditions of proceedings that can not be removed (Section 104 para. 1); where the jurisdiction of the court is not given, the court of appeal shall also decide on forwarding the case to an authority within whose powers the case falls.

(3) If the court of appeal quashes the decision because a binding legal opinion was not observed (Section 226 paa. 1, Section 235h para. 2 second sentence and Section 243d para. 1) or that the proceedings were affected by serious defects, the court of appeal may either order that in the further proceedings, the case shall be heard and decided by another panel (single judge) or order further proceedings on the case to another first instance court whose superior court the court of appeal is.

## Section 221a

The court of appeal may quash the decision of the first instance court even if a change thereof is proposed or the other way round.

## Section 222

(1) If the appealing person withdraws from the appeal, the contested decision shall become final and conclusive as if no appeal had been filed; this rule shall not apply to a judgment deciding that a marriage is divorced, null or non-existing.

(2) If the first instance court has not decided on certain part of the case, on costs of the proceedings or on a petition for a provisional enforceability, the court of appeal may, before deciding on the appeal, order that the first instance court complete the decision (Section 166).

(3) Under the conditions referred to in Section 164, the court of appeal may also order correcting the contested decision.

## Section 222a

(1) If the actor (petitioner) withdraws during the appellate proceedings from the petition for commencement of the proceedings, the court of appeal shall quash the decision of the first instance court either wholly or within the scope of the withdrawal and shall stay the proceedings; this rule shall not apply if the appeal was delayed or if it was filed by a person not being entitled to filing the appeal or if it is directed against a decision against that no appeal is admissible.

(2) If the other participants disagree to withdrawing from the petition for serious reasons, the court of appeal shall decide that the withdrawal is not effective; in such case, the court shall go on proceedings after the ruling becomes final and conclusive.

(3) The provision of paragraph 2 shall not apply to withdrawing from a petition for divorce, for nullity of a marriage or for determination that a marriage does not exist.

## Section 223

When confirming or changing a judgment, the court of appeal shall decide by a judgment; in other cases, the court of appeal shall decide by a ruling.

## Costs of the appellate proceedings

### Section 224

(1) The provisions on costs of proceedings before the first instance court shall adequately apply also to the appellate proceedings.

(2) If the court of appeal changes the decision, it shall also decide on the costs of proceedings before the first instance court.

(3) If the court of appeal quashes the decision and returns the case to the first instance court to further proceedings or if it forwards the case to a materially competent court, the reimbursement of costs shall be decided by the first instance court in the new decision on the case.

## Further course of proceedings

### Section 225

The first instance court shall deliver the decision on appeal unless it has been delivered directly by the court of appeal.

## Section 226

(1) If the decision has been quashed and if the case has been returned to further proceedings, the first instance court shall be bound by the legal opinion of the court of appeal.

(2) If the decision has been quashed and the case has been forwarded to the materially competent court, the provision of Section 104a shall not apply to further proceedings. In the new hearing of the case, the court may proceed from the results of the hitherto

proceedings only as for an admission made by the defendant and for agreeing factual statements of the participants; with the consent of the participants, the court may proceed also from several or all the evidence carried out.

Section 227

repealed

## CHAPTER TWO

### SUIT FOR RETRIAL AND NULLITY SUIT

Admissibility

Section 228

(1) By a suit for retrial, the participant of proceedings may contest a final and conclusive judgment or a final and conclusive ruling on the merits of the case where

a) there are facts, decisions or evidence the participant could not invoke without his fault in the original proceedings before the first instance court or, under the conditions referred to in Section 205a and 211a, before the court of appeal if they can lead to a decision in the case being more favorable for the participant;

b) it is possible to carry out evidence that could not be carried out in the original proceedings before the first instance court or, under the conditions referred to in Section 205a and 211a, before the court of appeal if it can lead to a decision on the case being more favorable for the participant.

(2) By a suit for retrial, the participant may contest also a final and conclusive ruling approving a settlement if the reasons for retrial according to paragraph 1 can be related also to the requirements under that the settlement was approved; this rule shall analogously apply to a final and conclusive order to pay, to a final and conclusive admission judgment and to a final and conclusive default judgment.

Section 229

(1) By a nullity suit, the participant may contest a final and conclusive decision of the first instance court or of the court of appeal by that the proceedings have been terminated if

a) the court has decided on a case not falling within the jurisdiction of courts;

b) the person who acted as a participant of the proceedings had no capacity to be a participant of the proceedings;

c) the participant has no litigation capacity or could not act before the court (Section 29 para. 2) and was not duly represented;

d) no petition for commencement of the proceedings was filed even if it was required by law;

e) the case was decided by an excluded judge or assessor;

f) the court was composed incorrectly except where a panel decided instead of a single judge;

g) the court decided to the detriment of the participant due to a crime committed by a judge or an assessor.

(2) By a nullity suit, the participant may contest also a final and conclusive judgment of the first instance court or of the court of appeal or a final and conclusive ruling of these courts concerning the merits of the case or a final and conclusive order to pay (a bill-of-exchange order to pay and a check order to pay) if

a) proceedings concerning the same case have been commenced earlier;

b) the same case was finally and conclusively decided earlier;

c) the court of appeal has finally and conclusively dismissed a petition for enforcement of these decisions because the duties imposed by the judgment, ruling or order to pay can not be enforced (Section 261a).

(3) By a nullity suit, the participant may contest also a final and conclusive judgment of the court of appeal or its final and conclusive ruling on the merits of the case if as a result of an incorrect procedure of the court, the participant was deprived during the proceedings of the possibility to act before the court.

(4) By a nullity suit, the participant may contest also a final and conclusive ruling of the court of appeal rejecting an appeal or staying the appellate proceedings.

## Section 230

(1) The suit shall not be admissible

a) against judgments pronouncing that a marriage is divorced, null or not existing;

b) only against the verdicts of the decision on costs of proceedings, on a period of performance and on provisional enforceability;

c) only against reasons of the decision.

(2) The suit for retrial shall also not be admissible against judgments and rulings that can be quashed or changed otherwise except for a recourse.

(3) The nullity suit shall also not be admissible against a ruling deciding on a nullity suit.

## Section 231

(1) For the reasons referred to in Section 228 and 229, the suit may be filed also by a subsidiary participant who entered into the original proceedings. However, the suit shall not be admissible if the supported participant does not agree thereto.

(2) For the reasons referred to in Section 229, the state representation may file a nullity suit only in the cases referred to in Section 35 para. 1. If the state representation has not entered into the proceedings in which the contested decision was issued, the state representation may file the suit if it simultaneously enters into the proceedings (Section 35) and if a period of any of the participants is still running.

(3) The provision of Section 230 shall apply analogously.

## Filing the suit

### Section 232

(1) Apart from the general requirements (Section 42 para. 4), the suit must contain identification of the decision against that it is directed, the scope within that the decision is being contested, the reason of the suit (the reason of the retrial or nullity), explanation of the facts proving that the suit is filed timely, identification of evidence to prove the grounds of the suit and identification of what is demanded by the person who is filing the suit.

(2) The scope within that the decision is being contested and the reason of the suit (the reason of the retrial and nullity) may be changed only in the course of the periods for filing the suit.

### Section 233

(1) The suit for retrial must be filed within three months from the moment when the person who is proposing the suit learnt of the reason of the retrial or from the moment when he could invoke it; however, the course of this period shall not end before the lapse of three months from the day when the contested decision became final and conclusive.

(2) After the lapse of three years from the day when the contested decision became final and conclusive, the suit for retrial may be filed only if a criminal judgment or a decision on a trespass or another administrative offence on the basis of which certain right was awarded in civil judicial proceedings were subsequently quashed according to the relevant legal regulation.

### Section 234

(1) Unless the law further provides for anything else, a nullity suit must be filed within three months from the delivery of the contested decision.

(2) For the reason of nullity referred to in Section 229 para. 1 letter c), the suit may be filed within three months; this period shall start running on the day when a representative was appointed to the participant or when the impediment preventing him from acting independently or preventing him from acting before the court ceased to exist; however, the suit must be filed not later than within three years after the contested decision became final and conclusive.

(3) For the reason of nullity referred to in Section 229 para. 1 letter e), the suit may be filed within three months from the moment when the person filing the suit learnt of the reason of nullity but not later than within three years after the contested decision became final and conclusive.

(4) For the reason of nullity referred to in Section 229 para. 1 letter g), the suit may be filed within three months from the moment when the person filing the suit learnt of the reason of nullity.

(5) For the reason of nullity referred to in Section 229 para. 2 letter c), the suit may be filed within three months from the day when the ruling of the court of appeal dismissing the petition for enforcement of a decision became final and conclusive.

#### Section 235

(1) Pardoning missing the periods for filing the suits shall not be admissible.

(2) If also a recourse has been filed against the decision contested by the suit, the course of the periods referred to in Section 234 para. 1 to 4 shall not include the time from the moment when the contested decision became final and conclusive until the moment when the decision of the court of recourse becomes final and conclusive.

#### Hearing and deciding on the suit

##### Section 235a

(1) The suit shall be heard and decided by the court that decided on the case in the first instance. However, a nullity suit filed for the reasons referred to in Section 229 para. 3 and 4 shall be heard and decided by the court whose decision has been contested; this rule shall not apply to cases where the first instance proceedings are to be conducted by a regional court (Section 9 para. 2 and 3).

(2) The proceedings on the suit shall be adequately governed by the provisions on first instance proceedings unless the law further provides for anything else.

##### Section 235b

(1) If one and the same decision has been contested by both a suit for retrial and a nullity suit, the court shall join the cases to joint proceedings.

(2) The provisions of Section 92, 97 and 98 shall not apply to the proceedings on the suit. The provision of Section 107a shall not apply to proceedings on a nullity suit.

(3) If the contested decision has been contested also by a recourse, the court shall interrupt the proceedings on the suit until the decision of the court of recourse.

##### Section 235c

If it is probable that the suit will be granted, the court may order deferring the enforceability of the contested decision on the case.

##### Section 235d

The court shall hear the suit within the limits within that the person who has filed the suit demands approving the retrial or quashing the contested decision due to nullity. The court shall not be bound by these limits

- a) in cases where the proceedings may be commenced without a petition;
- b) in cases where a verdict not affected by the suit depends on a decision on the contested verdict;
- c) in cases where the matter is such joint rights or duties that the decision must apply to all the participants acting on one side and where acts of one of them apply to the others (Section 91 para. 2);
- d) if certain way of settlement of the relationship between the participants follows from a legal regulation.

#### Section 235e

- (1) The court shall by a ruling either dismiss the suit for retrial or approve the retrial.
- (2) The court shall by a ruling either dismiss the nullity suit or quash the contested decision. Where the decision was quashed for the reasons referred to in Section 229 para. 1 letter a), b) and d) or in Section 229 para. 2 letter a) and b), the court shall also stay the proceedings on the case or, as the case may be, forward the case to the authority within whose powers the case falls. If the reasons for which a decision of a court of appeal has been quashed apply also to the decision of the first instance court, the court shall quash also this decision even if it has not been contested by the suit.
- (3) If one and the same decision has been contested both by a suit for retrial and by a nullity suit, the court may approve a well-grounded retrial only if it dismisses or rejects the nullity suit or stays the proceedings thereon.
- (4) If the contested decision has been quashed by a court of recourse, the court shall stay the proceedings on the suit.

#### Section 235f

If the court is dismissing the suit because it is inadmissible or because it has been filed by a person who is not entitled thereto or because it was filed after the lapse of the periods reckoned from the moment when the contested decision became final and conclusive, the court shall not have to order a retrial.

#### Section 235g

Enforceability of the contested decision shall be deferred by approving the retrial.

Proceedings and deciding after approving the retrial  
or after quashing the decision

#### Section 235h

- (1) If a retrial has been approved, the first instance court shall hear the case again without a further petition as soon as the ruling becomes final and conclusive; in doing so, the court shall take account of what was revealed in the original proceedings or in

hearing the suit. If the court finds the contested decision materially correct, the petition for quashing it shall be dismissed by a ruling. If the court changes the contested decision on the merits of the case, the original decision shall be superseded by the new decision.

(2) If the contested decision has been quashed due to a nullity thereof, the court that issued the decision shall hear the case again and decide without a further petition as soon as the ruling becomes final and conclusive; in doing so, the court shall take account of what was revealed in the original proceedings or in hearing the suit. The legal opinion mentioned in the quashing decision shall be binding upon the new hearing and deciding of the case.

(3) Paragraph 2 shall not apply if the proceedings on the case have been stayed (Section 235e para. 2 second sentence).

## Section 235i

(1) In the new decision on the case, the court shall decide on reimbursement of both the original proceedings and the proceedings on the suit; however, the court shall not decide on the reimbursement of the proceedings if the decision after approving the retrial does not replace the original decision.

(2) If the court quashes the contested decision and stays the proceedings on the case (Section 235e para. 2 second sentence), the court shall also decide on reimbursement of costs of the original proceedings.

(3) Legal relations of somebody else than of a participant of the proceedings can not be affected by the new decision on the case.

## CHAPTER THREE

### RECOURSE

#### Admissibility of a recourse

##### Section 236

(1) Final and conclusive decisions of the court of appeal can be contested by a recourse if it is allowed by law.

(2) A recourse only against the reasons of a decision shall not be admissible.

##### Section 237

(1) A recourse shall be admissible against a judgment of the court of appeal or against a ruling of the court of appeal

a) by that a decision of the first instance court concerning the merits of the case has been quashed;

b) confirming the decision of the first instance court by that the first instance court decided on the merits of the case in a different way than in the previous judgment

(ruling) because it was bound by the legal opinion of the court of appeal that has quashed the original decision;

c) confirming the decision of the first instance court if the recourse is not admissible according to letter b) and the court of recourse comes to the conclusion that the contested decision on the merits of the case is of a fundamental importance from the legal point of view.

(2) The recourse according to paragraph 1 shall not be admissible

a) in cases where the verdict contested by the recourse decided on a money performance not exceeding 20 000 Czech crowns or, in business cases, 50 000 Czech crowns;

b) in cases regulated by the Family Act except for a judgment on restriction or deprivation of parental responsibility or suspension of the exercise thereof, on determination (denial) of fatherhood or on an irrevocable adoption.

(3) The decision of the court of appeal shall be considered of a fundamental importance from the legal point of view [paragraph 1 letter c)] in particular where it deals with a legal issue that has not yet been solved in the decision practice of the court of recourse or that is being decided differently by the courts of appeal or by the court of recourse or if it deals with a legal issue that is at variance with the substantive law.

#### Section 238

(1) A recourse shall be admissible against a ruling of the court of appeal confirming or changing a ruling of the first instance court by that the court has decided

a) on a suit for retrial;

b) on dismissing a petition for changing a decision (Section 235h para. 1 second sentence).

(2) The provision of Section 237 shall apply analogously.

#### Section 238a

(1) A recourse shall be admissible against a ruling of the court of appeal confirming or changing a ruling of the first instance court by that the court decided

a) in a bankruptcy and composition case;

b) on a nullity suit;

c) on a petition for ordering enforcement of a decision;

d) on stay of enforcement of a decision;

e) on knocking down in the course of enforcement of a decision;

f) on distributing the estate in the course of enforcement of a decision;

g) on duties of the bidder referred to in Section 336m para. 2 (Section 336n) and in Section 338za para. 2.

(2) The provision of Section 237 para. 1 and 3 shall apply analogously.

#### Section 239

(1) A recourse shall be admissible against a ruling of the court of appeal by that the court

a) quashed a decision of the first instance court and stayed the proceedings or, as the case may be, forwarded the case to an authority within whose powers the case falls;

b) decided during the appellate proceedings on who is the procedural successor of a participant, on stay of the proceedings according to Section 107 para. 5, on entrance into the proceedings to the position of the hitherto participant (Section 107a), on accession of a further participant (Section 92 para. 1) and on change of a participant (Section 92 para. 2).

(2) A recourse shall also be admissible against a decision of the court of appeal

a) confirming a ruling of the first instance court on staying the proceedings according to Section 104 para. 1;

b) confirming or changing a ruling of the first instance court by that the court decided on who is the procedural successor of a participant, on stay of the proceedings according to Section 107 para. 5, on entrance into the proceedings to the position of the hitherto participant (Section 107a), on accession of a further participant (Section 92 para. 1) and on change of a participant (Section 92 para. 2).

(3) A recourse shall be also admissible against a ruling of the court of appeal confirming a ruling of the first instance court on rejecting a petition (lawsuit); this rule shall not apply to rejecting a petition for a preliminary measure (Section 75a).

## Section 240

(1) The participant may file the recourse within two months from the delivery of the decision of the court of appeal; the recourse shall be filed with the court that decided in the first instance. If the court of appeal issued a correcting ruling, this period shall run from the delivery of the correcting ruling.

(2) Missing the period referred to in paragraph 1 can not be pardoned. However, the period shall be considered kept if the recourse is filed during the period with the court of appeal or with the court of recourse.

(3) The period shall be considered kept also if the recourse was filed after the lapse of the two-month period because the person filing the recourse kept to an incorrect instruction of the court about the recourse. If the decision contains no instruction about the recourse, about the period for the recourse or about the court with that it is to be filed or if the decision contains an incorrect instruction that no recourse is admissible, the recourse may be filed within four months after the delivery.

## Section 241

(1) The person filing the recourse must be represented by an attorney of law or by a notary; this rule shall not apply if the person filing the recourse has legal education or if he acts through a person referred to in Section 21 or Section 21a or Section 21b who has

a legal education. A notary may represent the person filing the recourse only within the scope of his authorization provided by special regulations.57)

(2) Where the person filing the appeal has no legal education, the appeal must be made up by an attorney of law or by a notary or by a person referred to in Section 21 or Section 21a or Section 21b who has a legal education.

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57) Section 3 of the Act No. 358/1992 Sb., on notaries and their activity (Notarial Code), as amended by the Act No. 30/2000.

#### Section 241a

(1) Apart from the general requirements (Section 42 para. 4), the recourse must specify against which decision it is directed, in what scope and for what reasons this decision is being contested and, as the case may be, what evidence should be carried out to prove the ground of the recourse and what is demanded by the person filing the recourse (petition of the recourse).

(2) The recourse may be filed only for the reasons as follows:

a) the proceedings were affected by a defect that could have lead to an incorrect decision on the merits of the case;

b) the decision is based on an incorrect legal consideration of the case.

(3) Where the recourse is admissible according to Section 237 para. 1 letter a) and b) or according to the analogous application of these provisions (Section 238 and 238a), the recourse may be filed also for the reason that according to the contents of the file, the decision is based on a factual ascertainment that is not supported by the evidence carried out.

(4) No new facts or evidence concerning the merits of the case can be invoked in a recourse.

#### Acts of the first instance court

#### Section 241b

(1) The provisions of Section 208 para. 1, Section 209 and 210 shall apply analogously.

(2) Unless the condition referred to in Section 241 is met, the court shall proceed analogously according to Section 104 para. 2; this rule shall not apply if the recourse is delayed, if it has been filed by a person not entitled to filing a recourse or if it is directed against a decision against that no recourse is admissible.

(3) A recourse containing no particulars of in what scope and for what reasons the decision of the court of appeal is being contested may be completed by these essentials only during the period for recourse. Unless the condition referred to in Section 241 was met at the moment of filing the recourse, this period shall run until the lapse of the period specified for the person filing the recourse to meet this condition; however, if the person filing the recourse asked for an appointment of a representative (Section 30) before the lapse of the period, the period according to paragraph 1 shall start running again from the day when the ruling granting this petition became final and conclusive.

## Proceedings before the court of recourse

### Section 242

(1) The court of recourse shall examine the decision of the court of appeal within the limits within that the verdict thereof has been contested.

- (2) The court of recourse shall not be bound by the limits of the petitions of recourse
- a) in cases where the proceedings can be commenced without a petition;
  - b) where a verdict not affected by the recourse depends on a decision on a verdict contested by the recourse;
  - c) where the matter is such joint rights or duties that the decision must apply to all the participants on one side and where acts of one of them apply also to the other participants (Section 91 para. 2) even if the appeal has been filed only by one of the participants;
  - d) where certain way of settlement of the relationship between the participants follows from a legal regulation.

(3) The decision of the court of appeal may be examined only with regard to the reasons invoked in the recourse. Where the recourse is admissible, the court of recourse shall also take account of the defects referred to in Section 229 para. 1, Section 229 para. 2 letter a) and b) and Section 229 para. 3 as well as to other defects of the proceedings that could have lead to an incorrect decision on the merits of the case; the court of recourse shall take them into account even if they have not been invoked.

(4) During the period for recourse, the participants may change the reasons of recourse and the scope within that they contest the decision of the court of appeal. A change of the petition of recourse shall not require a consent of the court.

### Section 243

Before deciding on the recourse, the court that is to decide thereon may defer enforceability of the contested decision.

### Section 243a

(1) The court of recourse shall decide on the recourse without a meeting. Where the court considers it suitable or if evidence is carried out, the court shall order a meeting for the purpose of hearing the recourse.

(2) Any evidence shall be carried out by the court of recourse only in order to prove the reasons of the recourse. The court shall complete the evidence either on its own or through the mediation of the first instance court or through the mediation of the requested court.

(3) If the court of recourse orders a meeting, it shall proceed analogously according to Section 215 and Section 216 para. 3.

### Section 243b

(1) A recourse being admissible according to Section 237 para. 1 letter a) and b) or according to an analogous application of these provisions (Section 238 and Section 238a) or according to Section 239 shall be rejected by the court of recourse where it is obviously groundless.

(2) Unless the court of recourse has proceeded according to paragraph 1, the court shall dismiss the recourse if it comes to a conclusion that the decision of the court of appeal is correct; in other cases, the court shall quash the contested decision.

(3) If the court of recourse quashes the decision of the court of appeal, the case shall be returned to the court of appeal to further proceedings. If the reasons for that the decision of the court of appeal was quashed apply also to the decision of the first instance court, the court of recourse shall quash also this decision and shall return the case to the first instance court to further proceedings or, as the case may be, forward the case to a materially competent court to further proceedings.

(4) If the court of recourse quashes the decisions of the court of appeal and of the first instance court due to the defects referred to in Section 229 para. 1 letter a), b) and d) and in Section 229 para. 2 letter a) and b), the court of recourse shall also decide on staying the proceedings and, as the case may be, on forwarding the case to an authority within whose powers the case falls.

(5) The provisions of Section 218, 218a, 221 para. 3, Section 224 para. 1 and Section 225 shall apply analogously to the proceedings before the court of recourse. If the person filing the recourse completely withdraws from the recourse, the court of recourse shall stay the proceedings.

(6) The court of recourse shall decide by a judgment where it dismisses a recourse against a judgment of the court of appeal or where it quashed a judgment of the court of appeal; in other cases, the court of recourse shall decide by a ruling.

#### Section 243c

(1) The proceedings before the court of recourse shall be governed analogously by the provisions on proceedings before the first instance court unless the law provides for anything else; however, the provisions of Section 92 and 95 to 99 and Section 107a shall not apply to the proceedings before the court of recourse.

(2) A ruling rejecting a recourse that has not been found admissible according to Section 237 para. 1 letter c) or according to analogous application of this provision (Section 238 and Section 238a) shall not have to contain reasons. The same rule shall apply where a recourse was rejected according to Section 234b para. 1.

#### Section 234d

(1) Where the court of recourse quashes a decision of the court of appeal (a decision of the first instance court), the case shall be further heard by the court to that the case has been returned or forwarded to further proceedings; the provision of Section 226 shall apply analogously. Reimbursement of the costs of proceedings including the costs of the proceedings on recourse shall be decided by the court in the new decision on the case.

(2) Legal relations of somebody else than of a participant of the proceedings can not be affected by the new decision on the case.

## PART FIVE

### ADMINISTRATIVE JUSTICE

#### CHAPTER ONE

#### GENERAL PROVISIONS ON ADMINISTRATIVE JUSTICE

##### Section 244

(1) In administrative justice, the court shall on the basis of lawsuits and remedies examine lawfulness of decisions of authorities of public administration establishing, changing, canceling or authoritatively determining rights and duties of individuals and legal entities as well as of decisions of public administration authorities on a personal status.

(2) In administrative justice, the courts shall examine lawfulness of decisions of authorities of state administration, of authorities of territorial self-governance as well as of authorities of professional self-governance and of other legal entities if the law confers upon them the power to decide on rights and duties of individuals and legal entities in the field of public administration (hereinafter the "decision of administrative authority").

##### Section 245

(1) In examining the lawfulness of a decision of the administrative authority, the court shall consider the lawfulness of a administrative decision issued earlier and being a basis of the examined decision if the decision issued earlier was binding upon it and unless a special procedure is provided for examining it.

(2) In case of a decision issued by the administrative authority on the basis of a free discretion approved by law (administrative discretion), the court shall examine it only with regard to whether such decision did not exceed the limits and points of view provided by law.

##### Section 246

(1) The decision shall be examined by regional courts unless a law provides for anything else.

(2) High courts shall examine decisions of central authorities of state administration except for pension and sickness security, pension insurance and material security of applicants for work according to the employment regulations.

(3) District court shall examine the decisions on trespasses and the decisions where it is provided by law.

##### Section 246a

(1) The proceedings shall be conducted by the court in whose district the administrative authority whose decision is being examined has its seat unless anything else is provided.

(2) The proceedings according to Chapter Three of this Part and the proceedings in pension insurance cases, pension security cases and sickness insurance cases shall be conducted by the regional court in whose district the court of general jurisdiction of the petitioner is located.

#### Section 246b

(1) In examining the decisions of administrative authorities, the courts shall hear and decide in panels composed by the chairman and two judges unless anything else is provided. Remedies against decisions in pension security cases and pension insurance cases shall be heard and decided by single judges of regional courts.

(2) A single judge shall hear and decide on cases where the local competence is given to district courts and in cases where it is provided by law.

#### Section 246c

Issues that are not directly regulated by this Part shall be solved adequately according to Part One and Part Three of this law.

### CHAPTER TWO

#### DECIDING ON LAWSUITS AGAINST DECISIONS

#### OF ADMINISTRATIVE AUTHORITIES

#### Section 247

(1) The provisions of this Chapter shall apply if an individual or a legal entity claims himself to have been curtailed in his rights by a decision of an administrative authority and asks the court to examine the lawfulness of this decision.

(2) The proceedings according to this Chapter shall be linked to a condition that actor has exhausted ordinary remedies and that the decision became final and conclusive.

#### Section 248

(1) The courts shall not examine decisions of administrative authorities that do not have the character of a decision or a right or a duty of an individual or a legal entity, in particular generally binding (normative) acts, decisions of organizational nature and decisions regulating internal relations of the authority by that they have been issued.

(2) Furthermore, the courts shall not examine

- a) decisions examined according to Chapter Three of this Part or according to general provisions of the Civil Procedure Code;
- b) decisions of administrative authorities on civil law cases and commercial law cases where the administrative authority acts in the name of the state as an owner or another participant of a legal relationship;
- c) decisions of military administration authorities issued in order to prepare and fulfill the tasks during the military stand-by of the state;
- d) commands of officials of armed forces and armed corps;
- e) decisions of administrative authorities of a preliminary or disciplinary nature and decisions regulating the course of administrative proceedings;
- f) decisions of administrative authorities on disciplinary punishments of members of armed forces and armed corps not restricting personal freedom or not resulting in extinction of the service relationship and of sentenced persons placed in improving and educational institutions as well as of accused persons in exercising a detention;
- g) decisions whose issuance depends exclusively on considering a health condition of persons or technical state of things unless they mean a legal impediment of execution of a profession, job or business or another economic activity;
- h) decisions on not granting or depriving a professional capability of individuals unless they mean a legal impediment of execution of a profession or job;
- i) decisions on requests for a performance to that there is no legal claim or on requests for removing strictness of law, in particulars of decisions of financial authorities on relief concerning transfers, taxes and fees;
- j) decisions dismissing requests for approving exceptions to security regulations and to technical norms.

(3) Apart from the aforesaid cases, the court shall also not examine the decisions of administrative authorities issued on the basis of the provisions referred to in Annex A that is a part of this law as well as decisions whose examination shall be excluded by special laws.

## Section 249

(1) The proceedings shall be commenced upon a petition called a lawsuit.

(2) Apart from the general essentials of a motion, the lawsuit must contain identification of the decision of an administrative authority that is being contested, specification of the scope within that the decision is being contested, specification of the reasons for that the actor considers the decision unlawful and specification of the final petition of the actor.

## Section 250

(1) The actor and the defendant shall be the participants of the proceedings.

(2) The actor shall be defined as an individual or a legal entity asserting that his rights of a participant of administrative proceedings have been curtailed by the decision of the administrative authority. The lawsuit may be filed also by an individual or a legal entity

with whom the administrative authority did not proceed as with a participant although he should have been treated as a participant of the proceedings.

(3) If more persons consider themselves to have been curtailed in their rights by the decision of the administrative authority, they may file a joint lawsuit. The participants of the proceedings shall be also those to whom the decision of the court must also apply (Section 91 para. 2) due to indivisibly joint rights with the actor.

(4) The defendant shall be defined as the administrative authority that has decided in the last instance or an administrative authority to that the competence thereof has been transferred.

#### Section 250a

(1) The actor must be represented by an attorney of law or by a notary; this rule shall not apply if the actor has legal education or, as the case may be, if he acts through a person referred to in Section 21 or 21a para. 2 or Section 21b who has a legal education. A notary may represent the actor only within the scope of his powers provided by special legal regulations.<sup>57)</sup>

(2) Unless the condition referred to in paragraph 1 is met, the court shall proceed analogously according to Section 104 para. 2; this rule shall not apply if the lawsuit is delayed or filed by somebody who is obviously not entitled thereto or directed against a decision that can not be examined by the court.

(3) Paragraphs 1 and 2 shall not apply to cases where the local competence is exercised by district courts or to examining decisions in pension insurance cases, pension security cases or sickness insurance cases.

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57) Section 3 of the Act No. 358/1992 Sb., on notaries and their activity (Notarial Code), as amended by the Act No. 30/2000.

#### Section 250b

(1) The lawsuit must be filed within two months from the delivery of the decision of the administrative authority issued in the last instance unless a special law provides for anything else. Missing the period can not be pardoned.

(2) Where the lawsuit has been filed by a person asserting that the decision of the administrative authority has not been delivered to him although he should have been treated as a participant of the proceedings, the court shall verify whether this statement is correct and shall order that the administrative authority deliver the administrative decision to this participant; according to circumstances, the court shall also defer enforceability of the decision. The administrative authority shall be bound by this opinion of the court. After delivering the decision, the administrative authority shall submit the files to the court for the purpose of deciding on the lawsuit.

#### Section 250c

The lawsuit shall have no deferring effect on enforceability of the decision of the administrative authority unless a special law provides for anything else. Upon a request of the participant, the chairman of the panel may by a ruling defer enforceability of the decision where an immediate enforcement of the contested decision could result in a serious detriment.

#### Section 250d

(1) The chairman of the panel shall ask for the files of the sued administrative authority; the sued administrative authority shall submit them immediately together with the files of the first instance administrative authority.

(2) If the court comes to the conclusion that it is not materially or locally competent, it shall forward the case by a ruling to the competent court.

(3) The court shall stay the proceedings by a ruling if the suit is delayed, if it has been filed by a person being obviously not entitled thereto, if it is directed against a decision that can not be examined by the court, if the actor has not removed the defects of the lawsuit whose removal was ordered by the court and that prevent the court from executing the merits of the lawsuit or if the actor is not represented according to Section 250a or if the actor has withdrawn from the lawsuit (Section 250h para. 2).

#### Section 250e

Unless the lawsuit has been executed in the way referred to in Section 250d para. 2 and 3, the court shall deliver a copy of the lawsuit to the defendant. The chairman of the panel shall order that the defendant express his opinion on the contents of the lawsuit within a specified period.

#### Section 250f

(1) The court may decide on the lawsuit by a judgment without a meeting

a) where the contested decision can not be examined because it is not intelligible or because it lacks reasons; or

b) where the participants of the proceedings have proposed it accordingly or if they agree thereto.

(2) The consent according to paragraph 1 letter b) may be given also in the manner that the participant does not express his dissent from hearing the case without a meeting within fifteen days from the delivery of a call of the court. The participant must be warned against these consequences.

#### Section 250g

(1) Unless the lawsuit has been executed in the way referred to in Section 250d para. 3, Section 250f or Section 250i para. 2, the court shall order a meeting; for the purpose of

the meeting, the court may ask for necessary documents and, as the case may be, other written statements of the participants.

(2) If the participants fail to appear in the meeting, the case may be heard without their presence; the proceedings must not be interrupted for this reason.

#### Section 250h

(1) Until the decision of the court, the actor may change the scope of contesting the administrative decision; he may extend the scope only within the period according to Section 250b.

(2) Until the decision of the court, the actor may withdraw from the lawsuit; if costs of proceedings have meanwhile occurred to the defendant, the court shall decide on a reimbursement thereof.

#### Section 250i

(1) In examining the lawfulness of the decision, the court shall proceed from a factual state that existed at the moment when the contested decision was issued; no evidence shall be carried out.

(2) If the court finds out that there have been commenced administrative proceedings to examine the final and conclusive decision being contested, the court shall usually interrupt the lawsuit proceedings and shall wait for the results; if the contested decision is finally and conclusively quashed, changed or superseded by another decision, the court shall stay the proceedings.

(3) Defects of the proceedings before the administrative authority shall be taken into account by the court only if the arisen defects could have lead to the lawfulness of the contested decision.

#### Section 250j

(1) If the court comes to the conclusion that the contested decision is in accordance with law, the court shall pronounce by a judgment that the action is being dismissed.

(2) If the court comes to the conclusion that the administrative decision considered the case from the legal point of view incorrectly or that the ascertainment of the factual state from that the administrative decision proceeded is at variance with the contents of the files or that the ascertainment of the factual state is insufficient for considering the case, the court shall by a judgment quash the contested decision of the administrative authority and, according to circumstances, also the decision of the first instance administrative authority and shall return the case to the sued administrative authority to further proceedings. The court shall quash the contested decisions also if it is revealed at a meeting that they can not be examined due to unintelligibility or lack of reasons.

(3) The administrative authorities shall be bound by the legal opinion of the court.

(4) No remedy shall be admissible against the decision of the court.

## Section 250k

(1) If the actor has succeeded either wholly or in part, the court shall award him against the defendant a full or partial reimbursement of costs of proceedings. The court may also decide that the reimbursement of the costs of proceedings shall not be wholly or partially awarded if it is justified by reasons worth of special regard.

(2) If a new decision was issued after the decision of the administrative authority was quashed and if this new decision was quashed again on the basis of a new lawsuit due to the fact that the administrative authority deviated from the legal opinion expressed in the first judgment of the court even if no change of the factual or legal state has occurred, the court shall order that the administrative authority give the actor a reimbursement of all costs of the proceedings before the court.

## CHAPTER THREE

### DECIDING ON REMEDIES AGAINST DECISIONS

#### OF ADMINISTRATIVE AUTHORITIES

##### Section 250l

(1) The provisions of this Chapter shall apply to cases where a law confers upon the courts decision making on remedies against decisions of administrative authorities that have not yet become final and conclusive.

(2) Unless this Chapter provides for anything else, the provisions of Chapter Two shall apply analogously except for Section 250a.

##### Section 250m

(1) The proceedings shall be commenced upon a petition that shall be called a remedy against the decision of the administrative authority.

(2) The petition shall be filed with the competent court within thirty days from the delivery of the decision unless a special law provides for anything else. The petition shall be considered filed also if it has been filed during this period with the authority that issued the decision. Where the decision contains no proper instruction about the remedy, the decision may be contested within six months from the delivery thereof.

(3) The participants of the proceedings shall be those who are the participants of the proceedings before the administrative authority and the administrative authority whose decision is being examined. In pension insurance cases and in pension security cases, missing the period may be pardoned under the conditions referred to in Section 58 para. 1.

(4) A petition according to a special law<sup>57b)</sup> must be decided by the court within sixty days after the submission thereof.

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57b) Section 19 and Section 65 para. 1 of the Act No. 231/2001 Sb.

##### Section 250n

Where it is not excluded by the nature of the case, the person filing the remedy may propose deferring the enforceability of the contested decision. The court may grant such petition if carrying out the enforcement of the contested decision would frustrate the purpose of examination thereof.

#### Section 250o

Where the administrative authority whose decision is being examined by the court has issued a new decision completely granting the petition, the court shall stay the proceedings by a ruling.

#### Section 250p

Where the petition is delayed or is filed by a person not entitled thereto or where the petitioner contests a decision not being subject to examination or where the petitioner has not removed the defects the removal whereof was ordered by the court and that impede a meritorious deciding on the petition, the court shall reject the remedy by a ruling.

#### Section 250q

(1) Unless the remedy was executed in the way referred to in Section 250f, Section 250o or Section 250p, the court shall order a meeting. The court may carry out evidence as necessary for examining the contested decision.

(2) The court shall decide on the remedy by a judgment by that the examined decision shall be either confirmed or quashed and returned to further proceedings.

#### Section 250r

If the court quashes the decision of the administrative authority, the administrative authority, in hearing the case again, shall be bound by the legal opinion of the court.

#### Section 250s

(1) No remedies shall be admissible against the decision of the court save where a law provides for anything else.

(2) In pension insurance cases and in pension security cases,

a) the decision of the regional court may be contested by an appeal; the appeal shall be decided by the high court;

b) a final and conclusive decision of the high court may be contested by a recourse; the recourse shall be decided by the Supreme Court;

c) a final and conclusive decision of the regional court or the high court may be contested by a nullity suit that shall be decided in the first instance by a regional court; the appeal shall be decided by the high court and the recourse shall be decided by the Supreme Court.

(3) In the proceedings on appeal, nullity suit and recourse, it shall be necessary to proceed according to Part Four Chapter One, Two and Three of this Act. New facts and evidence may be invoked in the appeal.

#### Section 250t

A remedy against a decision on termination of special protection and assistance according to a special law<sup>57a)</sup> must be decided by the court within thirty days.

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57a) Act No. 137/2001 Sb., on special protection of a witness and another persons in connection with criminal proceedings and on amendment to the Act No. 99/1963 Sb., Civil Procedure Code, as subsequently amended.

## PART SIX

### ENFORCEMENT OF A DECISION

#### CHAPTER ONE

##### ORDERING AND CARRYING OUT

##### THE ENFORCEMENT OF A DECISION

#### Prerequisites of the enforcement of a decision

##### Section 251

Unless the obliged person fulfills voluntarily what is imposed upon him by an enforceable decision, the entitled person may file a petition for a judicial enforcement of the decision.

##### Section 252

(1) Save where a law provides for anything else, the competence to ordering and carrying out an enforcement of a decision, to activity of the court before ordering the enforcement of the decision and to a statement on property shall be exercised by the court of general jurisdiction of the obliged party.

(2) Where the obliged person has no court of general jurisdiction or where the court of his general jurisdiction is not located in the Czech Republic, the enforcement of the decision shall be ordered and carried out by the court in whose district the obliged person has assets; in case of enforcement of a decision by assignment of a receivable, the local competence shall be exercised by the court of general jurisdiction of a bank or another debtor of the obliged person or, as the case may be, by the court in whose district a

foreign debtor of the obliged person has located his enterprise or organizational component of his enterprise in the Czech Republic.

(3) In case of enforcement of a decision to exact maintenance of a minor child, instead of the court of general jurisdiction of the obliged person, the local competence to ordering and carrying out the enforcement of the decision and to activity of the court before ordering the enforcement of the decision shall be exercised by the court in whose district the minor's residence is located on the basis of an agreement of the parents or of a decision of the court or, as the case may be, of another decisive facts.

(4) Instead of the court of general jurisdiction of the obliged person and of the court referred to in paragraph 3, the enforcement of the decision shall be ordered and carried out by the court

a) in whose district the enterprise (or a part thereof) is located as for enforcement of the decision by sale of the enterprise (or a part thereof);

b) in whose district the real property is located if the enforcement of the decision affects the real property unless the competence according to letter a) is given.

(5) For serious reasons, the court competent according to paragraph 3 may, after ordering the enforcement of the decision finally and conclusively, transfer the local competence thereof to another court where it is in the interest of the minor. If the court to that the competence was transferred disagree to the transfer, it shall submit the case to its superior court unless the competence transfer issue has already been decided by the court of appeal; the decision of the superior court shall be binding also upon the court that has transferred the competence.

## Section 253

(1) The court shall order the enforcement of the decision usually without examining the obliged person. Eventual examination of the obliged person must not frustrate the purpose of the enforcement of the decision.

(2) The court shall order a meeting only if it considers it necessary or if it is provided by law.

## Section 254

(1) The enforcement of a decision shall be governed by the provisions of the preceding parts unless this Part provides for anything else. However, the court shall always decide by a ruling.

(2) In the course of the enforcement of the decision, the proceedings can not be interrupted for the reasons referred to in Part Three of this Act and missing a period can not be pardoned. It is not even possible to file a suit for reopening the enforcement of the decision; a nullity suit may be filed only for the reason referred to in Section 229 para. 4.

(3) In the course of the enforcement of the decision, the court shall provide the participants as well as other persons involved in the enforcement of the decision with instruction on their procedural rights and duties.

(4) An appeal may refer to new facts and evidence.

## Participants of the proceedings

### Section 255

(1) The participants of the enforcement of the decision shall be the entitled person and the obliged person.

(2) If an ordered enforcement of a decision affects things or rights falling within joint property of spouses, also the spouse of the obliged person shall be a participant of the proceedings with regard to these property values.

### Section 256

(1) The enforcement of the decision may be ordered and carried out against someone else than against the person identified in the decision as the obliged person or in favor of someone else than in favor of the person identified in the decision as the entitled person only if it is proved that the duty or right ensuing from the decision has passed to such person.

(2) The transition of the duty or right may be proved only by a document issued or certified by a state authority or by a notary<sup>76</sup>) unless such transition follows directly from law.

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76) Section 6 of the Act No. 358/1992 Sb.

## Ways of enforcement of a decision

### Section 257

An enforcement of a decision may be ordered and carried out only in the ways referred to in this Act.

### Section 258

(1) An enforcement of a decision imposing payment of a sum of money may be carried out by wage deductions, by assignment of a receivable, by sale of movable things or real property, by sale of an enterprise or by establishment of a judicial mortgage on real property.

(2) An enforcement of a decision imposing a duty other than payment of a sum of money shall be ruled by the nature of the imposed duty. It may be carried out by eviction, by taking away a thing, by dividing a common thing or by doing works and performances.

(3) An enforcement of a decision by sale of a pledge for the purpose of satisfying the secured receivable may be carried out by sale of the pledged movable things or mortgaged real property, of pledged aggregates of things, sets of things and flats or non-residential premises in ownership according to a special law, by assigning a pledged money receivable and by affecting another pledged property rights.

Activity of the court before ordering

the enforcement of the decision

Section 259

Where the entitled person asks therefor before filing a petition for enforcement of a decision or at the moment of filing such petition and where it is considered purposeful by the chairman of the panel, the court shall summon the obliged person and call him to fulfill voluntarily the duty imposed upon him by the decision.

Section 260

(1) In case of enforcing maintenance for a minor child, the court shall upon a participant's petition grant assistance with ascertaining the residence of the person to whom a duty ensues from the decision. In doing so, the court shall proceed in cooperation with another state authorities.

(2) Upon a petition of a participant whom the decision grants a right to payment of a sum of money, the court shall ask the person upon whom the payment of the sum of money is imposed of whether and from whom he receives wage or another regular income or, as the case may be, with which bank, branch of a foreign bank or a saving and crediting cooperative<sup>77)</sup> (hereinafter the "money institution") he has his accounts operated and what are the numbers of these accounts.

(3) The person being asked must answer within one week after the delivery of the request. If he fails to fulfill this duty or if he states false or incomplete particulars in the answer, the court may impose upon him a disciplinary fine (Section 53).

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77) Act No. 87/1995 Sb., on saving and crediting cooperatives and several measures related thereto and on amendment to the Act of the Czech National Council No. 586/1992 Sb., on income taxes, as subsequently amended.

Statement on property

Section 260a

(1) A person whose receivable has been awarded by an enforceable decision may, before filing a petition for enforcement of the decision, propose that the court summon the obliged person and call him to a statement on property.

(2) Unless the obliged person has a full capacity to legal acts or if the obliged person is a municipality, a higher territorial self-governing unit or a legal entity, the entitled person shall, where possible, identify the person to be summoned (Section 260c).

Section 260b

(1) The court shall grant the petition for statement on property only if the entitled person attaches to the petition documents proving that his receivable has not or could not have been satisfied even with an assistance of the court according to Section 260 by way of assignment of a receivable of the obliged person ensuing from an account of the obliged person in a money institute and if the entitled person attaches to the petition a copy of the decision with a clause of enforceability affixed thereto or another document necessary to ordering the enforcement of the decision; a copy of the decision shall not have to be attached if the petition is being filed with a court that decided on the case in the first instance.

(2) A petition for statement on property can not be granted

- a) where a period of protection was approved to the obliged person in the framework of bankruptcy proceedings;
- b) where bankruptcy has been adjudicated over the obliged person's assets;
- c) where a petition for composition has been filed in case of the obliged person;
- d) where an enforced administration has been introduced over the obliged person according to a special law.

#### Section 260c

(1) Where the obliged person has not a full capacity to legal acts, the court shall summon instead of the obliged person his legal representative.

(2) Where the obliged person is a municipality or a higher territorial self-governing unit, the court shall summon the person authorized by a special law to represent them outwardly.

(3) Where the obliged person is a legal entity, the court shall summon the person being a statutory body thereof; where the competence of the statutory body is exercised by more persons separately, the court shall summon any of them. Where the statutory body is composed by more persons, the court shall summon the chairman thereof; unless it is well possible, it shall be admissible to summon every member of this body who is entitled to act in the name of the legal entity. In case of a legal entity in liquidation, the court shall summon the liquidator.

(4) The person who has been summoned to the statement on property shall have to appear in the court personally.

#### Section 260d

(1) The writ of summons to the statement on property must specify the purpose of the examination and instruction about the consequences of rejecting the statement or about specifying false or grossly distorted particulars therein.78) Where the court considers it purposeful, the court may call the obliged person, his legal representative or the person giving the statement for a municipality, a higher territorial self-governing unit or a legal entity (hereinafter the "summoned person") to submit a list of assets of the obliged person containing the particulars referred to in Section 260e para. 2 and also documents proving these assets, as the case may be.

(2) The writ of summons shall be delivered to the summoned person personally. The writ of summons must be delivered at least ten days before the day when the examination is to take place.

(3) Where the person who has been duly summoned to the court does not appear without a timely and well-grounded apologize, such person shall be attached to the court; the summoned person must be instructed thereof.

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78) Section 256 para. 1 letter d) of the Act No. 140/1961 Sb., Criminal Act, as amended by the Act No. 253/1997 Sb.

#### Section 260e

(1) Before commencing the examination, the court shall call the summoned person to specify complete and true particulars of the assets of the obliged person; the court shall instruct him again of the consequences of not fulfilling this duty and of consequences of rejecting the statement.78)

(2) In the statement on property, the summoned person must identify

a) the payer of wage or another income that may be affected by wage deductions and the sum of this claim;

b) money institutes operating his accounts, the amount of the receivables and numbers of accounts;

c) the debtors against whom he has money receivables, the title and amount of these receivables;

d) persons against whom he has another property rights or property values, the title and value thereof (Section 320);

e) movable things (or a co-ownership interest therein) of the obliged person and where or, as the case may be, with whom they are located; the same rule shall apply to instruments referred to in Section 334 and to securities referred to in Section 334a;

f) real property (or a co-ownership therein) of the obliged person;

g) an enterprise of the obliged person or a part thereof and where it is located.

(3) The court shall take minutes from the statement on property according to paragraph 2; the list of property submitted by the summoned person shall be a part of the minutes if the summoned person declares that it contains complete and true particulars or if he completes this list into the minutes. Furthermore, the minutes shall specify the contents of the instruction given by the court (paragraph 1) and shall contain an explicit declaration of the summoned person that the statement on property contains only complete and true particulars concerning the assets of the obliged person. The minutes shall be signed by the judge, minutes clerk and the summoned person.

(4) The acts of the court according to this provision may be done only by a judge.

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78) Section 256 para. 1 letter d) of the Act No. 140/1961 Sb., Criminal Act, as amended by the Act No. 253/1997 Sb.

#### Section 260f

(1) The court shall inform the entitled person about the examination of the summoned person; the entitled person may put questions to the summoned person only with a consent of the court.

(2) Everyone whose money receivable against the obliged person has been awarded by an enforceable decision may inspect the files concerning the statement on property of the obliged person and may make extracts therefrom and copies thereof.

#### Section 260g

(1) The court shall abstain from the statement on property where the obliged person proves before the commencement of the examination that he has fulfilled (satisfied) the receivable of the entitled person or where the entitled person withdrew from his petition before the commencement of the examination.

(2) Where the entitled person states in the course of the examination that he does not insist that the summoned person specify further assets of the obliged person, the court shall not go on examining the summoned person; the minutes shall contain only the assets of the obliged person specified by the summoned person until the declaration of the entitled person.

(3) Where the obliged person made a statement on his property during six months before the submission of the petition (Section 260a para. 1), the court shall call the obliged person to a new statement on property only if it is revealed that the property condition of the obliged person has changed; this rule shall not apply if the examination of the summoned person was terminated according to paragraph 2.

#### Section 260h

Legal acts of the obliged person concerning his assets and done after a writ of summons to a statement on property was delivered to the summoned person (Section 260d) shall be ineffective as against the entitled person.

#### Ordering the enforcement of the decision

#### Section 261

(1) The enforcement of a decision may be ordered only upon a petition of the entitled person. A petition for enforcement of a decision imposing payment of a sum of money shall contain specification of the way the enforcement of the decision is to be carried out. Where the entitled person proposes enforcement of a decision by wage deductions, the entitled person shall identify in the petition the person as against whom the obliged person has a wage claim (wage payer). Where the entitled person proposes an enforcement of a decision by assignment of a receivable ensuing from an account operated by a money institute, the entitled person shall identify in the petition the money institute and the number of the account from that the receivable is to be charged off; where the entitled person identifies more accounts of the obliged person operated by the same money institute, the entitled person shall also specify the order in which the receivable is to be charged off. Where the entitled person proposes enforcement of a

decision by assignment of another money receivable, the entitled person shall identify in the petition the person as against whom the obliged person has a receivable (debtor of the obliged person) and the title of the receivable.

(2) The petition for enforcement of the decision must include a copy of the decision with a clause of the enforceability thereof. The clause of enforceability shall be attached to the decision by the court that decided on the case as the first instance court. The copy of the decision shall not have to be attached where the petition for enforcement of the decision is being filed with the court that decided on the case as the first instance court.

(3) Where the entitled person files a petition for enforcement of the decision with a court that decided on the case as the first instance court, this court shall confirm the enforceability of the decision directly on the petition; unless this court is competent to the enforcement of the decision, it shall forward the petition to the competent court.

#### Section 261a

(1) The enforcement of a decision may be ordered only if the decision contains identification of the entitled and obliged person, definition of the scope and contents of the duties for whose fulfillment the enforcement of the decision was proposed and specification of the period of fulfillment of the duty.

(2) Where the decision does not contain specification of the period for fulfillment of the duty, the duty imposed by the decision shall be presumed to have to be fulfilled within three days and, in case of eviction of a flat, within fifteen days from the moment when the decision has become final and conclusive.

(3) Where more obliged persons are to fulfill the duty according to the decision and where the performance is divisible, the duties shall be presumed to have to be fulfilled by all obliged persons by equal shares unless the decision provides for anything else.

(4) The provisions of paragraphs 1 to 3 shall not apply to a ruling on ordering a sale of a pledge. The enforcement of this decision may be ordered only if it contains identification of the entitled and obliged person, of the pledge and of the amount of the secured receivable and the accessories thereof.

#### Section 262

(1) If the duty imposed by the decision upon the obliged person is linked to fulfillment of a condition or to fulfillment of a mutual duty of the entitled person, the enforcement of the decision may be ordered only if the entitled person proves that the condition has been fulfilled or that he has already fulfilled his mutual duty against the obliged person or, as the case may be, that he is ready to fulfill it.

(2) In the cases referred to in paragraph 1, the clause of enforceability must include a document issued or certified by a state authority or by a notary<sup>76)</sup> revealing that the condition has been fulfilled or that the entitled person has fulfilled his mutual duty or, as the case may be, that he is ready to fulfill it.

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76) Section 6 of the Act No. 358/1992 Sb.

## Section 262a

(1) Enforcement of a decision against assets falling within joint property of spouses may be ordered also for the purpose of exacting an obligation that arose during the existence of marriage only to one of the spouses. For the purpose of ordering the enforcement of the decision, assets falling within joint property of the obliged person and his spouse shall include also assets being not a part of the joint property of spouses only due to the fact that the scope of the joint property of spouses as provided by law was restricted by an agreement or that an agreement reserved the rise of the joint property of spouses to the day of extinction of the marriage.79)

(2) In the course of the enforcement of the decision, the court shall not take account of an agreement restricting the legal scope of the joint property of spouses by assets that was a part of the joint property at the moment of rise of the exacted receivable. The same rule shall apply where the legal scope of the joint property of spouses was broadened by an agreement by assets of the obliged person that were not a part of the joint property at the moment of the rise of the exacted receivable.

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79) Section 143a of the Civil Code.

## Section 263

(1) The enforcement of a decision may be ordered only in a scope that has been proposed by the entitled person and that is, according to the decision, sufficient to his satisfaction.

(2) Where the entitled person proposes for the purpose of exacting his receivable an enforcement of a decision in more ways at the same time even though only one of them would be sufficient to satisfaction thereof, the court shall order the enforcement of the decision only in a way being sufficient to satisfying the receivable of the entitled person.

## Section 264

(1) Where the entitled person proposes an enforcement of a decision in a way being obviously unsuitable in particular with regard to inadequacy of the amount of the receivable and of the price of the item from that satisfaction of the receivable is to be achieved, the court may, after examining the entitled person, order the enforcement of the decision in another suitable way.

(2) The court shall dismiss the petition for the enforcement of the decision if the petition reveals that the proceeds that would be gained would be enough not even to cover the costs of the enforcement of the decision.

Carrying out the enforcement of the decision

## Section 265

(1) After ordering the enforcement of the decision, the court shall arrange for carrying it out.

(2) Individual acts concerning carrying out the enforcement of the decision may be done by an employee of the court (bailiff) where it is provided by law or by special regulations or where he has been entrusted therewith by the chairman of the panel; in the course of his activity, the bailiff shall keep to the instructions of the chairman of the panel. The bailiff may abstain from carrying out the enforcement of the decision without a command of the chairman of the panel only if the entitled person agrees thereto or where the obliged person fulfils voluntarily what has been imposed upon him by the decision.

(3) Where it is necessary for the bailiff to file a lawsuit or another petition for commencement of the proceedings with a court or another authority in connection with acts relating to carrying out the enforcement of the decision, the bailiff shall do so in the name of the state.

## Section 266

(1) Upon a petition, the court may suspend carrying out the enforcement of the decision where the obliged person has temporarily got without his fault into such a condition that an immediate enforcement of the decision would have extremely unfavorable consequences for him or for the members of his family and where the entitled person would not be seriously damaged by the suspension of the enforcement of the decision.

(2) Even without a petition of the obliged person, the court may suspend carrying out the enforcement of the decision if stay of the enforcement of the proceedings (Section 268) can be expected.

## Section 267

(1) A right to assets not admitting the enforcement of the decision may be exercised as against the entitled person in proceedings under Part Three of the Act on the basis of a petition to exclude a thing from the enforcement of the decision.

(2) The rule according to paragraph 1 shall analogously apply where an ordered enforcement of a decision has affected assets falling within the joint property of spouses or being considered a part of the joint property of spouses (Section 262a para. 1), however, the exacted obligation arose during the existence of the marriage only to one of the spouses in using the assets that

a) did not fall within the joint property of spouses according to an agreement on restriction of the scope of the joint property of spouses provided by law or according to an agreement on reserving the rise of the joint property to the day of extinction of the marriage<sup>79</sup>) provided that the entitled person had knowledge of the contents of the agreement at the moment of the rise of the exacted receivable;

b) was owned exclusively by the obliged person because he acquired them before the marriage or because he acquired them by way of succession or donation or for assets falling within his exclusive assets or because he acquired them according to the laws on restitution of assets that he owned before entering into the marriage or that were

surrendered to him as a legal successor of the original owner or because they serve only to his personal needs according to their nature.

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79) Section 143a of the Civil Code.

Section 267a

(1) On the basis of a petition filed against a creditor according to Part Three, it shall be possible to contest the existence, amount, group or order of any of the receivables filed into a distribution of proceeds or satisfied otherwise in the course of the enforcement of the decision where the enforcement of the decision has been ordered by wage deductions, by assignment of a receivable or of other rights or by sale of movable things, real property or an enterprise. Where the case does not fall within the jurisdiction of courts (Section 7 para. 1), the existence or amount of the receivable shall be decided by the relevant administrative or another authority.

(2) The decision on a petition according to paragraph 1 shall be effective as against all entitled persons, against another creditors of the obliged person taking part in the proceedings of enforcement of the decision and against the obliged person.

Stay of the enforcement of the decision

Section 268

(1) The enforcement of the decision shall be stayed where

- a) it has been ordered even though the decision has not yet become enforceable;
- b) the decision being the basis of the enforcement was quashed or became ineffective after the enforcement was ordered;
- c) the stay of the enforcement of the decision was proposed by the person who proposed ordering it;
- d) the enforcement of the decision affects things being excluded therefrom under Section 321 and 322;
- e) the course of the enforcement of the decision shows that the proceeds that will be gained will not be enough to cover even the costs thereof;
- f) the court has finally and conclusively decided that the enforcement of the decision affects assets to that somebody has a right not allowing the enforcement of the decision (Section 267);
- g) after the issuance of the decision, the right awarded thereby became extinct; where the right was awarded by a default judgment, the enforcement of the decision shall be stayed even if the right became extinct before the issuance of such judgment;
- h) the enforcement of the decision is inadmissible because of another reason for that the decision can not be enforced.

(2) The enforcement of the decision shall be stayed also where the obliged person made a deduction from the enforced money receivable of the entitled person according to special regulations<sup>35a</sup>) and transferred that deduction to the relevant authority; the enforcement of the decision shall be stayed in the extent he had to make this deduction.

(3) An enforcement of a decision by sale of a pledge shall be stayed if the right of pledge (mortgage) has become extinct.

(4) Where any of the reasons for stay concerns an ordered enforcement of the decision only in a part or where the enforcement of the decision was ordered in a scope being broader than what is enough to satisfy the entitled person, the enforcement of the decision shall be stayed in a part.

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35a) Section 83 of the Act of the Czech National Council No. 337/1992 Sb., on administration of taxes and fees, as subsequently amended.

Section 8 ff. of the Act of the Czech National Council No. 589/1992 Sb., on social security insurance premium and contribution to the state employment policy, as subsequently amended.

Section 5 ff. of the Act of the Czech National Council No. 592/1992 Sb., on public health insurance premium, as subsequently amended.

## Section 269

(1) The court shall stay an ordered enforcement of a decision even without a petition.

(2) In the cases referred to in Section 268 para. 1 letter g) and h), the court shall decide usually after a prior meeting.

(3) The enforcement of the decision can not be stayed only for the reason that the circumstances decisive for the amount and duration of allowances or instalments (Section 163 para. 1) have changed.

## Costs of the enforcement of the decision

### Section 270

(1) Together with ordering the enforcement of the decision, the court shall impose also a duty to reimburse the costs of the enforcement of the decision without specifying a period for payment thereof. The ordered enforcement of the decision shall apply also to these costs.

(2) The entitled person shall have the right to a reimbursement of all purposeful costs of the enforcement of the decision.

(3) The costs of carrying out the enforcement of the decision shall be paid by the state. Where the entitled person does not meet the conditions for exemption from judicial fees, the court may impose upon him to give an advance payment of the costs of carrying out the enforcement of the decision.

(4) The reimbursement of the costs of the enforcement of the decision shall be also governed by the provisions of Section 147 to 150.

## Section 271

Where an ordered enforcement of a decision was stayed, the court shall decide on reimbursement of costs arisen to the participants by carrying out the enforcement of the decision with respect to for what reason the enforcement of the decision was stayed. The court may also quash the hitherto decisions on the costs of the enforcement or impose upon the entitled person to return what the obliged person has paid him for costs of the enforcement of the decision.

## Enforcement of a decision on custody of minor children

### Section 272

(1) The provisions of Section 252 to 269 shall apply neither to an enforcement of a decision or of an approved agreement on custody of minor children and on regulation of a contact with them not to enforcement of a decision on returning a child; the participants of the proceedings shall be defined by Section 94 para. 1 first sentence.

(2) Before ordering the enforcement of the decision, the court shall either in writing or orally into minutes call the person who refuses to submit to the judicial decision or who fails to fulfill the agreement on custody of minor children and on regulation of a contact with them as approved by the court or who fails to fulfill a decision on returning a child to submit the judicial decision or to fulfill the agreement approved by the court. In this call, the court shall also ward against the consequences of not fulfilling the duties specified by the decision or agreement.

(3) The court may also ask the relevant authority of socio-legal protection of children to make the obliged person fulfill voluntarily the judicial decision or an agreement approved by the court concerning custody of minor children and regulation of a contact with them or the decision on returning the child without the necessity to order the enforcement of the decision.

### Section 273

(1) Where the call under Section 272 para. 2 remains without results, the court shall order an enforcement of a decision by that it

a) imposes a fine upon the person who fails to fulfill voluntarily a judicial decision or a judicially approved agreement on custody of minor children and, as the case may be, on regulation of contact with them or a decision on returning a child; the enforcement of a decision by imposing a fine may be ordered even repeatedly, individual fines must not exceed the sum of 50 000 Czech crowns and shall forfeit to the state; or

b) orders that the child be taken off from the person with whom the child is not to be according to the decision or agreement and be given to the person into whose custody it has been put or to whom it is to be returned according to the decision or agreement or to the person whom the decision or agreement award a right to a contact with the child for a limited period of time.

(2) The court may order the enforcement of the decision according to paragraph 1 letter b) even without a prior call according to Section 272 para. 2 where it is doubtless that the call can not lead to a voluntary fulfillment of the judicial decision or judicially approved agreement on custody of minor children and on regulation of contact with them or of a decision on returning the child or where fulfillment of the judicial decision or

judicially approved agreement on custody of minor children or of the decision on returning the child would be frustrated thereby.

(3) The writ of enforcement according to paragraph 1 letter b) shall be binding upon everyone. The court shall carry it out in cooperation with the competent state authorities.

(4) Where carrying out the enforcement of a decision by taking off a child requires so, the person carrying out the enforcement shall be entitled to make a visit of a flat or another premises of the obliged person or another person if it can be presumed that the child finds himself therein; for that purpose, he shall be entitled to obtain access to the flat and another premise of the obliged person or another person.

(5) The enforcement of a judicial decision or a judicially approved agreement on custody of minor children and on regulation of the contact with them or of a decision on returning a child shall be carried out by the court referred to in Section 88 letter c).

### Section 273a

(1) Where the court has ordered by a provisional measure that a minor child be put into the custody of a specified person (Section 76a), the court shall see to it that this decision is also immediately enforced.

(2) The enforcement of the decision shall be carried out in the manner that the court cooperating with the relevant state authorities shall put the minor child into the custody of the specified person; if the child stays with another person, the child shall be taken off from such person. The provisions of Section 272 para. 2 and 3 and Section 273 para. 1 to 3 and 5 shall not apply.

(3) The enforcement of this decision shall be carried out by the court that has ordered the provisional measure. The provision of Section 76a para. 3 shall apply analogously.

### Application of the provisions for enforcement of a decision

#### Section 274

The provisions of Section 251 to 271 except for Section 261a para. 2 and 3 shall also apply to the enforcement of

- a) enforceable decisions of courts and another authorities being active in criminal proceedings where they award a right or affect assets;
- b) enforceable decisions of commissions of arbitration and of settlements approved thereby;
- c) enforceable decision of state notaries and of agreements approved thereby;
- d) notarial records with a consent to enforceability made according to a special law;80)
- e) enforceable decisions of authorities of state administration and territorial self-governance including payment assessments, assessments of tax arrears or fee arrears as well as of settlements approved by these authorities;
- f) enforceable decisions and assessments of arrears in sickness insurance cases and social security cases;
- g) another enforceable decisions, approved settlements and documents that may be enforced by a court according to law.

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80) Section 71a to 71c of the Act No. 358/1992 Sb., as amended by the Act No. 30/2000 Sb.

#### Section 275

(1) A clause of enforceability shall be affixed to the decisions or, as the case may be, to the assessment of arrears by the authority that issued them; in case of settlements and agreements, by the authority that approved them.

(2) However, the court shall, before ordering the enforcement of the decision, always be entitled to verify the correctness of the clause of enforceability of all enforceable documents.

(3) Before staying the enforcement of the decision in the cases referred to in Section 274, the court shall usually ask for a statement of the authority that issued the decision or the assessment of arrears as the case may be or that approved the settlement or agreement being subject to the enforcement.

## CHAPTER TWO

### WAGE DEDUCTIONS

#### The scope of deductions

##### Section 276

Wage deductions may be carried out only up to the amount of the receivable being exacted by way of the enforcement of the decision including the accessories.

##### Section 277

(1) The deductions shall be carried out from a net wage that shall be calculated by reducing the wage by an advance payment of the individual income tax deducted from income from dependent activity and function benefits, by social security insurance premium, by a contribution to the state employment policy and by public health insurance premium (hereinafter the "deducted sums"). The deducted sums shall be calculated according to the conditions and rates as valid for the obliged person in the month for that the wage is being ascertained.

(2) The net wage shall include the net remuneration for secondary activity carried out by the employee for the person by whom he is employed. However, it shall not include sums paid as a remuneration of costs connected with the labor performance, in particular in case of work trips.

##### Section 278

A basic sum must not be deducted from the monthly wage of the obliged person; the way of calculation of the basic sum shall be provided by the decree of the Government of the Czech Republic.

#### Section 279

(1) The net wage remaining after reducing the basic sum shall be rounded down to a sum divisible by three and expressed in whole Crowns; only one third may be deducted from this net wage for the purpose of enforcing the receivable of the entitled person. Two thirds may be deducted for the purpose of enforcing priority receivables referred to in paragraph 2. the priority receivables shall be satisfied first from the second third; where this third is not enough to cover them, they shall be satisfied from the first third together with the other receivables.

(2) The priority receivables shall be defined as

- a) maintenance receivables;
- b) receivables for compensation of damage caused to the damaged person by health injury;
- c) receivables for compensation of damage caused by intentional crimes;
- d) tax receivables and fees receivables;
- e) receivables of reimbursement of sickness insurance allowances overpaid, pension insurance allowances overpaid and pension security allowances overpaid;
- f) receivables of social security insurance premium and contribution to the state employment policy and receivables of public health insurance premium;
- g) receivables of a reimbursement for a contribution to maintaining a child and contribution to covering the needs of a child put into fostering custody.

(3) The Government of the Czech Republic shall provide by a decree for a sum where the rest of the net wage calculated according to paragraph 1 first sentence exceeding this sum shall be deducted without limits.

#### Section 280

(1) Where the deductions are carried out for the purpose of enforcing more receivables, the individual receivables shall be satisfied from the first third of the rest of the net wage according to their order regardless of whether they are priority receivables or other receivables.

(2) Where the deductions are carried out from the second third of the rest of the net wage according to Section 279 para. 1, it shall be first necessary to satisfy the maintenance receivables regardless of the order; other priority receivables shall be satisfied subsequently according to the order (paragraph 3). Where the sum deducted from the second third is not enough to satisfy all maintenance receivables, it shall be necessary to satisfy first a current maintenance of all entitled person and then earlier arrears according to the ratio of current maintenance. However, where the sum deducted from the second third would not even cover current maintenance of all entitled persons, the sum deducted from the second third shall be distributed among them proportionally according to the amount of the current maintenance regardless of the amount of arrears.

(3) The order of receivables shall be determined by the day when the writ of enforcement was delivered to the wage payer. Where a writ of enforcement concerning more receivables was delivered to him on the same day, these receivables shall have the same order; where the sum falling thereto is not enough to a full satisfaction thereof, they shall be satisfied proportionally.

#### Section 281

It shall not be admissible to carry out wage deductions higher than allowed by this law even if the obliged person agrees thereto.

#### Ordering and carrying out the deductions

#### Section 282

(1) In the writ of enforcement, the court shall command that the wage payer should, after the delivery of the writ of enforcement, carry out deductions from wage of the obliged person and not pay the deducted sums to the obliged person.

(2) The court shall deliver the writ of enforcement to the entitled person, to the obliged person and to the wage payer. The delivery to the obliged person and to the wage payer must be done personally.

(3) On the day of the delivery of the writ of enforcement or of a ruling containing information of ordering the enforcement of the decision (Section 294 para. 3), the obliged person shall lose the right to payment of the part of the wage corresponding to the specified amount of deductions.

#### Section 283

As soon as the writ of enforcement becomes final and conclusive, the court shall inform thereof the wage payer who shall subsequently pay the entitled person the sums deducted from the wage of the obliged person.

#### Section 284

(1) The wage payer shall stop carrying out the deductions as soon as the receivable of the entitled person is satisfied (Section 276).

(2) Where the enforcement concerns a decision awarding the entitled person a right to repeating sums, the writ of enforcement shall apply also to the sums to become due in the future. The same rule shall apply where the decision imposes upon the obliged person to pay a sum of money in instalments.

(3) Where the judgment is changed in the course of the enforcement of the decision according to Section 163 in the manner that the maintenance is increased, the writ of enforcement shall apply also to all sums of the increased maintenance; the increased maintenance shall have the same order as the rest of the receivable.

## Section 285

(1) Where the wage payer pays the monthly wage twice (as a prepayment and a statement), the adequate deductions may be carried out also from the prepayment. However, the deductions shall be paid to the entitled person always after the end of the relevant calendar month.

(2) Where the writ of enforcement was delivered to the wage payer after the part of the monthly wage has already been paid to the obliged person, the realized payment shall not be taken into account and the deductions shall be carried out as if the obliged party had for the whole month a right only to wage that has not yet been paid to him.

(3) Where the prepayment is paid for a period being longer than one month, it shall be necessary to calculate the parts of the paid prepayment falling to the individual months; the deductions shall be carried out from a monthly remuneration calculated in this way. The total remuneration of the obliged person for the last year shall be equally distributed to individual months. Final calculation of the deductions shall be done from the monthly remuneration and the entitled person shall be paid the difference between the sums that should have been deducted in the individual months and the sums that have really been paid to the entitled person from the prepayments.

## Section 286

Where the wage is paid for more months all at once, the deductions shall be calculated individually for each month.

## Section 287

(1) Where the entitled person and the obliged person agree that that entitled person shall agree to deductions being lower than those provided by Section 277 to 280 and where they both inform the court thereof, the court shall call the wage payer to carry out deductions from the obliged person's monthly wage only in a sum agreed by the entitled person unless this sum exceeds during the relevant payment period the admissible sum of deductions according to this law. Where such excess occurs, the wage payer shall deduct in the relevant payment period only the sums within the limit allowed by the provisions of Section 277 to 280.

(2) The entitled person may inform the court at any time that he withdraws from his consent to making deductions being lower according to paragraph 1. The court shall notify it to the obliged person and to the wage payer.

(3) The call of the court to make lower deductions shall lose effect on the day of delivery to the wage payer of a further writ of enforcement by deductions from the obliged person's wage or a notification of the court that the entitled person has withdrawn from his consent to making lower deductions. As of that day, the wage payer shall make the deductions according to the previous writ of enforcement in a full extent.

## Section 288

Where it is required by the wage payer, by the entitled person or by the obliged person, the court shall determine what sum should be deducted from the wage of the obliged person in the relevant payment period and, where there are more entitled persons, what part of this sum shall fall to each of them.

#### Suspending and staying the enforcement of the decision

##### Section 289

(1) Where the court approves a suspension of the enforcement of the decision according to Section 266 para. 1, the wage payer shall not carry out deductions from the obliged person's wage from the day of the delivery of the ruling on approving the suspension until the day of the delivery of a writ of the court commanding that the deductions go on.

(2) Where the court approves a suspension of the enforcement of the decision according to Section 266 para. 2, the wage payer shall go on making the deductions; however, he shall not pay these deductions to the entitled person until the suspension of the enforcement is set aside.

##### Section 290

(1) Upon a petition of the wage payer or of the obliged person, the court shall stay the ordered enforcement of a decision by wage deductions, if the obliged person has been receiving for a year either no wage at all or a wage whose amount makes the deductions impossible.

(2) Upon a petition of the obliged person, the court may stay an ordered enforcement of a decision by wage deductions where the deductions are being carried out only for current maintenance and where it can be presumed that the obliged person will, with regard to his behavior and attitude to work, go on paying the maintenance voluntarily.

#### Payment of the deductions made

##### Section 291

(1) The wage payer shall pay the deducted sum directly to the entitled person. However, where more receivables are to be satisfied from the deductions made, the wage payer may send the sum deducted to the court that shall distribute it among the entitled persons and make the payment on its own. The wage payer shall have to send the sum deducted to the court where it was imposed upon him by the court upon a petition of any of the entitled person.

(2) The wage payer must pay the sum deducted to the entitled person even if he himself has a money receivable against the entitled person that could be otherwise set off.

##### Section 292

Where the wage payer does not carry out due and timely deductions from the wage of the obliged person or where he carries them out in a scope being lower than the provided one or where he does not pay the deductions to the entitled person without delay after the delivery of a notification that the writ of enforcement became final and conclusive or after further monthly wage sums became due, the entitled person may exercise with the court a right against the wage payer to payment of the sums that should have been deducted from the wage of the entitled person.

#### Change of the wage payer

##### Section 293

(1) If the person of the wage payer changes after the enforcement of the decision was ordered, the writ of enforcement of the decision by wage deductions shall apply also to the wage of the obliged person with the new wage payer.

(2) The new wage payer shall have the duty to carry out the deductions from the day when he is informed by the obliged person or by the hitherto wage payer of the fact that an enforcement of a decision by deductions from wage of the obliged person has been ordered by the court and of for what receivables; where the new wage payer learn of these circumstances earlier, this duty shall arise on the day when the ruling according to Section 294 para. 3 is delivered to him. The order a receivable of the entitled person gained according to Section 280 para. 3 shall remain unaffected also with the new wage payer.

(3) The change of the wage payer according to paragraph 1 shall not be considered to have occurred where the obliged person gains after the enforcement of the decision was ordered a claim to a money allowance of sickness insurance compensation wage and where the allowance is paid to him by the wage payer.

##### Section 294

(1) A person who is accepting an employee to work must ask the employee for a certificate issued by the person for whom he worked the last time as for whether, by which court and in whose favor an enforcement of a decision by deductions from his wage was ordered. Every employer must give such certificate to an employee who stopped working for him.

(2) If a person with whom the obliged person entered a new job finds out that an enforcement of a decision by deductions from his wage has been ordered, such person shall notify it without delay to the court that ordered the enforcement.

(3) The court shall personally send the person with whom the obliged person entered a new job a ruling informing him of the enforcement of the decision by wage deductions, of the hitherto course of the enforcement of the decision, in particular of the amount of the deductions already made, of the sum of the receivable for that the deductions are to go on being carried out and of the order thereof; the court shall call him to go on carrying out the deductions from the day when the ruling according to this paragraph is delivered to him and shall instruct him of all his duties relating to the enforcement of the decision by wage deductions.

##### Section 295

(1) If the obliged person stopped working for the hitherto wage payer, he must notify it within one week to the court that ordered the enforcement of the decision. The obliged person must within one month inform the court that he has entered a job with a new wage payer.

(2) The wage payer must inform the court within one month that the obliged person stopped working for him. At the same time, the wage payer shall send the court a final account of deductions he carried out from the wage of the obliged person and paid to the entitled persons and shall inform the court for which receivables the enforcement of the decision by wage deductions was ordered and what is the order of these receivables.

#### Section 296

(1) Where any wage payer fails to fulfill a duty referred to in Section 294 para. 1 and 2 or Section 295 para. 2, the entitled person may demand that the wage payer pay him the sums he would be entitled to if the wage payer has fulfilled the aforesaid duties.

(2) For not fulfilling the duties referred to in Section 294 and 295, the court may impose a disciplinary fine (Section 53) upon both the obliged person and the wage payer.

#### More wage payers

#### Section 297

(1) Where the obliged person receives the wage from more wage payers, the writ of enforcement of the decision shall apply to all his wage.

(2) Every wage payer shall carry out the wage deductions from the day when the writ of enforcement was delivered to him.

(3) Where the obliged person enters a job without stopping working for the hitherto wage payer, the provisions of Section 293, 294 and 296 shall apply analogously.

#### Section 298

(1) Where the court orders that the wage deductions be carried out by more wage payers, the court shall determine what part of the basic sum (Section 278) must not be deducted by each individual wage payer. If the income of the obliged person received from any wage payer does not reach even the aforesaid part of the basic sum, the wage payer must notify it to the court. The court shall subsequently determine again what part of the basic sum must not be deducted by individual wage payer. The court may also order that, in particular where the deductions are carried out only for current maintenance, the deductions be carried out only by one of the wage payer and that the other wage payers not go on carrying out the deductions.

(2) Where the wage deductions are carried out by more wage payer at the same time, they shall always send the deductions to the court. The court shall make sure that the total sum of deduction does not exceed the receivable of the entitled person. Where the receivable is not exceeded, the court shall pay the whole sum to the entitled person. Where the receivable is exceeded, the court shall pay the entitled person only a part of

the sum deducted that corresponds to his receivable and return the rest to the obliged person.

#### Deductions from another revenues

##### Section 299

(1) The provisions on enforcement of the decision by wage deductions shall apply also to the enforcement of the decision by deductions from salary, work remuneration of members of cooperatives and from revenues compensating the remuneration for work, in particular from pension allowances, sickness insurance allowances, money assistance of motherhood, scholarship, reimbursement of lost earnings, reimbursement paid for exercise of public offices and from material security of an applicant for job.

(2) In case of enforcement of a decision by deductions from pension allowances of an individual paying therefrom costs for accommodation in a social care institution, the enforcement of the decision shall not apply to a sum necessary to covering the accommodation and the sum being equal to the sum of pocket money in such an institution.

(3) The provisions relating to enforcement of a decision by wage deductions shall apply also to enforcement of the decision by deductions from remuneration ensuing from a work activity agreement.

(4) Remuneration for execution of work under Section 236 of the Labor Code shall not be considered another revenues within the meaning of paragraph 1 regardless of what has been agreed on the due date of the remuneration.

##### Section 300

Where members of cooperatives are paid prepayments for a period longer than one month, it shall be necessary to calculate what part of the prepayment paid falls to the individual months; the deductions shall be carried out from the monthly remuneration calculated in this way.

##### Section 301

(1) Where the provisions relating to enforcement of a decision by wage deductions use the term "wage payer", the relevant provisions shall apply also to a legal entity or an individual as against whom the obliged person has claim to any of the revenues referred to in Section 299.

(2) Increase of pension allowances due to disability shall not be included to the net income.

##### Section 302

(1) Where the obliged person has, apart from the wage claim, also a right to another revenue referred to in Section 299, it shall be necessary to proceed as if the matter is more wages.

(2) Where the obliged person, after the enforcement of the decision by wage deductions, acquires instead of a part from the wage also a right to any of the revenues referred to in Section 299, the writ of enforcement shall apply also to this revenue.

## CHAPTER THREE

### ASSIGNMENT OF A RECEIVABLE

Assignment of a receivable ensuing from an account  
with a money institution

#### Section 303

(1) Enforcement of a decision by assignment of a receivable ensuing from an account with a money institution may be ordered in case of a receivable of the obliged person ensuing from a current account, deposit account or another type of account maintained in any currency by a money institution being active in inland save where a law provides for anything else.

(2) The provisions on assignment of a receivable ensuing from an account shall apply neither to deposits on saving books nor to deposit certificates nor to other forms of deposits.

#### Section 304

(1) In the writ of enforcement of a decision by assignment of a receivable ensuing from the account, the court shall command that the money institution should after the delivery of the ruling not pay money means from the account of the obliged person, not set off receivables against such receivable and not dispose thereof in any way up to the amount of the enforced receivable with accessories. Where the court orders the enforcement of the decision against more accounts of the obliged person, the ruling shall also specify the order in that the enforced receivable shall be charged off.

(2) The court shall deliver the writ of enforcement to the entitled person, to the obliged person and to the money institution. The delivery to the money institution shall be done personally. The writ of enforcement must not be delivered to the obliged person before it is delivered to the money institution.

(3) At the moment of the delivery of the writ of enforcement to the money institution, the obliged person loses the right to withdraw the money means from the account, to use it for payments and to dispose thereof in any other way up to the sum of the enforced receivable and the accessories thereof.

#### Section 304a

(1) The bans referred to in Section 304 para. 1 and 3 shall not apply to money means destined by the obliged person to paying his employees wages (salaries), reimbursement of wages (salaries) and other performance reimbursing a remuneration for work that are to be paid in the next term of payments following the day of the delivery of the writ of enforcement to the money institution; wages (salaries), reimbursement of wages (salaries) and performance reimbursing remuneration for work that are to be paid in the following terms can not be covered from the receivable ensuing from the account before the enforcement of the decision ceases to exist.

(2) The money institution shall pay the money means referred to in paragraph 1 to the obliged person if the obliged person submits his written statement specifying the purpose of the payment, the total sum and the names of employees with specification of the sum of the wage (salary), reimbursement of wage (salary) or another performance reimbursing the remuneration for work that are to be paid to them; the signature of the obliged person on the statement must be officially verified.

(3) The money institution shall inform the court of the payment of the money means to the obliged person. Where it is imposed by the court, the obliged person shall give the court an account of the payment of wages (salaries), reimbursements of wages (salaries) or another performance reimbursing remuneration for work to his employees.

#### Section 305

The court shall inform the obliged person and the money institution of the fact that the writ of enforcement became final and conclusive; the delivery of the notification to the money institution must be done personally.

#### Section 306

(1) Up to the sum of the enforced receivable and the accessories thereof, the writ of enforcement shall apply to the receivable of the obliged person ensuing from the account in a sum equal to the total sum of money means on the account at the moment of the delivery of the writ of enforcement to the money institution as well as to a receivable from the account arisen due to the fact that certain money means was transferred to the account additionally but not later than within six months from the day of the delivery of the notification according to Section 305 to the money institution; the duty of the money institution to make a rectifying account according to a special law<sup>81)</sup> and the provision of Section 304a shall not be affected by this rule.

(2) The enforcement of the decision shall cease to exist by carrying it out (Section 307, 308, Section 309a para. 1 and 3).

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81) Section 20b of the Act No. 21/1992 Sb., on banks, as amended by the Act No. 165/1998 Sb.

#### Section 307

(1) The enforcement of the decision shall be carried out by charging the enforced receivable and accessories thereof off the account and by paying it to the entitled person.

Where the enforcement of the decision has been ordered against more account of the obliged person, the money institution shall carry out the enforcement of the decision from the individual account in accordance with the order specified in the writ of enforcement.

(2) The money institution shall carry out the enforcement of the decision on the day following the day of the delivery of the notification according to Section 305; however, where the receivable of the obliged person ensuing from the account has not yet become due, the money institution shall carry out the enforcement of the decision on the day following the due day of the receivable. The enforcement of the decision shall be carried out even if the receivable from the account of the obliged person is enough only to a partial satisfaction of the entitled person.

(3) Where the enforced receivable and the accessories thereof has not been fully satisfied according to paragraph 2, the money institutions shall carry out the enforcement of the decision also on the day following the day when money means are transferred to the account in a sum being necessary to the full satisfaction of the entitled person. Where this does not happen within six months after the delivery of the notification according to Section 305, the money institution shall carry out the enforcement of the decision with respect to the money means transferred additionally also on the day following the lapse of the aforesaid period or, as the case may be, inform the entitled person of the fact that no money means was deposited on the account of the obliged person. The money institution shall charge the receivable off the account and pay it to the entitled person even if it is not enough to his full satisfaction.

(4) The money institution must pay the entitled person the receivable charged off the account of the obliged person even if it has a money receivable against the entitled person that could otherwise be set off.

(5) By carrying out the enforcement of the decision, the money institution shall be relieved of his duty against the obliged person within the scope of the performance paid to the entitled person.

## Section 308

(1) Where the court approves a suspension of the enforcement of the decision (Section 266) and where the ruling of approving the suspension before the enforcement was done, the money institution shall not carry out the enforcement of the decision until the delivery of a notification of the court that the suspension was cancelled.

(2) Where the court stays the enforcement of the decision, the duties of the money institution referred to in Section 304 para. 1 and effects of the enforcement of the decision referred to in Section 304 para. 3, Section 306 and 307 shall expire on the day when the ruling on stay of the enforcement of the decision became final and conclusive; where the enforcement of the decision has been stayed only in a part, this rule shall apply analogously to the relevant part of the receivable from the account. The court shall notify the money institution of the fact that the ruling on stay (partial stay) of the enforcement of the decision became final and conclusive.

## Section 309

(1) Where the enforcement of the decision by assignment of the receivable from the same account was ordered for the purpose of enforcing more receivables, the individual receivables shall be satisfied according to their order.

(2) The order of the receivables for that the enforcement of the decision was ordered shall be determined by the day of the delivery of the writ of enforcement of the decision to the entitled person; where writs of enforcement of more receivables were delivered to the money institution on the same day, these receivables shall have the same order. Where the receivable from the account of the obliged person is not enough to satisfy all the enforced receivables having the same order, these receivables shall be satisfied proportionally; the provision of Section 316 para. 2 and 3 shall apply here analogously.

#### Section 309a

(1) Where the receivable from the account of the obliged person has been pledged<sup>82)</sup> or assigned to stand security for a receivable of a creditor of the obliged person<sup>83)</sup> or transferred for securing an obligation of the obliged person in favor of his creditor<sup>84)</sup> and where these rights have a prior order than has the receivable for that the enforcement of the decision was ordered, the enforcement of the decision by assignment of the receivable or a part thereof affected by these rights may be carried out only if these rights became extinct without completely withdrawing money means from the account on the basis thereof. In such case, the money institution shall carry out the enforcement of the decision according to Section 307 para. 2 and 3 or, as the case may be, on the day following the day when it learnt of the extinction.

(2) Where the rights referred to in paragraph 1 have a later order than has the receivable for that the enforcement of the decision was ordered, they shall not be taken into account in carrying out the enforcement of the decision.

(3) Where the rights referred to in paragraph 1 have the same order as has the receivable for that the enforcement of the decision was ordered and where the part of the receivable from the account affected by the enforcement of the decision (Section 306 para. 1) and not affected by these rights is not enough to a full satisfaction of the enforced receivable, the enforced receivable or an unsatisfied part thereof shall be satisfied proportionally; the provision of Section 316 para. 2 and 3 shall apply here analogously. The money institution shall carry out the enforcement of the decision analogously according to Section 307 para. 3.

(4) The order of the rights referred to in paragraph 1 shall be governed by the day of their rise.

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82) Section 151h of the Civil Code.

Section 72 of the Act No. 337/1992 Sb., as amended by the Act No. 255/1994 Sb.

83) Section 554 of the Civil Code.

84) Section 553 of the Civil Code.

#### Section 310

Regulations excluding or limiting use of receivables ensuing from an account maintained by a money institution for a purpose other than the specified purpose shall not

be affected by the provisions concerning assignment of the receivable from an account with a money institution.

## Section 311

Where the money institution does not proceed in the manner specified by the provisions of Section 304 para. 1 and Section 307 to 309a, the entitled person may demand, even if there is not enough money on the account of the obliged person, that the money institution pay him a sum to that he would be entitled if the money institution had proceeded correctly.

## Assignment of other money receivables

### Section 312

(1) Enforcement of the decision by assignment of a money receivable of the obliged person other than a receivable ensuing from an account maintained by a money institution or than the claim referred to in Section 299 may be ordered even if the receivable of the obliged person becomes due in the future and even if individual receivables of the obliged person ensuing from the same legal title are still to arise in the future gradually.

(2) The enforcement of the decision shall affect the receivable of the obliged person up to the sum of the receivable of the entitled person and the accessories thereof for that the enforcement was ordered.

### Section 313

(1) In the writ of enforcement, the court shall enjoin the obliged person from disposing of his receivable in any way. The court shall enjoin the debtor of the obliged person from paying the receivable to the obliged person, to set off a receivable against it or to dispose thereof in any way after the moment of the delivery of the writ of enforcement.

(2) The court shall deliver the writ of enforcement to the entitled person, to the obliged person and to the debtor of the obliged person. The delivery to the debtor of the obliged person must be done personally. The writ of enforcement must not be delivered to the obliged person before it is delivered to the debtor of the obliged person.

(3) The obliged person shall lose the right to the receivable at the moment of the delivery of the writ of enforcement to the debtor of the obliged person.

### Section 314

As soon as the writ of enforcement becomes final and conclusive, the court shall notify it to the obliged person and to the debtor of the obliged person; the delivery of the notification to the debtor of the obliged person must be done personally.

### Section 314a

(1) The enforcement of the decision shall be carried out in the manner that the debtor of the obliged person shall, after the writ of enforcement becomes final and conclusive, pay the entitled person to receivable in the extent it has been affected by the enforcement of the decision.

(2) Where the receivable has already become due, the debtor of the obliged person shall pay it to the entitled person on the day following the delivery of the notification according to Section 314; where the receivable of the obliged person has not yet become due on this day, he shall pay it to the entitled person as soon as it becomes due.

#### Section 314b

(1) Where the receivable of the obliged person has been assigned to stand security for a receivable of a creditor of the obliged person<sup>83)</sup> and where this right has a prior order than has the receivable for that the enforcement of the decision was ordered, the enforcement of a decision concerning the receivable affected in this way may be ordered only if the right has become extinct without completely paying the receivable to the creditor of the obliged person. In such case, the debtor of the obliged person shall pay the receivable (or a part thereof) to the entitled person as soon as he learns of the extinction of the right; the provision of Section 314a para. 2 shall not be affected by this rule.

(2) Where the right referred to in paragraph 1 has a later order than has the receivable for that the enforcement of the decision was ordered, it shall not be taken into account in the course of the enforcement of the decision.

(3) Where the right referred to in paragraph 1 has the same order as the receivable for that the enforcement of the decision was ordered and where the part of the receivable affected by the enforcement of the decision (Section 312 para. 2) and not affected by this right to a full satisfaction of the enforced receivable, the enforced receivable or the unsatisfied part thereof shall be satisfied proportionally.

(4) The order of the right referred to in paragraph 1 shall be determined by the day of the rise thereof.

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83) Section 554 of the Civil Code.

#### Section 315

(1) Where the debtor of the obliged person does not pay the entitled person the receivable according to Section 314a para. 2 or according to Section 314b para. 1 and 3 as the case may be, the entitled person may in his own name demand in proceedings according to Part Three or in proceedings according to a special law as the case may be that the debtor of the obliged person pay the receivable. However, he must neither enter into a settlement with the debtor of the obliged person with respect to this receivable to the detriment of the obliged person nor remit the payment thereof. In such case, the debtor of the obliged person must not set off his own receivable he has against the entitled person.

(2) Where the entitled person does not exercise the receivable of the obliged person against the debtor of the obliged person timely with the court or another authority as the

case may be or where he does not inform the obliged person that he exercises it, he shall be liable to the obliged person for the damage that could eventually arise to the obliged person because of it.

#### Section 316

(1) Where the enforcement of the decision was ordered for more receivables, the individual receivables shall be satisfied in the order the writ of enforcement was delivered to the debtor of the obliged person. Where a writ of enforcement for more receivables was delivered to him on the same day and where these receivables could not be fully satisfied, the debtor of the obliged person shall satisfy these receivables proportionally.

(2) Where more receivables are to be satisfied, the debtor of the obliged person may transfer the sum deducted to the court. The debtor of the obliged person shall have to transfer the sum deducted to the court where it has been imposed upon him by the court upon a petition of any of the entitled persons. The court shall distribute the sum transferred sum among the entitled persons and shall pay them the sums belonging to them.

(3) By transferring the sum deducted to the court, the debtor of the obliged person shall be relieved of his duty against the obliged person up to the amount of this sum.

#### Receivables not being subject to the enforcement of the decision

#### Section 317

(1) The enforcement of the decision can not affect receivables of a compensation paid by an insurance company according to an insurance agreement where the compensation is to be used to building a new building or to fixing a building.

(2) The enforcement of the decision shall affect neither social care allowances paid in money nor state social support allowances paid in a lump sum according to a special law.<sup>85)</sup>

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85) Act No. 117/1995 Sb., on state social support, as subsequently amended.

#### Section 318

Receivables of individuals being businessmen that arose in the course of their business activity shall be subject to the enforcement of the decision only by two fifths; however, in case of proposing an enforcement of the decision for any of the priority receivables referred to in Section 279 para. 2, they shall be subject to the enforcement of the decision by three fifths. The order of satisfaction of the priority receivables shall be adequately governed by the provision of Section 280 para. 2 and 3.

#### Section 319

(1) Where the obliged person is the author, receivables of copyright remuneration shall be subject to the enforcement of the decision only by two fifths; however, where the enforcement of the decision is sought for any of the priority receivables referred to in Section 279 para. 2, they shall be subject to the enforcement of the decision by three fifths. The order of satisfaction of the priority receivables shall be adequately governed by the provision of Section 280 para. 2 and 3.

(2) Where the author is paid the remuneration through the mediation of a protecting organization, the court shall deliver the writ of enforcement also to the protecting organization that shall subsequently have the rights and duties of a debtor of the obliged person. The writ of enforcement shall apply both to the sums that have already been deposited with the protecting organization in favor of the obliged person and to sums that will be deposited therewith during the current calendar year.

(3) The provision of paragraphs 1 and 2 shall analogously apply to receivables ensuing from rights of performing artists and from rights of authors of intellectual property rights.

### Affecting another property rights

#### Section 320

(1) The enforcement of the decision may be ordered by affecting a right other than wage, a money receivable or a claim referred to in Section 299 if the matter is a right having a property value and not being connected with the obliged person and not being transferable to anyone else.

(2) This enforcement of the decision shall be adequately governed by the provisions of Section 312 para. 2, Section 313 to 316 save where the law provides for anything else.

(3) Where the right of the obliged person consists in surrendering or supplying movable things; these things shall always be given to the court; surrendering or supplying the things shall be enforced by the bailiff in the way referred to in Section 315 para. 1. The court shall subsequently proceed according to Section 326b and 328 to 334a analogously.

#### Section 320a

(1) Where ordering the enforcement of the decision according to Section 320 para. 1 leads to extinction of the participation of the obliged person in a business company or a cooperative or where it leads to winding-up of a business company,<sup>86)</sup> the enforcement of the decision shall affect the receivable of the obliged person ensuing from his right to a settlement amount or from the right to a share of the assets remaining after liquidation as the case may be.

(2) The enforcement of the decision for a receivable ensuing from the right to settlement amount or, as the case may be, from the right to a share of the assets remaining after liquidation shall be governed by the provisions of Section 312 para. 2, Section 313 to 316 adequately.

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<sup>86)</sup> Section 88 para. 1 letter f), Section 93 para. 2, Section 102 para. 3, Section 148 para. 2 and Section 231 para. 1 of the Commercial Code.

## CHAPTER FOUR

### SALE OF MOVABLE THINGS AND OF REAL PROPERTY

Things not being subject to enforcement of the decision

#### Section 321

The enforcement of the decision can not affect things whose sale is prohibited by special regulations or that are not subject to the enforcement of a decision according to special regulations.

#### Section 322

(1) In case of things owned by the obliged person, the enforcement of the decision can not affect those the obliged person necessarily needs for satisfying material needs of his and his family or for fulfilling his work tasks as well as another things whose sale is contrary to moral principles.

(2) In this way, in particular the following things shall be excluded from the enforcement of the decision:

- a) usual parts of clothing, usual equipment of a household;
- b) wedding ring and other items of personal nature;
- c) medical tools and other things the obliged person needs with regard to his sickness or body defect;
- d) money in cash in a sum of up to 1 000 Czech crowns.

(3) Where the obliged person is a businessman, the enforcement of the decision can not affect the things being owner by him he necessarily needs for execution of his business activity; this rule shall not apply where these things are encumbered by a right of pledge (mortgage) and where the enforcement of the decision is to enforce the receivable secured by this lien.

(4) The provisions of paragraphs 1 and 3 shall apply also to things co-owned by the obliged person.

Sale of movable things

#### Section 323

(1) The enforcement of the decision may be ordered on the basis of a petition of the entitled person either containing an explicit identification of things to be sold or containing no such specification.

(2) Where the entitled person has knowledge that the obliged person has located any movable thing of his outside his flat (seat, place of business), the entitled person shall, where possible, specify in the petition for the enforcement of the decision where such thing is located.

## Section 324

In the writ of enforcement, the court shall enjoin the obliged person from disposing of the things that will be listed by the bailiff.

## Section 325

(1) The writ of enforcement of a decision by sale of movable things shall be delivered to the obliged person at the moment of carrying out the enforcement. Where the obliged person is not present at carrying out the enforcement, the ruling shall be delivered to him with a notification that the list has been made and what things have been listed.

(2) The notification that the list has been made and what things have been listed shall be delivered also to the entitled person and to the spouse of the obliged person.

## Section 325a

Where it is required by the purpose of the enforcement of the decision, the person carrying out the enforcement may make a search of the obliged person and a visit to his flat (seat, place of business) and other premises of the obliged person as well as of the cases and another boxes located therein where the obliged person has located his assets; for that purpose, the person carrying out the enforcement shall be entitled to enter the flat or another premise of the obliged person or, as the case may be, to open closed cases or another boxes.

## Section 325b

(1) The obliged person shall allow the person carrying out the enforcement of the decision to enter all places where the obliged person has located his movable assets.

(2) Everyone in whose building the obliged person has his flat (seat, place of business) or his another premises must admit the person carrying out the enforcement of the decision to make a visit of the flat and another premises of the obliged person. Where this person fails to fulfill this duty, the person carrying out the enforcement of the decision shall have the right to obtain access to the flat or another premise.

## Section 326

(1) In the flat (seat, place of business) of the obliged person or in another place where the obliged person has located his things, the court shall list the things that could be sold within a scope that the proceeds from sale of listed things are enough to satisfy the entitled person's receivable being enforced together with costs of the enforcement of the decision. The court shall list in particular things the entitled person can miss and that can be sold in the easiest way; quickly perishable things shall be listed only if another things are not enough and if a quick sale thereof may be arranged for. Movable things being accessories of a real property can not be listed.

(2) The obliged person's things held by someone else shall be listed by the court only if the court is simultaneously given such things.

(3) Where the enforcement of the decision was ordered regarding certain movable things of the obliged person, the court shall list only things identified in the writ of enforcement.

(4) The entitled person shall have the right to be present at listing the things. The court shall not list things with regard to which the entitled person explicitly states that they should not be listed.

(5) The court shall add further things to the list where the proceeds from the sale of the listed things is not enough to satisfaction of the receivable of the entitled person or where an additional enforcement of the decision by sale of movable things of the obliged person has been ordered.

(6) Where necessary, the person making the list shall call a suitable person, a representative of a municipal authority if possible, upon assistance at the act.

#### Section 326a

If the court fails list any thing in the flat (seat, place of business) of the obliged person or in another place whereof the courts has knowledge, the court shall notify it to the entitled person and shall call him to identify the place of location of things of the obliged person that could be sold. Where the entitled person fails to identify such place within the specified period or where no things were listed even in the place identified by the entitled person, the court shall stay the enforcement of the decision.

#### Section 326b

(1) Quickly perishable things shall be taken by the court from the obliged person and sold outside an auction as soon as they were listed.

(2) Where the court fails to sell these things and where even the entitled person refuses to assume them for a price specified by the court, they shall be given back to the obliged person.

#### Section 327

(1) Upon a petition of the entitled person, the court shall see to a suitable conservation of the things included to the list.

(2) Where the conservation of movable things demands costs, the court shall carry out the conservation only if the entitled person deposits a prepayment of these costs.

(3) Listed movable things that were not conserved shall be let on the place where they were listed and shall be labeled so that it is obvious by which court they were listed and in what case of enforcement of the decision.

#### Section 328

(1) After the writ of enforcement becomes final and conclusive, the listed things shall be estimated save where the price is laid down officially.<sup>36)</sup> The estimation shall be done by the court; an expert shall be called upon assistance where an estimation done in simple cases by the bailiff in listing the thing is not sufficient.

(2) The estimation under paragraph 1 shall not have the form of a decision of the court.

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36) Section 5 of the Act No. 526/1990 Sb., on prices.

#### Section 328a

(1) After the writ of enforcement of the decision becomes final and conclusive and after the estimation of the listed things is done, the court shall see to it that

- a) particularly important works of art and sculpture and monuments;
- b) manuscripts of particularly important works of literature;
- c) personal souvenirs and correspondence of particularly important writers and cultural functionaries as well as another souvenirs of museum nature left by these persons;
- d) items of more important cultural and historical nature and sets thereof

are offered to cash purchase to institutions whose task is to care for such monuments; they must be offered to purchase for at least the estimated price.

(2) Where these institutions do not answer to the offer within thirty days after the delivery of the call and do not lodge the estimated price with the court, the court shall sell even these items in the manner as follows.

#### Section 328b

(1) The listed things shall be sold in an auction.

(2) The auction may be carried out in the place where the listed things are located or in another suitable place. Where necessary, the court shall see to it that the listed things are transported to the place where the auction takes place. Unless the things have been conserved, the obliged person shall surrender the listed things to auction; where the obliged person fails to do so voluntarily, the things shall be taken away from him.

(3) The court shall notify the term of auction to the obliged person, to his spouse, to the entitled person and to the municipal body in whose district the auction is to take place and in whose district the obliged person has his residence. Apart from it, the term of auction shall be publicized in a manner as usual in the given place.

(4) The auction shall be carried out by the bailiff who shall take the auction down to minutes. Neither judges nor employees of courts nor the obliged person nor his spouse are allowed to auction.

#### Section 329

(1) The lowest bid shall amount to one third of the estimated or officially determined price. The bidders shall be bound by their bids until a higher bid is done. The sum of the price of the auctioned things shall not be limited by provisions of price regulations.

(2) The court shall give the knock down to the highest bidder. Where more bidders have done the same bid and where no higher admissible bid was done, the court shall decide by lot to whom the knock down shall be given save where these bidders agree to anything else. The highest bidder must pay his bid immediately; where he fails to do so, the thing shall be auctioned again without his presence.

(3) At the moment of transition of the ownership to the highest bidder, liens and rights of retention as well as other encumbrances over the thing shall become extinct.

### Section 330

(1) The auction shall be terminated as soon as the reached proceeds are enough to satisfy all entitled persons.

(2) Where no buyer of the things being auctioned is found, the court shall order a repeated auction.

(3) Things for that no buyer was found even in the repeated auction may be assumed by the entitled person within fifteen days after the notification of the fact that the auction was unsuccessful; he may assume them for one third of the estimated or officially determined price. Where more entitled persons are willing to assume the things, their order (Section 332 para. 1) shall be decisive. The sale done by way of assumption shall have the same effects as a sale in auction. Where the entitled person refuses to assume these things, the court shall exclude them from the list. A ruling thereon shall be delivered to the entitled person and to the obliged person.

(4) Things that have been finally and conclusively excluded from the list shall be returned to the obliged person. Where the obliged person refuses to accept these things or where his residence is unknown, the court shall proceed according to Section 185g adequately; the period under Section 185g para. 1 shall start running from the day when the ruling on exclusion of the thing from the enforcement becomes final and conclusive.

### Section 331

(1) Where the enforcement of the decision by sale of movable things was ordered only for satisfying one receivable only, the court shall, after deducting the costs of the sale, pay the entitled person the proceeds gained.

(2) Where the enforcement of the decision by sale of movable things was ordered for satisfying more receivables even after one another, the court shall, after deducting the costs of the sale, pay each entitled person the proceeds from sale of those things that were listed in favor of his receivable. Proceeds from sale of things that were listed in favor of more receivables shall be paid according to the order.

(3) Where the proceeds gained exceed the receivable for satisfaction whereof the enforcement of the decision was ordered, the rest of the proceeds shall be paid to the obliged person. Where the obliged person refuses to accept the rest of the proceeds or where his residence is unknown, the court shall proceed analogously according to Section 185g; the period under Section 185g para. 1 shall start running from the day when the

obliged person refused to accept the rest of the proceeds or when the rest of the proceeds was returned to the court as being undeliverable.

#### Section 331a

(1) In case of sale in the auction of a thing that was pledged,<sup>87)</sup> retained<sup>88)</sup> or transferred to stand security for an obligation of the obliged person in favor of his creditor,<sup>84)</sup> the court shall pay the proceeds from the sale first to the creditor whose receivable was secured by the right of retention. In paying the proceeds to the pledgee, to the creditor whose receivable was secured by transfer of the right and to the entitled person in whose favor the things was listed, the court shall proceed according to the order.

(2) In case of movable things that have been pledged separately (by a collective lien) to stand security for more receivables,<sup>89)</sup> the court shall proceed according to Section 337d adequately.

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84) Section 553 of the Civil Code.

87) Section 151a ff. of the Civil Code.

Section 72 of the Act No. 337/1992 Sb., as amended by the Act No. 255/1994 Sb.

88) Section 151s ff. of the Civil Code.

89) Section 151f para. 2 of the Civil Code.

Section 72 of the Act No. 337/1992 Sb., as amended by the Act No. 255/1994 Sb.

#### Section 332

(1) The order in that the court carries out payment of the individual receivables shall be determined by the day of the delivery to the court of a petition for enforcement of the decision for the individual receivables.

(2) The order of a right of pledge and of a security transfer of a right shall be determined by the day of the rise thereof.

(3) Where more receivables have the same order and the proceeds from the sale are not enough to satisfy them fully, these receivables shall be satisfied proportionally. Regardless of the order, it shall be necessary to satisfy first the receivables required by a legal regulation to be satisfied with priority.

Cash money and other things not being to be sold

#### Section 333

(1) Where there is found in the course of the enforcement of the decision a sum of money in currency of the Czech Republic exceeding the sum being excluded from the enforcement of the decision under Section 322 para. 2 letter d), the sum being subject to the enforcement of the decision shall be treating as being the proceeds from the sale (Section 331, 332).

(2) Where there is found in the course of the enforcement of the decision worldly tradable gold, money means in a foreign currency and another foreign exchange values,<sup>90)</sup> they shall be treated according to special regulations. The proceeds gained shall be distributed and paid according to Section 331 and 332.

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90) Section 1 letter d) of the Act No. 219/1995 Sb.

#### Section 334

(1) Saving books, deposit certificates and other forms of deposits, shares, bills of exchange, promissory notes, cheques and other certificated securities and another documents the submission whereof is required in exercising a right shall be listed in the same manner as another things; however, they shall always be given to the court.

(2) A saving book or another form of deposit similar thereto shall be submitted by the court to a money institution; the court shall withdraw the sum the obliged person is entitled to. The money institution shall carry out the payment even if this payment is tied.

(3) In case of deposit certificates, shares, bills of exchange, promissory notes or another certificated securities or another documents the submission whereof is required in exercising a right, the court shall, according to the nature of the security of document, either call the person being to pay to transfer the relevant performance to the court or arrange for turning them into cash. In doing so, the court shall proceed adequately according to the provisions on enforcement of a decision by assignment of a receivable; acts necessary to exercising the right that are to be done according to special regulations by the obliged person as being the person entitled from the securities or another documents shall be done by the bailiff instead of the obliged person.

(4) The sum gained shall be treated as proceeds of the sale (Section 331 to 332).

#### Section 334a

(1) Book-entered and immobilized securities shall be listed as soon as the court learns of the fact that such securities are registered in favor of the obliged person with the Securities Center or with another register provided by a special law.<sup>91)</sup> Where necessary or in case of doubts, the court shall ask the Securities Center or the authority maintaining another register provided by a special law (hereinafter the "Center") for a report.

(2) After making the list, the court shall inform the Center of what book-entered or immobilized securities of the obliged person have been listed, of the day when the list was made and of the fact that the obliged person must not dispose thereof from that day (Section 324). The Center shall enter the contents of the information in the registration thereof maintained according to a special law.

(3) Listed book-entered and immobilized securities shall be turned into cash by the court in accordance with special regulations. The necessary measures shall be taken by the bailiff; in doing so, the bailiff shall have the same rights as are the rights belonging otherwise to the obliged person being an owner of the account with the Center or being a person entitled from these securities.

(4) The provision of Section 334 para. 4 shall apply adequately.

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91) Act No. 591/1992 Sb., on securities, as subsequently amended.

## Sale of real property

### Section 335

(1) Enforcement of a decision by sale of real property may be ordered if the entitled person identifies the real property the sale whereof is being proposed and if he submits documents issued or verified by state authorities or, as the case may be, by verified documents of a notary<sup>76)</sup> proving that the real property is owned by the obliged person. For the purpose of the enforcement of a decision by sale of real property, the real property shall be defined as immovable things and flats or non-residential premises owned according to a special law. The court shall inform the relevant cadastral authority of the fact that a petition for ordering enforcement of a decision by sale of the real property has been filed.

(2) A petition of a further entitled person for ordering an enforcement of a decision by sale of the same real property filed with the competent court before the court finally and conclusively ordered the enforcement of the decision shall be considered joining the proceedings as of the day of submission of the petition. A petition of a further entitled person filed with an incompetent court shall be forwarded by the court to the competent court without any decision thereon being made; in such case, the petition shall be considered joining the proceedings as of the day when the petition was delivered to the competent court. The further entitled person must accept the state of the proceedings existing on the day when he joined the proceedings.

(3) The entitled person may withdraw from his petition before the writ of enforcement becomes final and conclusive. However, the court shall stay the proceedings only if all the entitled person who joined the proceedings agree thereto.

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76) Section 6 of the Act No. 358/1992 Sb.

### Section 335a

(1) In ordering the enforcement of the decision by sale of real property, the court shall proceed from the state existing at the moment of commencement of the proceedings.

(2) The writ of enforcement shall apply to the real property with all parts and accessories thereof; the same rule shall apply also to movable things being an accessory of the real property.

### Section 335b

(1) In the writ of enforcement, the court shall

- a) enjoin the obliged person from transferring the real property to someone else or to encumber it after the delivery of the ruling;
- b) order that the obliged person inform the court within fifteen days from the delivery of the ruling of whether and who has a preemption right to the real property; the ruling must

contain a warning that where the obliged person fails to inform the court, he shall be liable for the damage caused thereby.

(2) The writ of enforcement shall be delivered by the court to the entitled person, to those who joined the proceedings as further entitled persons, to the obliged person, to the spouse of the obliged person and to the relevant cadastral office.

(3) After the writ of enforcement becomes final and conclusive, the court shall deliver the writ of enforcement to the persons known to the court as having a preemption right, real right or a right of lease to the real property, to the financial office and to the municipal office in whose district the real property is located and in whose district the obliged person has his residence (seat, place of business); the court shall also publish the writ of enforcement on the official board of the court. The court shall inform the relevant cadastral office of the fact that the writ of enforcement became final and conclusive.

### Section 336

(1) After the writ of enforcement becomes final and conclusive, the court shall appoint an expert and impose upon him to value the real property and the accessories thereof and to value individual rights and encumbrances connected with the real property. Where this law provides for nothing else, in valuating the real property, the expert shall proceed according to a special regulation.<sup>92)</sup>

(2) Where necessary, the court shall check over the real property and the accessories thereof. The court shall notify the time and place of the checking over to the entitled person, to those who joined the proceedings as further entitled persons, to the obliged person, to the expert and to the persons being known to the court as having rights to or encumbrances on the real property. The obliged person and other persons as the case may be must enable the court to check over the real property and the accessories thereof as necessary to valuation and ascertaining the condition of rights and encumbrances connected with the real property.

(3) Where the real property and the accessories thereof were valued in the manner referred to in paragraphs 1 and 3 during year before the writ of enforcement became final and conclusive and where the circumstances being decisive for the valuation have not changed, the court may abstain from a new valuation.

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92) Section 2 para. 1 of the Act No. 151/1997 Sb., on valuation of property and on amendment to several acts (Property Valuation Act).

### Section 336a

(1) With respect to the results of the valuation and checking over carried out according to Section 336, the court shall determine

- a) the price of the real property and of the accessories thereof;
- b) the price of individual rights and encumbrances connected with the real property;
- c) encumbrances that will not become extinct by sale in auction;
- d) the final price.

(2) Within the meaning of paragraph 1 letter c), the encumbrances shall be defined as easements provided by special regulations, lease of flats and other easements and rights of lease where the interest of the society requires them to go on encumbering the real property.

(3) In calculating the final price, the encumbrances under paragraph 1 letter c) shall be subtracted from the price of the real property and accessories thereof and from the price of rights connected with the real property.

(4) The ruling according to paragraph 1 shall be delivered by the court to the entitled person, to those who joined the proceedings as further entitled persons, to the obliged person and to the persons known to the court as having rights and encumbrances to the real property. A meeting shall not have to be ordered.

## Section 336b

(1) After the price ruling (Section 336a) becomes final and conclusive, the court shall order the auction.

(2) In the verdict of the ruling on ordering the auction (auction decree), the court shall mention

- a) the time and place of the auction (Section 336d);
- b) identification of the real property and the accessories thereof;
- c) the final price (Section 336a);
- d) the amount of the lowest bid (Section 336e para. 1);
- e) the amount of the security and the way of payment thereof (Section 336e para. 2);
- f) rights and encumbrances connected with the real property;
- g) rights and encumbrances that will not become extinct by sale of the real property in auction [Section 336a para. 1 letter c)];
- h) conditions under that the highest bidder may assume the auctioned real property and under that he becomes the owner thereof (Section 336l para. 1 and 2);
- i) instruction that the entitled person, those who joined the proceedings as further entitled persons and other creditors of the obliged person may demand satisfaction of recoverable receivables or receivables secured by a mortgage other than are the receivables for that the enforcement of the decision was ordered only if they file the receivables until the commencement of the auction, if they specify in the application the amount of the receivable and accessories thereof and if they prove them by relevant documents; the auction decree must also contain a warning that the court shall not take account of applications not specifying the amount of the receivable or of the accessories thereof (Section 336f);
- j) a call that the entitled person, those who joined the proceedings as further entitled persons and other creditors of the obliged person who demand satisfaction of their receivables in the framework of distribution of the estate (Section 336f) must inform the court of whether they demand payment of their receivables; the call must contain warning that where they fail to ask for payment before the commencement of the auction, the highest bidder may take over the debt of the obliged person as against them (Section 336g);

k) a call that anyone who has a right to the real property not admitting the auction (Section 267) must exercise the right and prove such exercise of the right not later than before the commencement of the auction; the call must contain a warning that in a contrary case, his right shall not be taken into account in the course of carrying out the enforcement of the decision;

l) information that persons having a preemption right to the real property may exercise it only in the auction as bidders and that the preemption right shall become extinct by granting a knocking down.

#### Section 336c

(1) The court shall deliver the auction decree to

a) the entitled person, to those who joined the proceedings as further entitled persons, to the obliged person, to the spouse of the obliged person, to the persons known to the court as having a preemption right, a real right or a right of lease to the real property and to the persons who have filed their recoverable receivables or receivables secured by a mortgage against the obliged persons and have proved them by the relevant documents;

b) the financial office and to the municipal authority in whose district the real property is located and in whose district the obliged person has his residence (seat, place of business);

c) those who collect social security insurance premium, contribution to the state employment policy and public health insurance premium;

d) the competent cadastral office;

e) the district office in whose district the real property is located.

(2) The delivery of the auction decree to the persons referred to in paragraph 1 letter a) shall be done by the court personally.

(3) On the day of the issuing the auction decree, the court shall publish it on the official board of the court and shall ask the municipal authority in whose district the real property is located to publish the auction decree or the important contents thereof in a manner usual in the place; the court shall also ask the competent cadastral office to publish the auction decree or important contents thereof on its official board. At the same time, the court shall remove the writ of enforcement from the official board of the court.

(4) In well-grounded cases, the court may publish the auction decree or the important contents thereof in statewide or local press or in another suitable way.

(5) An appeal against the decree of auction may be filed only by the entitled person, by those who joined the proceedings as further entitled persons, by the obliged person and by the persons having a preemption right, real right or a right of lease to the real property. It shall not be admissible to appeal only the verdicts referred to in Section 336b para. 2 letters a), b), f), h) to l).

#### Section 336d

(1) The auction may be carried out in the place where the real property is located or with the court or in another suitable place.

(2) The court shall order the auction at least thirty days after issuing the auction decree.

#### Section 336e

(1) The lowest bid shall be determined by the court in the sum of two thirds of the final price [Section 336a para. 1 letter d)].

(2) The amount of the security shall be determined by the court with respect to the circumstances of the case but maximally in a sum not exceeding three quarters of the lowest bid. The security may be paid either in cash with the cash-desk of the court or to the account of the court; the payment to the account of the court may be taken into account only where the court made sure before the commencement of the auction that the payment arrived to the account.

(3) A person who intends to exercise his preemption right during the auction must prove the existence thereof with the court not later than before the commencement of the auction. Before commencing the auction itself, the court shall decide whether the preemption right is proved; no appeal shall be admissible against this decision.

#### Section 336f

(1) A creditor having against the obliged person a receivable awarded by a decision, settlement or another document referred to in Section 274 (recoverable receivable) or a receivable secured by a mortgage may file such receivable with the proceedings until the commencement of the auction. The entitled person and the person who joined the proceedings as a further entitled person may file their receivables only if they were awarded them by a decision, settlement or another document referred to in Section 274 after the writ of enforcement became final and conclusive.

(2) The application must contain specification of the amount of the receivable whose satisfaction is demanded by the creditor and of the accessories thereof or the receivable shall not be taken into account; the auction decree must warn the creditor against this consequence. The application must include documents proving that the receivable is recoverable or secured by a mortgage save where these facts follow from the contents of the file.

(3) Delayed applications shall be rejected by the court by a ruling; no appeal shall be admissible against this ruling.

#### Section 336g

(1) Where the entitled person or a person who joined the proceedings as a further entitled person or a creditor who has filed an application (Section 336f) that he demands payment of his receivable, the highest bidder shall be entitled to take over the debt of the obliged person against these creditors.

(2) By taking over the debt according to paragraph 1, the highest bidder shall enter as a debtor the position of the obliged person; the consent of the creditor shall not be required.

(3) Where the receivable taken over by the highest bidder becoming the debtor instead of the obliged person is secured by a mortgage to the auctioned real property, the mortgage shall be effective as against the highest bidder.

#### Section 336h

(1) The auction may be ruled only by a judge. Individual acts by which no decision is made may be done in the course of the auction by the bailiff or by another employee of the court upon an entrustment of the judge; in doing so, the bailiff or another employee of the court shall keep to the instructions given by the judge.

(2) Only a person who paid a security until the commencement of the auction (Section 336e para. 2) may take part in the auction as a bidder.

(3) An individual may auction only personally or through the mediation of a representative whose power of attorney was officially verified. A legal entity, a municipality, a higher territorial self-governing unit or the state may auction either through the persons referred to in Section 21, 21a and 21b whose powers must be proved by an officially verified document or through their representative whose power of attorney was officially verified.

(4) The following persons must not auction: judges, employees of courts, the obliged person, the spouse of the obliged person, the bidder referred to in Section 336m para. 2 and those who are prevented by a special regulation from acquiring the real property.

#### Section 336i

(1) Where the court finds out that a lawsuit for exclusion of the real property being sold from the enforcement of the decision (Section 267), the court shall adjourn the auction until the decision on the lawsuit becomes final and conclusive.

(2) After commencing the auction, the court shall first decide whether a preemption right is proved (Section 336e para. 3) and announce which creditors have filed their receivables and in what amount, which creditors asked for payment of their receivables and in what amount and which receivables may be taken over by the highest bidder and what is the amount of these receivables.

(3) After carrying out the acts under paragraph 2, the court shall call the persons who are allowed to auction to make their bids.

(4) The auction shall take place until the bidders make their bids; the bidders shall be bound by their bids until the court grants knocking down. The price of the auctioned property shall not be limited by provisions of price regulations.

#### Section 336j

(1) The knocking down may be granted to the person who made the highest bid and meets the other conditions provided by law. Where more bidders made the same highest bid, the court shall grant the knocking down first to the person entitled from a preemption right and then, where the highest bidders fail to agree on anything else, to the bidder determined by lot.

(2) Before granting the knocking down, the court shall ask the persons being present at the auction whether they have objections against granting the knocking down; objections raised the entitled person, by a person who joined the proceedings as a further entitled person, by the obliged person and by a bidder shall be taken down to the minutes.

(3) Where the court finds objections against the knocking down well-grounded, the auction shall go on by calling the last but one bid; no appeal shall be admissible against this ruling. In a contrary case, the court shall by a ruling grant the knocking down.

(4) In the ruling on granting the knocking down, the court shall specify a period for payment of the highest bid; this period shall start running on the day when the ruling on knocking down becomes final and conclusive and must not be longer than two months. The security deposited by the highest bidder shall be set off against the highest bid.

(5) The bidders who were not granted the knocking down shall be given back the paid security after the end of the auction; however, where they raised objections against the knocking down, they shall be given back the security after the ruling on knocking down becomes final and conclusive.

#### Section 336k

(1) The ruling on knocking down shall be delivered by the court to the entitled person, to the person who joined the proceedings as a further entitled person, to the obliged person, to the highest bidder and to the bidders who raised objections against granting the knocking down.

(2) An appeal against the ruling on granting the knocking down may be filed only by the person referred to in paragraph 1. Within fifteen days from the day of auction, the appeal may be filed also by the persons referred to in Section 336c para. 1 letter a) to whom the auction decree was not delivered where they did not take part in the auction for that reason.

(3) The court of appeal shall change the ruling on granting the knocking down in the manner that the knocking down shall not be granted where the proceedings were affected by such defects that the appealing person could not take part in the auction or where the knocking down was granted because a violation of law occurred in ordering or carrying out the auction. The provision of Section 221 shall not apply.

(4) The ruling of the court of appeal shall be delivered to the persons referred to in paragraph 1. Where the ruling on the knocking down was changed by the court of appeal, the first instance court shall order a new auction.

#### Section 336l

(1) The highest bidder shall be entitled to take over the auctioned real property with accessories thereof on the day following the day of issuance of the ruling on knocking down; the highest bidder shall inform the court thereof.

(2) The highest bidder shall become owner of the auctioned real property with accessories if the ruling on knocking down became final and conclusive and if he paid the highest bid; he shall be considered the owner of the real property back to the day of issuance of the ruling on knocking down.

(3) A preemption right to the auctioned real property shall become extinct on the day when the highest bidder became the owner thereof.

(4) A highest bidder who has not become the owner of the auctioned real property must give the property back to the obliged person, surrender the proceeds and compensate the damage he caused to the obliged person in managing the real property and accessories thereof.

#### Section 336m

(1) Where not even the lowest bid was made in the auction, the court shall end the auction. The next auction shall be ordered by the court upon a petition of the entitled person or of the person who joined the proceedings as a further entitled person; such petition may be filed not earlier than after the lapse of three months from the unsuccessful auction; where the petition was not filed within one year, the court shall stay the enforcement of the decision.

(2) Where the highest bidder failed to pay the highest bid even within an additional period specified by the court and not exceeding one month, the ruling on knocking down shall be quashed by a vain lapse of the additional period and the court shall order a new auction.

(3) In the next auction under paragraphs 1 and 2, the lowest bid shall be specified in the sum of one half of the final price [Section 336a para. 1 letter d)]; ordering and carrying out the next auction shall be analogously governed by the provisions of Section 336b to 336d, Section 336e para. 2, Section 336g, 336h, Section 336i para. 3 and 4, Section 336j to 336l.

#### Section 336n

(1) The highest bidder referred to in Section 336m para. 2 shall reimburse the costs arisen to the state and the participants in connection with the next auction, the damage that arose due to the fact that he failed to pay the highest bid and, where a lower highest bid was made in the next auction, the difference between the two highest bids. The security deposited by the highest bidder shall be set off against these obligations; where the security exceeds these obligations, the rest shall be given back to the highest bidder.

(2) The court shall decide on the obligations under paragraph 1 by a ruling issued after a meeting.

(3) Where the deposited security is not enough to cover the obligations under paragraph 1, the bailiff shall, for the purpose of recovery of the necessary sums, file a petition for enforcement of the decision against the highest debtor on the basis of an enforceable ruling referred to in paragraph 2.

(4) The sums falling to reimbursement of costs shall be paid by the court to the state and to the participants who were granted them. Other reimbursements shall belong to the estate to be distributed.

#### Section 337

(1) After the ruling on knocking down becomes final and conclusive and after the highest bid is paid by the highest bidder, the court shall order a meeting on distribution of the estate.

(2) The court shall summon to the meeting the participants of the distribution who are the entitled person, the person who joined the proceedings as a further entitled person, the obliged person, the highest bidder, the persons who have filed the application save where their application was rejected (Section 336f) and the persons known as having encumbrances on the real property except for the encumbrances with respect to which the court has decided that they shall not become extinct by the auction sale [Section 336a para. 1 letter c)].

(3) The writ of summons to the meeting on distribution shall be also published on the official board of the court.

#### Section 337a

The estate to be distributed shall be created by the highest bid and interest therefrom or, as the case may be, reimbursements belonging to the estate according to Section 336n para. 4; the security of the highest bidder referred to in Section 336m para. 2 shall be set off against these reimbursements.

#### Section 337b

(1) The distribution meeting shall concern the receivables that may be satisfied from the distributed estate.

(2) Each creditor being present at the meeting must specify the amount of his receivable and of the accessories thereof as existing on the day of the distribution meeting and specify to which group the receivable belongs and specify the facts relevant for the order thereof. Receivables of other creditors and the accessories thereof shall be calculated as existing on the day of the distribution meeting; the group and order thereof shall be specified by the court according to the particulars included in the file. After the end of the distribution meeting, the part of the receivables and accessories thereof the amount whereof has not been specified shall not be taken into account.

(3) Each participant of the distribution may contest calculated receivables as for their existence, amount, group and order. Objections of persons who failed to appear at the distribution meeting shall not be taken into account save where they were raised and documented before the meeting.

(4) The highest bidder shall state whether he takes over the receivables the payment whereof is not demanded by the creditors (Section 336g). A statement of the highest bidder done after the end of the distribution meeting shall not be taken into account.

(5) The persons entitled from an easement or from a right of lease shall state whether they demand payment of a compensation; in a contrary case, they shall be presumed to have agreed to payment of the reimbursement to the highest bidder. A statement done after the end of the distribution meeting shall not be taken into account.

#### Section 337c

(1) According to the results of the distribution meeting, the satisfaction from the distributed estate shall be done subsequently in these groups:

- a) receivables of costs of proceedings that occurred to the state in connection with carrying out the auction, new auction or next auction;
- b) mortgage credit receivables to cover the nominal value of mortgage bonds;
- c) receivable of the entitled person, of a person who joined the proceedings as a further entitled person, receivables secured by mortgage and compensation for easements or rights of lease except for those where the court has decided that they shall not become extinct by sale of the real property in auction [Section 336a para. 1 letter c)];
- d) maintenance arrears receivables;
- e) receivables of taxes and fees, public health insurance premium receivables, social security insurance premium receivables and receivables of contribution to the state employment policy save where they were satisfied under letter c);
- f) other receivables.

(2) Where all the receivables belonging to one and the same group can not be satisfied, they shall be satisfied according to their order; receivables belonging to one group and having the same order shall be satisfied proportionally.

(3) Undue receivables secured by mortgage shall be considered due for the purpose of distribution.

(4) Interests, default interests or default charge for the last three years before the distribution meeting as well as reimbursement of costs of proceedings shall be satisfied in the same order as the principal sum. Where the distributed estate is not enough, they shall be covered before the principal.

(5) The order shall be determined as follows:

- a) in case of a receivable of the entitled person, the order shall be determined by the day of delivery of the petition for enforcement of the decision to the court;
- b) in case of the receivable of the person who joined the proceedings as a further entitled person, the order shall be determined by the day being considered the day of joining the proceedings;
- c) in case of a filed claim, the order shall be determined by the day when the application was delivered to the court;
- d) in case of a receivable secured by a mortgage, the order shall be determined by the day of rise of the mortgage;
- e) in case of compensations for easements, the order shall be determined by the day of rise of the easement;
- f) in case of compensations for rights of lease, the order shall be determined by the day of rise of the right of lease.

The order of the receivable shall be determined according to the point of view being more favorable therefor.

(6) After the satisfaction of all receivables to be satisfied, the rest of the distributed estate shall be paid to the obliged person.

(1) Where all real properties encumbered by receivables secured by a mortgage for the same receivable<sup>89)</sup> (hereinafter the "collective mortgage") were sold in the auction, such receivables shall be satisfied in distributing the individual estates proportionally according to the parts of the estates remaining with each real property after covering of the preceding claim. Where the creditor demands satisfaction in another ratio, the persons who would obtain less as a result thereof shall be given the sum that would fall to such receivable up to the sum of the deficit from individual distributed estates.

(2) Where the court failed to sell in the auction all the real properties encumbered by receivables secured by a collective mortgage, the satisfaction shall be calculated according to the value of all real properties ascertained according to a special regulation.<sup>92)</sup> Sums by which the creditors with a worse order would be curtailed due to the fact that the creditor of a receivable secured by the collective mortgage obtained more than what would fall to him from the proceeds from the sold property shall be secured upon their petition by a mortgage on the unsold property in the order that belonged to the satisfied creditor.

(3) The provisions of paragraphs 1 and 2 shall adequately apply to receivables encumbering interests of more co-owners of the same real property.

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89) Section 151f para. 2 of the Civil Code.

Section 72 of the Act No. 337/1992 Sb., as amended by the Act No. 255/1994 Sb.

92) Section 2 para. 1 of the Act No. 151/1997 Sb., on valuation of property and on amendment to several acts (Property Valuation Act).

Section 337e

(1) In the distribution schedule, the court shall also decide on receivables that were contested during the distribution meeting as for their existence, amount, group or order where the court can decide thereon without carrying out evidence; this rule shall not apply to receivables where to not even a partly payment from the distributed estate falls due to their groups or order.

(2) The person on whose objections the court could not decide according to paragraph 1 shall be called by the court to file a petition according to Section 267a para. 1 within thirty days after the distribution schedule becomes final and conclusive if at least a partly payment from the distributed estate falls to the disputable receivables; the court shall decide that the sum falling to the disputable receivables shall be heard at the next distribution meeting.

(3) Objections that were not raised timely according to paragraphs 2 shall not be taken into account; the persons called to file the petition according to Section 267a para. 1 must be warned against this consequence.

(4) In the petition according to Section 267a para. 1, the petitioner may invoke only the facts that were invoked in the distribution meeting.

Section 337f

(1) After the decision on the petition according to Section 267a para. 1 becomes final and conclusive, the court shall order a meeting concerning distribution of the rest of the estate to be distributed.

(2) The participants of the distribution whose receivables have been fully satisfied according to the preceding distribution schedule shall not be summoned by the court to the meeting. In distributing the rest of the estate to be distributed, the court shall proceed analogously according to Section 337 para. 2 and 3, Section 337a, 337c and 337d.

#### Section 337g

(1) In the distribution schedule, the court shall award the receivables to their creditors; satisfaction of receivables taken over by the highest bidder (Section 336g, Section 337b para. 4) shall be awarded to the highest bidder.

(2) Compensation for an easement or a right of lease shall be awarded by the court to the highest bidder with a consent of the person being entitled from this easement or right to lease (Section 337b para. 5).

(3) The court shall pay the sums awarded after the distribution schedule becomes final and conclusive.

#### Section 337h

(1) Mortgages encumbering the real property shall become extinct on the day when the distribution schedule becomes final and conclusive; the provision of Section 336g para. 3 shall not be affected by this rule.

(2) Easements and rights of lease encumbering the real property shall become extinct on the day when the distribution schedule becomes final and conclusive; this rule shall not apply to easements and rights of lease whereon the court decided that they shall not become extinct [Section 336a para. 1 letter c)] and to easements and rights of lease wherefor the highest bidder was granted a compensation (Section 337g para. 2).

(3) After the distribution schedule becomes final and conclusive, the court shall inform the relevant cadastral office of whether mortgages encumbering the real property have become extinct or whether they are effective as against the highest bidder as well as of which easements have become extinct and which shall go on encumbering the real property.

(4) Where the enforcement of the decision was stayed, the court shall notify it to the relevant cadastral office after the ruling becomes final and conclusive.

#### Sale of a co-ownership interest

#### Section 338

(1) Enforcement of a decision by sale of a co-ownership interest shall be governed by the provisions of enforcement of a decision by sale of movable things or real property save where the law provides for anything else.

(2) In case of sale of a co-ownership interest in a movable thing, the court shall deliver the writ of enforcement to the obliged person's co-owner at the moment of making the list or, as the case may be, after making the list or after finding out that the thing is co-owned; the court shall inform him also of the term of auction. The obliged person's co-owner must allow making the list of the co-owned thing; the duties of the obliged person referred to in Section 325b and 326b shall apply also to the co-owner. Where the obliged person's co-owner takes part in the auction and makes the highest bid together with other bidders, he shall be granted the knocking down; the provision of Section 329 para. 2 shall not apply.

(3) In case of sale of a co-ownership interest in a real property, the court shall deliver to the obliged person's co-owner a final and conclusive writ of enforcement and the auction decree; the obliged person's co-owner may appeal against the auction decree under the conditions referred to in Section 336c para. 5. Where the obliged person's co-owner takes part in the auction and makes the highest bid together with other bidders, he shall be granted the knocking down; the provision of Section 336j para. 1 second sentence shall not apply. Under the conditions referred to in Section 336k para. 2 second sentence, the obliged person's co-owner may appeal against the ruling on knocking down.

## Sale of a pledge

### Section 338a

(1) Enforcement of a decision by sale of pledged movable things and mortgaged real property shall be governed by the provisions on enforcement of a decision by sale of movable things and real property save where a law provides for anything else.

(2) Enforcement of a decision by sale of movable things may be ordered only by sale of a pledge identified in the decision. Where the pledge is held by the pledgee or by another person given the pledge according to the pledge agreement, these persons shall have to allow making the list of the thing and a valuation thereof and give the thing to the court for auction; the provisions of Section 325b and 326b shall apply thereto analogously.

(3) The provisions of Section 335 para. 2 and 3 shall not apply to the enforcement of a decision by sale of real property save where the matter is a petition of a further person entitled from the decision ordering sale of the pledge; the provision of Section 336f shall not apply save where the creditor files a receivable secured by the pledge being sold.

## CHAPTER FIVE

### ESTABLISHMENT OF A JUDICIAL MORTGAGE OVER A REAL PROPERTY

#### Section 338b

(1) Enforcement of a decision by establishing a judicial mortgage of a real property may be carried out only where the entitled person exactly identifies the real property over that the mortgage is to be established and where he proves the ownership of the obliged person by submitting issued or verified by state authorities or by a notary.<sup>76)</sup> The court shall inform the relevant cadastral office of the submission of a petition for ordering an enforcement of a decision by establishing a judicial mortgage over a real property.

(2) The enforcement of a decision by establishing a judicial mortgage shall be ordered according to the conditions existing at the moment of commencement of the proceedings.

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76) Section 6 of the Act No. 358/1992 Sb.

#### Section 338c

(1) The writ of enforcement of a decision by establishing a judicial mortgage shall apply to the real property with all components and accessories thereof.

(2) Establishment of the judicial mortgage shall be registered with the Real Property Cadaster according to special regulations.

#### Section 338d

(1) The order of the judicial mortgage over the real property shall be determined by the day of the delivery to the court of the petition for establishment of the judicial mortgage; where more petitions were delivered on the same day, the mortgages shall have the same order. However, where a legal or contractual mortgage has been already established for the receivable being enforced, the order of the judicial mortgage shall be determined by the order of this mortgage.

(2) Enforcement of a decision for receivables for that a judicial mortgage has been established may be carried out directly against any further owner of the real property who acquired it on the basis of an agreement.

#### Section 338e

(1) The provisions of Section 263 to 266, Section 267a and Section 268 para. 1 letter e) shall not apply to the enforcement of a decision by establishing a judicial mortgage over a real property. The provision of Section 268 para. 1 letter g) may apply only where the right awarded by the decision became extinct before the petition for ordering this enforcement of the decision was filed.

(2) Where the enforcement of a decision by establishing a judicial mortgage over a real property was finally and conclusively stayed, the mortgage shall become extinct from the beginning. Where the enforcement of the decision was stayed only in part, it shall be presumed from the beginning to have been ordered for the receivable only in the part remaining after the stay of the enforcement of the decision.

(3) The ruling on stay or on a partial stay of the enforcement of the decision shall be delivered by the court to the relevant cadastral office after it becomes final and conclusive.

## CHAPTER SIX

### SALE OF AN ENTERPRISE

Ordering the enforcement of the decision

#### Section 338f

(1) Enforcement of a decision by sale of an enterprise<sup>93)</sup> may be ordered only if the entitled person identifies the enterprise the sale whereof is being proposed and proves that the enterprise is owned by the obliged person.

(2) A petition of a further entitled person for ordering an enforcement of a decision by sale of the same enterprise filed with the competent court before the court finally and conclusively ordered the enforcement of the decision shall be considered joining the proceedings as of the day of submission of the petition. A petition of a further entitled person filed with an incompetent court shall be forwarded by the court to the competent court without any decision thereon being made; in such case, the petition shall be considered joining the proceedings as of the day when the petition was delivered to the competent court. The further entitled person must accept the state of the proceedings existing on the day when he joined the proceedings.

(3) The entitled person may withdraw from his petition before the writ of enforcement becomes final and conclusive. However, the court shall stay the proceedings only if all the entitled persons who joined the proceedings agree thereto.

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93) Section 5 of the Commercial Code.

#### Section 338g

(1) The enforcement of a decision by sale of an enterprise shall be ordered according to the conditions existing at the moment of commencement of the decision.

(2) The writ of enforcement shall apply to things, rights and order property values serving to operation of the enterprise or are supposed to serve to such purpose with regard to the nature thereof; there shall be decisive the conditions existing at the moment of granting the knocking down.

(3) The enforcement of the decision can not affect an enterprise where the matter is a bank.

#### Section 338h

(1) In the writ of enforcement, the court shall appoint a trustee of the enterprise (hereinafter the "trustee") and shall

a) enjoin the obliged person from transferring the enterprise or a part thereof to someone else after the delivery of the ruling;

b) order that the obliged person inform the court within fifteen days from the delivery of the ruling of whether and who has a preemption right to the enterprise, a part thereof or to things, rights and other values belonging to the enterprise; the ruling must contain a warning that where the obliged person fails to inform the court, he shall be liable for the damage caused thereby;

c) enjoin the obliged person from transferring, encumbering or any other disposing of the things, rights and other property values serving to operation of the enterprise or being supposed to serve to such purpose with regard to their nature after the delivery of the ruling without the trustee's consent;

d) order that the obliged person enable the trustee to inspect accounting books and other documents concerning the enterprise and to enter all premises of the enterprise without any restrictions.

(2) The writ of enforcement of the decision shall be delivered by the court to the entitled person, to those who joined the proceedings as further entitled persons, to the obliged person, to the spouse of the obliged person, to the trustee and to the relevant registry court or authority keeping another register wherewith the obliged person is registered.

(3) After the writ of enforcement of the decision becomes final and conclusive, the court shall deliver it to the persons known to the court as having a preemption right, right of pledge (mortgage) or a right of retention to the enterprise, to the things, rights and other property values serving to operation of the enterprise or being supposed to serve to such purpose, to the persons to whom the rights appertaining to the enterprise were assigned for the purpose of giving security for a receivable of the obliged person's creditor<sup>83)</sup> or to whom they were assigned in order to give security for the obligation of the obliged persons in favor of his creditor<sup>84)</sup> and to the financial and municipal authority in whose district the enterprise is located and in whose district the obliged person has his residence (seat, place of business). After the writ of enforcement becomes final and conclusive, it shall be also published on the official board of the court. Also the relevant register court or an authority keeping another register wherewith the obliged person is registered shall be informed by the court of the fact that the writ of enforcement became final and conclusive.

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83) Section 554 of the Civil Code.

84) Section 553 of the Civil Code.

Trustee of the enterprise

Section 338i

(1) A person entered according to special regulations in the list of bankruptcy trustees<sup>94)</sup> shall be appointed by the court as the trustee. The court may exceptionally appoint as a trustee even a person not entered in this list where such person meets the requirements for entering in the list and where he agrees to his appointment as the trustee.

(2) In choosing the person of trustee, the court shall particularly take account of whether the trustee has the necessary requisites for a proper exercise of the trusteeship with regard to the nature of the enterprise. Persons entered in the list of bankruptcy trustees may reject the office of trustee only for important reasons that shall be considered by the court.

(3) The trustee must execute his office with a professional care and shall be liable for damage he caused by an intentional or negligent breach of his duties imposed upon him by law or by the court.

(4) The trustee shall have the right to a remuneration and reimbursement of cash costs.

(5) Upon the trustee's request, the court shall provide him with an advance payment of reimbursement of cash costs spent in particular in connection with calling an expert upon assistance. Cash costs covered from this advance payment shall be considered costs of the sale.

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94) Section 8 para. 1 of the Act No. 328/1991 Sb.

#### Section 338j

(1) The trustee shall be excluded from the execution of his office where there is a reason to doubt of his disinterestedness with regard to his relation to the case, to the participants or to their representatives.

(2) The court shall decide on whether the trustee is excluded or not; before making the decision, the court shall usually ask for a statement of the trustee. No remedy shall be admissible against the ruling of the court.

(3) Where the court decides that the trustee is excluded from his office, the court shall at the same time recall him from his office and shall appoint a new trustee.

#### Section 338k

(1) In executing his office, the trustee shall proceed according to law and other legal regulations and shall keep to the instructions of the court; he shall see to it that the assets belonging to the enterprise are not reduced without reason after the enforcement of the decision is ordered and, as the case may be, that the assets belonging to the enterprise are increased in an expected way. He shall take measures necessary to a due conservation of the assets belonging to the enterprise; he shall in particular inform the money institution of the fact that the obliged person may dispose of the means on the account serving to operation of the enterprise only with his consent. Where it is required by the circumstances of the case, the trustee may call the debtors of the obliged person to deposit the performance of their money debts to an account of the obliged person established by the trustee for that purpose. Where the trustee finds out that a real property is a part of the enterprise, he shall inform the relevant cadastral office without undue delay of the fact that the court ordered an enforcement of a decision by sale of the enterprise and that the obliged person must not without his consent transfer the real property to anyone else or encumber it or dispose of it in any other way.

(2) The consent of the trustee to the acts of the obliged person must be given in writing; in case of written acts, the consent must be given on the same document. Legal acts of the obliged person done without the consent of the trustee shall be null and void.

(3) Where the trustee calls the debtor of the obliged person to deposit the performance of his money debt to certain account, the debtor must after the delivery of the call not perform his debt otherwise. Where the debtor of the obliged person fails to perform his debt in accordance with the call of the trustee, the trustee in the position of a representative of the obliged person shall be entitled to demand a due performance of the debt.

(4) Where the obliged person fails to take due and timely measures to avert a threatening damage to the assets of the enterprise, these measures may be taken by the trustee in the position of a representative of the obliged person.

(5) Where the trustee refuses to give the obliged person his consent to an act necessary to a due operation of the enterprise, the obliged person may ask the court to supersede the trustee's consent by a ruling. The court shall decide on the petition after examining the trustee and the obliged person; no appeal shall be admissible against his ruling.

(6) In disputes and other proceedings wherein the obliged person takes part and that concern the enterprise, the trustee shall be entitled to represent the obliged person even without his consent; in doing so, the trustee shall have the same position as a representative of the participant on the basis of a procedural power of attorney (Section 28a para. 1). During the time when the trustee of the enterprise represents the obliged person, the obliged person must not be represented by other persons and other persons must not act for him.

## Supervision of the court

### Section 338l

(1) The court shall supervise how the trustee fulfils his duties imposed upon him by law and by other legal regulations or by the court. In executing the supervisory activity, the court shall be entitled to ask the trustee for a report on his activity, inspect the documents of the trustee and of the obliged persons and make necessary inquiry. Where the court finds defects of the trustee's activity, the court shall command the trustee to remove them; no appeal shall be admissible against this decision.

(2) No consent of the court shall be necessary to calling an expert upon assistance by the trustee [Section 338m para. 1 letter c)].

(3) The court may impose a disciplinary fine for breach of duties in the course of execution of the office; in doing so, the trustee shall proceed analogously according to Section 53.

(4) Where the trustee fails to fulfill his duties properly or where other serious reasons are given, the court may recall the trustee from his office upon a petition of any of the participants or of the trustee or even without a petition. Where the court recalls the trustee from his office, the court shall at the same time appoint a new trustee. A trustee who was recalled from his office must pass the office on the new trustee and provide him with all necessary information and documents.

## Price of the enterprise

### Section 338m

(1) After the writ of enforcement becomes final and conclusive, the court shall order that the trustee

a) find out on the basis the accounting data on the enterprise what things, rights and other property values serve to operation of the enterprise or are supposed to serve for this purpose with regard to their nature; where the obliged person fails to enable the trustee to inspect the accounting books properly, the court shall see to it that the trustee obtains access to these books upon the trustee's request; in well-grounded cases, the access may be obtained even with assistance of justice guard bodies or bodies of the Police of the Czech Republic;

b) make a list of things, rights and other property values and obligations whereof the trustee found out with assistance of the obliged person that they serve to operation of the enterprise or are supposed to serve for this purpose with regard to their nature where it is impossible to find out the necessary data by proceedings according to letter a);

c) give the court a report on price of the enterprise elaborated on the basis of the ascertainments according to letter a) or according to letter b) or on the basis of another decisive facts or, as the case may be, on the basis of a valuation of an expert called by him upon assistance due to the fact that the price could not be ascertained otherwise.

(2) Unless a law provides for anything else, the valuation shall be made according to a special regulation.<sup>92)</sup>

(3) Unless the court determines anything else, the trustee's report on the price of the enterprise shall specify

a) what things, rights and other property values belong to the enterprise and what is the price thereof;

b) the amount of enterprise-related cash money means or money means deposited on an account kept by a money institution in the currency of the Czech Republic;

c) what obligations belong to the enterprise and what is the price thereof;

d) what money obligations belong to the enterprise and what is the total amount thereof;

e) the amount of net assets of the enterprise.

(4) A copy of the report on the price of the enterprise shall be delivered by the court to the entitled person, to those who joined the proceedings as further entitled persons and to the obliged person; the court shall enable them to express their opinion on the contents of the report within an adequate period. The court shall not take account of objections of the obliged person concerning the list of things, rights and other property values if the obliged person failed to provide the trustee with assistance according to paragraph 1 letter b).

(5) The court may order that the trustee complete the report or give the court necessary explanations. For the purpose of clarification of the decisive facts, the court may also make necessary inquiry.

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92) Section 2 para. 1 of the Act No. 151/1997 Sb., on valuation of property and on amendment to several acts (Property Valuation Act).

## Section 338n

(1) According to the contents of the trustee's report on price of the enterprise or, as the case may be, to the ascertainments according to Section 338m para. 5, the court shall determine

a) the price of things, rights and other property values belonging to the enterprise;

b) the amount of money means in cash and money means deposited on an account with a money institution in the currency of the Czech Republic belonging to the enterprise;

c) the price of all obligations belonging to the enterprise;

d) the amount of money obligations belonging to the enterprise;

e) the ascertained price of the enterprise.

(2) The ascertained price of the enterprise shall be determined by the court in the sum of net assets of the enterprise; the means referred to in paragraph 1 letter b) shall not be taken into account.

(3) Where no evidence is carried out or where the persons referred to in Section 338m para. 4 agree thereto, a meeting shall not have to be ordered.

(4) The court shall deliver the ruling according to paragraph 1 to the entitled person, to those who joined the proceedings as further entitled persons and to the obliged person.

(5) After the ruling according to paragraph 1 becomes final and conclusive, everyone shall be entitled to inspect the report on price of the enterprise.

(6) The court shall stay the enforcement of the decision where it finds out that the price of things, rights and other property values belonging to the enterprise including the means referred to in paragraph 1 letter b) does not exceed the amount of due money obligations belonging to the enterprise, the amount of the receivables of the entitled person and of those who joined the proceedings as further entitled persons which do not belong to the enterprise, the anticipated costs of sale, the remuneration of the trustee and reimbursement of his cash costs or where the price exceeds these sums only slightly.

Auction decree

Section 338o

(1) After the price ruling becomes final and conclusive, the court shall, where the enforcement of the decision has not been finally and conclusively stayed, order an auction.

(2) In the verdict of the ruling ordering the auction (auction decree), the court shall specify

a) time and place of the auction (Section 338q);

b) identification of the enterprise being sold;

c) the data referred to in Section 338n para. 1;

d) the amount of the lowest bid;

e) the amount of the security and the way of payment thereof (Section 338r para. 2);

f) notification that the price of things, rights and other property values belonging to the enterprise, the amount of cash money means and money means deposited on an account with a money institution in the currency of the Czech Republic belonging to the enterprise, the price of obligations belonging to the enterprise, the amount of money obligations belonging to the enterprise, the ascertained price of the enterprise and the amount of the lowest bid may change with regard to increase or decrease of the assets of the enterprise occurred until the auction (Section 338t para. 1);

g) the conditions under that the highest bidder may take over the enterprise and under that the auctioned enterprise becomes his ownership;

h) information that in the course of distribution of the estate, the entitled person, those who joined the proceedings as further entitled persons and other creditors of the obliged person may demand satisfaction of recoverable receivables or receivables secured by a mortgage, right of retention, assignment of a receivable<sup>83)</sup> or transfer of a right<sup>84)</sup> which belong to the enterprise and which are other than the receivables for which the enforcement of the decision was ordered only if these persons file them not later than five days before the auction, if they specify in the application the amount of the receivables and of the accessories thereof and if they submit documents proving these receivables; the auction decree shall also contain a warning that applications not specifying the

amount of the receivable or of the accessories thereof shall not be taken into account (Section 338s and Section 338zn para. 2);

i) information that obligations belonging to the enterprise which were not satisfied in the course of the enforcement of the decision shall pass to the highest bidder (Section 338zk);

j) instruction that everyone who has a right not allowing the auction (Section 267) must exercise it with the court and prove such exercise of the right until the commencement of the auction and a warning that in a contrary case, his right shall not be taken into account in the enforcement of the decision;

k) instruction that persons having a preemption right to the enterprise, to a part thereof or to the things, rights and other property values serving to operation of the enterprise or being supposed to serve for this purpose with regard to the nature thereof may exercise this right only in the auction as bidders and that the preemption right shall become extinct by granting the knocking down;

l) information of where and when it is possible to inspect the report on the price of the enterprise (Section 338n para. 5).

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83) Section 554 of the Civil Code.

84) Section 553 of the Civil Code.

#### Section 338p

(1) The court shall deliver the auction decree

a) to the entitled person, to those who joined the proceedings as further entitled persons, to the obliged person, to the spouse of the obliged person, to the persons known to the court as having a preemption right, right of pledge (mortgage) or a right of retention to the enterprise or to the things, rights and other property values serving to operation of the enterprise or being supposed to serve for such purpose with regard to the nature thereof, to the persons to whom the rights appertaining to the enterprise were assigned to give security for a receivable of a creditor of the obliged person<sup>83)</sup> or were transferred to give security for the obligation of the obliged person in favor of his creditor,<sup>84)</sup> to the persons who have filed their recoverable receivables or receivables secured by a lien, by a right of retention, by an assignment of a receivable or by transfer of a right belonging to the enterprise and who have proved them by the relevant documents, and to the persons referred to in Section 338zn para. 1;

b) to the financial authority and to the municipal authority in whose district the enterprise is located and in whose district the obliged person has his residence (seat, place of business);

c) to those who collect social security insurance premium, contribution to the state employment policy and general health insurance premium;

d) the district authority in whose district the enterprise is located.

(2) The delivery of the auction decree to the persons referred to in paragraph 1 letter a) shall be done by the court personally.

(3) On the day of issuance thereof, the court shall publish the auction decree on the official board of the court shall ask the municipal authority in whose district the enterprise is located to publish the decree or the essential contents thereof in a way being

usual in the municipality. At the same time, the court shall remove the writ of enforcement from the official board of the court.

(4) In well-grounded cases, the court may publish the auction decree or essential contents thereof in the statewide or local press or, as the case may be, publish it in another suitable way.

(5) An appeal against the auction decree may be filed only by the entitled person, by those who joined the proceedings as further entitled persons, by the obliged person and by the persons having a preemption right to the enterprise or to things, rights and other property values serving to operation of the enterprise or being supposed to serve for such purpose with regard to the nature thereof. An appeal against the verdicts referred to in Section 338o para. 2 letters a), b), f) to l) only shall not be admissible.

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83) Section 554 of the Civil Code.

84) Section 553 of the Civil Code.

#### Section 338q

(1) The auction may be carried out in the place where the enterprise is located, in the place of the court or in another suitable place.

(2) The court shall order the auction not earlier than thirty days after the issuance of the auction decree.

#### Section 338r

(1) The lowest bid shall be determined by the court in the sum of one half of the price of things, rights and other property values belonging to the enterprise [Section 338n para. 1 letter a)]; the lowest bid must not, however, exceed the sum of two thirds of the ascertained price of the enterprise [Section 338n para. 1 letter e)].

(2) The amount of the security shall be determined by the court with respect to the circumstances of the case but must not exceed the sum of three quarters of the lowest bid. the security may be paid either in cash with the court's cash-desk or by transfer of money to the account of the court; the payment to the account of the court may be taken into account only where the court made sure before the commencement of the auction that the payment arrived to the account.

(3) A person who intends to exercise his preemption right at the auction must prove the existence thereof until the commencement of the auction.

#### Section 338s

(1) A creditor who has against the obliged person a receivable awarded by a decision, settlement or another document referred to in Section 274 (recoverable receivable) or a receivable secured by a pledge (mortgage), by a right of retention, by an assignment of a receivable<sup>83)</sup> or transfer of a right<sup>84)</sup> which belong to the enterprise may file it not later than five days before the auction. The entitled person or the person who joined the

proceedings as a further entitled person may file their receivables only if they were awarded them by a decision, settlement or another document referred to in Section 274 after the writ of enforcement became final and conclusive.

(2) The application must contain specification of the amount of the receivable and of the accessories thereof the satisfaction whereof is demanded by the creditor; in a contrary case, the receivable shall not be taken into account; the creditor must be warned against this consequence in the auction decree. The application must include documents proving that the receivable is recoverable or secured by a right of pledge (mortgage), right of retention, assignment of a receivable<sup>83</sup>) or transfer of a right<sup>84</sup>) and that it belongs to the enterprise save where these facts follow directly from the contents of the file.

(3) Delayed applications and applications of receivables which not belong to the enterprise shall be rejected by the court; no appeal shall be admissible against this ruling.

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83) Section 554 of the Civil Code.

84) Section 553 of the Civil Code.

#### Section 338t

(1) After issuing the auction decree, the court shall order the trustee to submit before the commencement of the auction a report whether the circumstances referred to in Section 338m para. 3 changed in comparison with the conditions decisive for the ruling according to Section 338n para. 1 and, as the case may be, how these circumstances have changed.

(2) Where the trustee fails to submit a due and timely report according to paragraph 1, the court shall order that he give the state a reimbursement of costs of a frustrated auction; upon a petition of the participants of the auction, the court may also order that the trustee give them reimbursement of costs occurred to them in connection with taking part in the frustrated auction. The trustee must be warned against this consequence.

#### The auction

#### Section 338u

(1) The auction may be ruled only by a judge. Individual acts in the course of the auction by that no decision is being issued may be done by the bailiff or by another employee of the court upon an entrustment of the judge; in doing so, they shall keep to the instructions of the judge.

(2) Only a person who paid the security until the commencement of the auction (Section 338r para. 2) may take part in the auction in the position of a bidder.

(3) The following persons must not take part in the auction as bidders: judges, employees of courts, the obliged person, the spouse of the obliged person, the trustee, the bidder referred to in Section 338za para. 2 and those who are prevented from acquiring the enterprise by a special regulation.

(4) The provision of Section 336h para. 3 shall apply analogously.

## Section 338v

(1) Where the court finds out that a petition for exclusion from the enforcement of the decision of the enterprise or a part thereof being sold (Section 267 para. 1), the court shall adjourn the auction until the decision on the petition becomes final and conclusive.

(2) Where a petition for exclusion of individual things, rights or another property values belonging to the enterprise was filed, the court shall, with respect to the circumstances of the case, consider whether the meeting is to be adjourned until the decision of the petition becomes final and conclusive or whether the auction can be made despite this fact. Where the court decides to carry out the auction, the court shall remind the bidders of disputable things, rights or another property values.

(3) Where the trustee failed to submit a report according to Section 338t para. 1 until the commencement of the auction, the court shall decide on the claims referred to in Section 338t para. 2 and shall adjourn the auction. In ordering a new auction, the court shall proceed according to Section 338o to 338t once again.

## Section 338w

(1) After the commencement of the auction, the judge shall

- a) decide whether a preemption right is proved (Section 338r para. 3);
- b) on the basis of the trustee's report according to Section 338t para. 1), determine by a ruling a new price of things, rights and other property values belonging to the enterprise, the amount of money means in cash and the amount of means deposited on an account with a money institution in the currency of the Czech Republic if these means belong to the enterprise, the amount of money obligations belonging to the enterprise and the final price of the enterprise;
- c) determine the amount of the lowest bid;
- d) announce which creditors have filed their receivables and in what sum and, as the case may be, which creditors have a right to satisfaction of their receivables according to Section 338zn para. 1.

(2) No appeal shall be admissible against the rulings according to paragraph 1 letter a), b) and c).

(3) Where the court finds out that the price of things, rights and other property values belonging to the enterprise together with the means referred to in Section 338n para. 1 letter b) do not exceed the amount of due money obligations belonging to the enterprise, the amount of receivables of the entitled person and of those who joined the proceedings as further entitled persons and of other filed creditors which do not belong to the enterprise and the anticipated costs of the sale, remuneration of the trustee and reimbursement of his cash expenses or that the aforesaid price exceeds these sums only slightly, the court shall stay the enforcement of the decision.

(4) Where the enforcement of the decision is not stayed, the court shall, after doing the acts according to paragraph 1, call those who are entitled to auction to make their bids.

(5) The auction shall take place until the bidders make bids; the bidders shall be bound by their bids until the court grants the knocking down. The price of the sold enterprise shall not be limited by provisions of price regulations.

## Section 338x

(1) The knocking down may be granted to the person who made the highest bid and meets the other conditions provided by law. Where more bidders made the same highest bid, the court shall grant the knocking down first to the person entitled from a preemption right to the enterprise, then to the person entitled from a preemption right to the part of the enterprise or to individual things, rights and other property values belonging to the enterprise and then, where the highest bidders fail to agree on anything else, to the bidder determined by lot.

(2) Before granting the knocking down, the court shall ask the persons being present at the auction whether they have objections against granting the knocking down; objections raised the entitled person, by a person who joined the proceedings as a further entitled person, by the obliged person and by a bidder shall be taken down to the minutes.

(3) Where the court does not grant the knocking down with respect to the objections raised, the auction shall go on by calling to last but one bid; no appeal shall be admissible against this ruling. In a contrary case, the court shall grant the knocking down by a ruling.

(4) In the ruling on granting the knocking down, the court shall specify a period for payment of the highest bid; this period shall start running on the day when the ruling on knocking down becomes final and conclusive and must not be longer than two months. The security deposited by the highest bidder shall be set off against the highest bid.

(5) The bidders who were not granted the knocking down shall be given back the paid security after the end of the auction; however, where they raised objections against the knocking down, they shall be given back the security after the ruling on knocking down becomes final and conclusive.

## Section 338y

(1) The ruling on knocking down shall be delivered by the court to the entitled person, to the person who joined the proceedings as a further entitled person, to the obliged person, to the spouse of the obliged person, to the highest bidder and to the bidders who have raised objections against granting the knocking down.

(2) An appeal against the ruling on granting the knocking down may be filed only by the person referred to in paragraph 1. Within fifteen days from the day of auction, the appeal may be filed also by the persons referred to in Section 336c para. 1 letter a) to whom the auction decree was not delivered where they did not take part in the auction for that reason.

(3) The provision of Section 336k para. 3 and 4 shall apply analogously.

## Section 338z

(1) The highest bidder shall be entitled to take over the auctioned enterprise on the day following the day of issuance of the ruling on knocking down. The enterprise shall be given to the highest bidder upon his request by the trustee in cooperation with the obliged person; the taking over shall be taken down to the minutes. The trustee shall inform the court on giving over the enterprise.

(2) The auctioned enterprise shall pass to the ownership of the highest bidder with effect back to the day of issuance of the ruling on knocking down as soon as the ruling on the knocking down becomes final and conclusive and if the highest bidder pays his bid. With effect to the same day, the highest bidder shall become the owner of things and enters into the rights and obligations belonging to the enterprise.

(3) A preemption right to the sold enterprise, to the parts thereof and to individual things, rights or other values shall become extinct on the day when the enterprise passed to the ownership of the highest bidder.

(4) Where the auctioned enterprise did not pass to the ownership of the highest bidder, the highest bidder must give the enterprise back to the obliged person, surrender the proceeds and give compensation for damage he caused in managing the enterprise.

#### Section 338za

(1) Where not even the lowest bid was made at the auction, the court shall end the auction. The next auction shall be ordered by the court upon a petition of the entitled person or of the person who joined the proceedings as a further entitled person; such petition may be filed not earlier than after the lapse of three months from the unsuccessful auction; where the petition was not filed within six months, the court shall stay the enforcement of the decision.

(2) Where the highest bidder failed to pay the highest bid even within an additional period specified by the court and not exceeding one month, the ruling on knocking down shall be quashed by a vain lapse of the additional period and the court shall order a next auction. The duties and obligations of this bidder and making decision thereon shall be analogously governed by the provision of Section 336n.

(3) At the next auction according to paragraphs 1 and 2, the lowest bid shall be determined in the sum of one quarter of the price of things, rights and other property values belonging to the enterprise [Section 338n para. 1 letter a)]; however, the lowest bid must not exceed one third of the ascertained price of the enterprise [Section 338n para. 1 letter e)]; ordering and carrying out the next auction shall be analogously governed by the provisions of Section 338p, 338q, Section 338r para. 2, Section 338t, 338u, 338v para. 2, Section 338w to 338z. Where the enterprise was not sold even at the next auction for the reason referred to in paragraph 1 first sentence, the court shall stay the enforcement of the decision.

#### Distribution

#### Section 338zb

(1) After the ruling on knocking down becomes final and conclusive and after the highest bid is paid by the highest bidder, the court shall order a meeting concerning distribution of the estate to be distributed.

(2) The court shall summon to the meeting the participants of the distribution, i.e. the entitled person, those who joined the proceedings as further entitled persons, the obliged person, the trustee, the highest bidder, the persons who have filed an application save where their bid was rejected (Section 338s para. 3) and the persons referred to in Section 338zn para. 1.

(3) The writ of summons to the distribution meeting shall be published on the official board of the court.

#### Section 338zc

The estate to be distributed shall be created by the means referred to in Section 338n para. 1 letter b), the highest bid and interests therefrom or, as the case may be, the reimbursements falling to the estate according to Section 338za para. 1 second sentence and the security that was set off against these reimbursements and that was deposited by the bidder referred to in Section 338za para. 2.

#### Section 338zd

(1) At the distribution meeting, there shall be heard the receivables that may be satisfied from the estate to be distributed.

(2) The provision of Section 337b para. 2 and 3 shall apply analogously; however, a receivable of the highest bidder according to Section 338zf can not be contested.

#### Section 338ze

(1) With regard to the results of the distribution meeting, the satisfaction from the distributed estate shall be done after one another in these groups:

a) receivables of costs of the sale occurred to the state in connection with carrying out the auction, new auction or next auction and paying the advancement according to Section 338i para. 5;

b) the receivable of remuneration of the trustee and of his cash expenses;

c) the receivable of the highest bidder according to Section 338zf;

d) receivables secured by a right of retention;

e) receivable of the entitled person, receivable of the person who joined the proceedings as a further entitled person, receivables secured by a right of pledge (mortgage), assignment of a receivable<sup>83</sup>) or by a transfer of a right;<sup>84</sup>)

f) receivables of taxes and fees, public health insurance premium receivables and social security insurance premium receivables, receivables of contribution to the state employment policy save where they were satisfied according to paragraph e);

g) other receivables.

(2) Where the receivables belonging to one and the same group can not be satisfied, they shall be satisfied according to their order; receivables belonging to one group and having the same order shall be satisfied proportionally.

(3) Undue receivables secured by a mortgage, by an assignment of a receivable or by transfer of a right shall be considered due for the purpose of distribution.

(4) Interests, default interests or default charge for the last three years before the distribution meeting as well as reimbursement of costs of proceedings shall be satisfied

in the same order as the principal sum. Where the distributed estate is not enough, they shall be covered before the principal.

(5) The order shall be determined as follows:

- a) in case of a receivable of the entitled person, the order shall be determined by the day of delivery of the petition for enforcement of the decision to the court;
- b) in case of the receivable of a person who joined the proceedings as a further entitled person, the order shall be determined by the day being considered the day of joining the proceedings;
- c) in case of a filed receivable, the order shall be determined by the day when the application was delivered to the court;
- d) in case of a receivable secured by a pledge (mortgage), by a right of retention, by assignment of a receivable<sup>83)</sup> or by transfer of a right,<sup>84)</sup> the order shall be determined by the day of rise of these rights;
- e) in case of a receivable of the creditor referred to in Section 338zn, the order shall be determined by the day determining the order of a receivable in the proceedings on enforcement of a decision by assignment of a receivable or by sale of movable things or real property.

The order of a receivable shall be determined by the point of view being more favorable thereto.

(6) After a full satisfaction of all receivables to be satisfied, the rest of the distributed estate shall be paid to the obliged person.

(7) Where the receivable of the trustee according to paragraph 1 letter b) was not fully satisfied, the court shall impose this duty by a ruling upon the obliged person; the entitled person and those who joined the proceedings as further entitled persons and the creditors who have filed their receivables (Section 338s) shall jointly and severally guarantee for fulfillment of this duty.

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83) Section 554 of the Civil Code.

84) Section 553 of the Civil Code.

Section 338zf

The highest bidder shall have a receivable against the estate where

- a) the amount of money obligations belonging to the enterprise and the receivables of the entitled person, of those who joined the proceedings as further entitled persons and of other filed creditors which do not belong to the enterprise and which are to be satisfied from the estate do not exceed the distributed estate; the receivable shall be equal to the amount of this difference; or
- b) receivables of the entitled person, of those who joined the proceedings as other entitled persons and of other filed creditors that are to be distributed from the estate do not exceed the distributed estate; the receivable shall be equal to the amount of this difference.

Section 338zg

(1) In the distribution schedule, the court shall also decide on receivables that were contested at the distribution meeting as for their existence, amount, group or order where the court can decide thereon without carrying out evidence; this rule shall not apply to receivables whereto not even a partly payment from the distributed estate falls because of their groups or order.

(2) The provision of Section 337e para. 2, 3 and 4 shall apply analogously.

#### Section 338zh

(1) After a decision on a petition under Section 267a para. 1 becomes final and conclusive, the court shall order a meeting concerning distribution of the rest of the distributed estate.

(2) The participants of the distribution whose receivables have been fully satisfied according to the preceding distribution schedule shall not be summoned by the court to the meeting. In distributing the rest of the estate to be distributed, the court shall proceed analogously according to Section 338zb para. 2 and 3, Section 338zc, 338ze and 338zf.

#### Section 338zi

(1) In the distribution schedule, the court shall award the receivables to their creditors; payment of remuneration of the trustee and reimbursement of his cash expenses shall be given to the trustee and satisfaction of the receivable according to Section 338zf shall be given to the highest bidder.

(2) The court shall pay the sums awarded after the distribution schedule becomes final and conclusive.

#### Report on exercise of trust of the enterprise

#### Section 338zj

(1) After the auctioned enterprise passed to the ownership of the highest bidder and after the trustee gave him over the enterprise, the trustee shall send the court a final report on exercise of his office and an account of the remuneration and cash expenses.

(2) The court shall deliver the report to the entitled person, to those who joined the proceedings as further entitled persons, to the obliged person, to the spouse of the obliged person and to the highest bidder.

(3) The court shall examine the report and shall decide on the approval thereof at a meeting; the meeting shall not have to be ordered where the persons referred to in paragraph 2 do not raise their objections against the report within the specified period.

(4) After approving the report, the court shall recall the trustee from his office.

#### Transition of rights and obligations to the highest bidder

#### Section 338zk

(1) There shall pass to the highest bidder to whose ownership the sold enterprise passed

a) things, rights and other property values serving to operation of the enterprise or being supposed to serve to such purpose with regard to their nature;

b) industrial and other intellectual property rights concerning business activities of the auctioned enterprise save where such transition is contrary to an agreement on provision of such rights or to the nature thereof;

c) rights and duties following from labor relationships of employees being active in the auctioned enterprise;

d) obligations belonging to the auctioned enterprise that were not satisfied in the distribution including the security therefor.

(2) Transition of a debt or another obligation of the obliged person shall mean that the highest bidder shall enter the position of the obliged person being debtor; transition of the obligation shall not require a consent of the creditor.

(3) Where acquisition or conservation of the rights referred to in paragraph 1 letter b) depends on carrying out certain business activity, this activity of the highest bidder exercised after the knocking down shall include also the activity exercised in the course of operation of the enterprise before it was sold at the auction.

(4) An agreement on lease or sublease of non-residential premises entered into by the obliged person being a lessee or a lessor may be terminated by the highest bidder during a period specified by law or by the agreement even for reasons other than are the reasons provided by a special law<sup>95)</sup> or by the agreement; this rule shall apply also to cases where the lease was agreed for a definite period of time. The right of the other party to compensation of damage caused thereby shall not be affected.

(5) Security for obligations that were satisfied in the distribution shall become extinct together with these obligations.

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95) Act No. 116/1990 Sb., on lease and sublease of non-residential premises, as subsequently amended.

#### Notification of other authorities

#### Section 338zl

(1) The fact that the auctioned enterprise passed to the ownership of the highest bidder (Section 338z para. 2) shall be notified by the court to the relevant register court or authority keeping another register wherewith the obliged person is registered. The register court or other authority shall subsequently enter the sale of the enterprise in the respective register.

(2) Where the enterprise includes a real property, the court shall inform the relevant cadastral office of the fact that the highest bidder became the owner of the real property; where the real property was mortgaged, the court shall also specify whether it is effective as against the highest bidder or became extinct.

(3) Where the enforcement of the decision was stayed, the court shall, after the ruling becomes final and conclusive, inform thereof the relevant register court or authority

keeping another register wherewith the obliged person is registered and, as the case may be, also the relevant cadastral office.

#### Section 338zm

(1) None of the creditors whose receivable passed to the highest bidder (Section 338zk para. 2) can not raise an objection that the sale of the enterprise at auction aggravated the recoverability of his receivable.

(2) The obliged person shall not be liable for defects of things, rights or other property values belonging to an enterprise that was sold at the auction.

#### Another proceedings on enforcement of a decision

#### Section 338zn

(1) After the enforcement of the decision by sale of the enterprise was ordered, carrying out enforcements of decisions by sale of movable things and real property belonging to the enterprise and enforcements of decisions by assignment of a receivable belonging to the enterprise and being other than receivables from an account with a money institution that have already been ordered shall be suspended. The persons entitled from these enforcements of decisions shall be considered to be the creditors referred to in Section 338s, the receivable shall not have to be filed; this rule shall apply even to the cases where the enforced receivable does not belong to the enterprise.

(2) An enforcement of a decision by sale of movable things or real property belonging to the enterprise or by assignment of a receivable belonging to the enterprise and being other than a receivable from an account with a money institution shall not be carried out. The right of these entitled persons to file the enforced receivable according to Section 338s shall not be affected.

(3) Where the receivable of the creditors referred to in paragraphs 1 and 2 was not satisfied in distributing the estate, the court shall go on proceeding after the end of the enforcement of the decision by sale of the enterprise; where the enterprise was sold at auction and the receivable belongs to the enterprise, the highest bidder shall enter the proceedings instead of the obliged person.

#### Stay of the enforcement of the decision

#### Section 338zo

(1) Where the enforcement of the decision by sale of the enterprise was stayed, the court shall call the trustee to submit a final report on the exercise of his office and a final accounting of the remuneration and cash expenses.

(2) The court shall deliver the report to the entitled person, to those who joined the proceedings as further entitled person, to the obliged person and to the spouse of the obliged person.

(3) The provision of Section 338zj para. 3 and 4 shall apply analogously.

(4) The duty to pay the trustee a remuneration and reimbursement of cash expenses shall be imposed by the court either upon the obliged person or jointly and severally upon the entitled person, those who joined the proceedings as further entitled persons and the creditors who filed their receivables (Section 338s and 338zn) with respect to for what the enforcement of the decision was stayed.

#### Sale of a part of the enterprise

##### Section 338zp

(1) Enforcement of a decision by sale of a part of the enterprise being an independent organizational component shall be governed by the provisions on enforcement of a decision by sale of the enterprise unless a law provides for anything else.

(2) Trust over a part of the enterprise executed by the trustee shall apply also to the acts of the enterprise concerning the organizational component of the enterprise managed by the trustee.

#### Sale of the interest of a co-owner of the enterprise

##### Section 338zq

(1) Enforcement of a decision by sale of an interest of a co-owner of the enterprise shall be governed by the provisions on enforcement of the decision by sale of the enterprise save where the law provides for something else.

(2) The court shall deliver the writ of enforcement of the decision by sale of the enterprise and the auction decree also to the co-owner of the obliged person; under the conditions referred to in Section 338p para. 5, the co-owner of the obliged person may file an appeal against the auction decree.

(3) The duties imposed upon the entitled person by Section 338m shall apply also to the co-owner of the enterprise.

(4) Measures of the trustee of the enterprise shall be effective even as against the co-owner of the obliged person.

(5) The provision of Section 338k para. 2 to 6 shall apply to the co-owner of the obliged person.

(6) Where the co-owner of the obliged person takes part in the auction and makes with other bidders the same highest bidder, he shall be granted the knocking down; the provision of Section 338x para. 1 second sentence shall not apply.

(7) Under the conditions referred to in Section 338y para. 2 second sentence, the co-owner of the obliged person may file an appeal against the ruling on granting the knocking down.

## CHAPTER SEVEN

### SATISFACTION OF RIGHTS TO AN IN KIND PERFORMANCE

#### Section 339

## Petition

(1) The following provisions shall apply to enforcement of decisions imposing a duty other than payment of a sum of money.

(2) Where the entitled person proposes the enforcement of the decision also for the costs awarded to him by the decision, he shall specify in the petition for the enforcement of the decision the way his receivable of the costs of proceedings is to be satisfied.

## Eviction

a) without compensation

### Section 340

(1) Where the decision the enforcement whereof is being proposed orders that the obliged person evacuate a real property, building, flat or room for that neither an adequate compensatory flat, nor a compensatory flat nor a compensatory accommodation nor a shelter are to be arranged for, the court shall order the enforcement of the decision and, after thus ruling becomes final and conclusive, carry out the enforcement of the decision.

(2) The court shall inform the obliged person at least five days in advance of the day when the enforcement of the decision shall be carried out. The court shall notify it also to the entitled person and the relevant municipal authority.

### Section 341

(1) The enforcement of the decision shall be carried out in the manner that the court shall take measures to

a) remove from the property being evicted the things belonging to the obliged person and to the members of his household as well as the things belonging to someone else but being placed with the consent of the obliged person in or on the property being evicted;

b) order the obliged person and all the persons staying there on the basis of the obliged person's right out of the property being evicted.

(2) Things removed from the property being evicted shall be given to the obliged person or to any major member of his household.

(3) Where nobody who could take over the things was present at the eviction or where taking over the things was rejected, the things shall be listed and shall be put at the costs of the obliged person into the custody of the municipality or of another suitable custodian; where the things can not be put into custody, the enforcement of the decision can not be carried out. The court shall inform the obliged person of into whose custody the things have been put.

### Section 342

(1) Where the entitled person failed to collect the things with the municipality or with the custodian within six months from the day when they were put into the custody, they shall be sold upon a petition of the municipality (custodian) according to the provisions of sale of movable things.

(2) The proceeds from the sale shall be paid by the court to the obliged person after deduction of the costs of the custody and of the sale. Where the obliged person rejects to accept the rest of the proceeds or where his residence is unknown, the court shall proceed adequately according to Section 185g; the period according to Section 185g para. 1 shall start running from the day when the obliged person rejected to accept the rest of the proceeds or when the rest of the proceeds was returned to the court as being undeliverable.

(3) Things that were not sold shall be offered by the court to the municipality or custodian for the purpose of satisfaction of the costs of the custody in the amount of two thirds of the estimated price; where they refuse to accept the things, the things shall forfeit to the state.

(4) Costs of the custody that will be satisfied neither from the proceeds of the sale nor from the things taken over shall be paid to the municipality (custodian) by the obliged person.

b) with arranging for a housing compensation or shelter

#### Section 343

(1) Where the decision the enforcement whereof is being proposed orders that the obliged person evacuate a flat or room for that an adequate compensatory flat, compensatory flat, compensatory accommodation or a shelter have to be arranged for, the court shall order the enforcement of the decision only if it is proved that the obliged person was provided with a housing compensation specified in the decision or if the obliged person is provided with a shelter in cases where the enforced decision rules that the obliged person evacuating the flat is entitled to a shelter. After this ruling becomes final and conclusive, the court shall carry out the enforcement of the decision.

(2) Arranging for a housing compensation or a shelter for the obliged person must be proved by the entitled person.

(3) Where the entitled person fails to prove by a document issued by a state authority or municipal authority or by a notarial record that the obliged person was provided with the housing compensation and that such compensation corresponds to the decision being enforced or that the obliged person was provided with a shelter, the court shall, before ordering the enforcement of the decision, order a meeting. In finding out whether the obliged person was provided with the housing compensation and whether it corresponds to the decision being enforced or, as the case may be, whether the obliged person was provided with a shelter, the court may, in order to ascertain the factual state, carry out even evidence other than the evidence proposed by the participants.

#### Section 344

(1) the court shall, at least five days in advance, inform the obliged person of the day when the eviction will be carried out. The court shall notify it also to the entitled person and to the relevant municipal authority. Where necessary, in particular where the obliged

person is not present, the bailiff carrying out the eviction shall call a suitable person upon assistance, possibly a representative of the authority of the municipality.

(2) The enforcement of the decision shall be carried out in the manner referred to in Section 341 para. 1; the removed things shall be moved to the specified housing compensation (shelter).

(3) Where the court finds out after ordering the enforcement of the decision or even after carrying it out that the obliged person was in fact not provided the housing compensation (shelter), the enforcement of the decision shall be stayed.

(4) After the move, the bailiff carrying out the eviction shall give the specified housing compensation to the obliged person or to any of major members of his household; where these persons refuse to accept the housing compensation, the keys shall be deposited at the court or at the authority of the municipality and the obliged person shall be informed thereof. Where the obliged person, without having any serious reason therefor, does not start using the housing compensation within six months after the deposition, the rights of the obliged person to the housing compensation shall become extinct after the lapse of this period.

(5) Where the things or any of the things can not be moved to the specified housing compensation (shelter), it shall be necessary to proceed according to Section 341 para. 2 and 3 and Section 342 analogously.

#### Taking off a thing

##### Section 345

(1) Where the decision the enforcement whereof is being proposed imposes upon the obliged person a duty to surrender or supply a thing, the court shall arrange for the enforcement of the decision by having the thing and the accessories thereof taken off from the obliged person and by giving it to the entitled person.

(2) Where using the things taken off requires a document, even this document shall be taken off from the obliged person and given to the entitled person together with the thing taken off from the obliged person.

(3) The writ of enforcement of the decision shall be delivered to the obliged person by the bailiff at the moment of taking off the thing. The court shall inform the entitled person of the day of the enforcement in advance. The thing shall not be taken off where the entitled person or his representative are not present. Where it appears necessary, the bailiff carrying out taking off the thing shall call a suitable person upon assistance, possibly a representative of an authority of the municipality.

(4) Where it is required by the purpose of the enforcement of the decision, the person carrying out the enforcement shall be entitled to make a search of the obliged person and of the flat (seat, place of business) and other premises of the obliged person as well as of cases and other boxes where the things to be surrendered or supplied to the entitled person can be reasonably presumed to be located; for that purpose, the bailiff shall be entitled to obtain access to the flat of the obliged person or to another premises of the obliged person and, as the case may be, open closed cases or another boxes.

##### Section 346

Where the things to be taken off from the obliged person is located with someone else, the court shall call him to surrender the thing to the entitled person. Where the thing is not surrendered voluntarily, the provisions concerning enforcement of a decision by assignment of a receivable shall apply adequately upon a petition of the entitled person.

#### Section 347

(1) Where the court fails to take off the things identified in the writ of enforcement and where a things of the same kind and quality can be obtained otherwise, the court shall call the entitled person to obtain it at the costs and risk of the obliged person.

(2) The court may order that the obliged person pay the entitled person the necessary costs in advance. Enforcement of this decision shall be subsequently carried out upon a petition of the entitled person in any of the ways referred to in Section 258 para. 1.

#### Division of a common thing

#### Section 348

(1) Where the decision being enforced orders that a common movable thing or real property be sold and the proceeds therefrom be distributed among the co-owners, the enforcement of the decision shall be carried out adequately according to the provisions on sale of movable things and real property.

(2) For the purpose of distribution of the proceeds, the co-owners shall have the position of entitled persons; the amount of their receivables shall be determined by their interests in the common thing.

(3) Where the court failed to sell the common movable thing or real property, the court shall stay the enforcement of the decision.

#### Section 349

(1) Where the decision being enforced orders that the common movable thing or real property be divided in a way other than by sale, the court shall specify at the moment of ordering the enforcement of the decision the way the enforcement shall be carried out. Where it appears necessary, the court shall call a suitable person upon assistance to the enforcement of the decision, possibly a representative of an authority of the municipality.

(2) Where it is necessary, in particular where boundaries of plots are to be exactly determined or demarcated, the court shall call an expert upon assistance to the division.

#### Doing works and performances

#### Section 350

(1) Where the decision being enforced orders that the obliged person do for the entitled person certain work that can be done even by someone else than by the obliged person, the court shall allow the entitled person to have the concerned work done by someone else or to do it on his own at the costs of the obliged person.

(2) The entitled person or the person who did the work for the entitled person shall be entitled in the course of the enforcement of the decision to all that is necessary for doing the concerned work.

(3) The court may order that the obliged person pay the entitled person necessary costs in advance. Enforcement of this decision shall be subsequently carried out upon a petition of the entitled person in any of the ways of satisfaction of money receivables.

## Section 351

(1) Where the decision being enforced imposes another duty, the court shall impose for the breach of this duty a fine of up to 100 000 Czech crowns. Where the obliged person fails to fulfill the decision being enforced even after being imposed the fine, the court shall, upon a petition of the entitled person, go on imposing upon the obliged person further adequate fines until the enforcement of the decision is stayed. The fines shall forfeit to the state.

(2) Payment of the fines shall not exempt the obliged person from liability for damage.

## Section 351a

(1) Where the decision being enforced was fulfilled, however, the obliged person caused, by breaching a duty imposed upon him, subsequently a change of the state anticipated by this decision, (the preceding state), the court shall allow the entitled person to arrange for a restitution of the state anticipated by the decision at the costs of the obliged person. The court shall specify the way of restitution of the preceding state in the writ of enforcement of the decision.

(2) The court shall upon a request of the entitled person entrust the bailiff with doing individual acts in the course of the enforcement if the decision or shall take other suitable measures to help the entitled person reconstitute the preceding state.

(3) The court may order that the obliged person pay the entitled person the necessary costs in advance. The enforcement of this decision as well as of the decision ordering that the obliged person pay the costs referred to in paragraph 1 shall be carried out upon a petition of the entitled person in any of the ways of satisfaction of money receivables.

## PART SEVEN

### OTHER ACTIVITIES OF THE COURT

#### Section 352

(1) The court shall carry out custody of money, documents and other movable things related to criminal proceedings or with other judicial proceedings. The court shall also carry out custody of money and other values belonging to persons the management of whose assets is supervised by the court, prepayments and other payments immediately connected with judicial proceedings.

(2) The court shall give the person depositing the values a certificate proving the custody.

Section 353 and 354  
repealed

## PART EIGHT FINAL PROVISIONS

Transitional provisions  
Section 355

Where the following provisions do not provide for anything else, this law shall apply even to proceedings commenced before it entered into force. Legal effects of acts done in the proceedings before this law entered into force shall remain unaffected.

Section 356

(1) Periods that have not elapsed on the day when this law entered into force shall be governed by the provisions of this law.

(2) However, where a longer period was provided by the hitherto law, the period shall end at this later time.

(3) A period for filing a complaint for violation of law shall not end before the lapse of six months from the day when this law enters into force.

Section 357

Orders to pay issued before the day when this law entered into force shall be governed by the hitherto regulations.

Section 358

Proceedings in lease cases commenced before the day when this law entered into force shall be brought to the end according to the hitherto regulations.

Section 359

Where making decisions on writs of eviction issued by national committees still falls within the jurisdiction of courts after the day when this law entered into force, the court shall decide on these cases according to the hitherto regulations.

## Section 360

(1) Where, before the day when this law entered into force, certain proceedings were commenced before a court that was so far materially competent, the proceedings shall be continued by this court and the further procedure shall be governed by the hitherto regulations.

(2) The same rule shall apply where the case falls within the competence of state notaries except for judicial custody cases.

## Section 361

(1) Judicial custody cases that have not yet been brought to the end shall be forwarded by the court to the state notary and the inform the participants and the depositor that the proceedings shall be continued and surrendering the subject of custody shall be decided by the state notary.

(2) The court shall conduct the proceedings according to the hitherto regulations until the depositor is informed in this way.

## Section 362

(1) Guardianship cases and tutelage cases concerning assets of a child shall be transferred from national committees to courts on the day when this law entered into force.

(2) The national committees shall immediately forward the files concerning the cases referred to in paragraph 1 to the competent district court.

## Section 363

(1) Requests for approving entrance into marriage by a minor or by persons affected by a mental disorder or by persons being insufficiently mentally developed that were not finally and conclusively decided by the national committee before the day when this law became final and conclusive shall be decided by the court.

(2) The national committees shall immediately forward the requests referred to in paragraph 1 to the competent district court.

## Section 364

The court shall not go on proceeding in cases of keeping in an institution after a new regulation of these proceedings enters into force; until that time, the court shall decide on keeping in an institution according to the hitherto provisions.

## Section 365

Instruments of execution that arose before the day when this law entered into force shall be a basis of enforcement of a decision even according to this law even if this law does not consider them to be a basis of the enforcement of the decision.

## Section 366

Approving of an execution issued before the day when this law entered into force shall have the effects of a writ of enforcement of a decision. The court shall go on proceedings according to this law save where the following provisions provide for anything else.

## Section 367

(1) Sequestration of a money receivable and of a salary occurred before the day when this law entered into force shall have the effects of a writ of enforcement of a decision by wage deductions or, as the case may be, by assignment of a receivable of the obliged person that was delivered to the wage payer or, as the case may be, to the debtor of the obliged person.

(2) The wage payer carrying out deductions from wage of the obliged person on the basis of a wage execution approved before the day when this law entered into force may proceed in carrying out the deductions according to the new provisions after this law became final and conclusive. As soon as the court sends him a ruling calling him to go on making the deductions according to this law, the wage payer shall have to do so.

## Section 368

(1) Where an execution by eviction of a flat was approved before the day when this law entered into force, this execution shall be brought to the end according to the hitherto regulations.

(2) Where a decision of a court issued before the day when this law entered into force imposes a duty to evacuate a flat for that a compensation must be provided, this decision shall be enforceable after the compensatory flat, or, in cases where a compensatory accommodation is sufficient, the compensatory accommodation was validly provided.

## Section 369

Approved execution against real property and movable things shall be brought to the end according to the hitherto regulations.

## Section 370

Execution by liquidation ordered before the day when this law became final and conclusive shall be brought to the end according to the hitherto regulations.

Section 371 and 372

repealed

Empowering provision

Section 373

The Ministry of Justice of the Czech Republic (hereinafter the "Ministry") shall provide by an ordinance for enforcement of a decision by deductions from wage of persons under execution of imprisonment or in detention as well as of wards in establishments of institutional and protective raising.

Section 374

(1) The Ministry shall be empowered to issue a generally binding regulation concerning rules of procedure of district, regional and high courts providing in a more detailed way for organization of work and for tasks of employees in exercising the justice including procedure of a notary in doing acts in inheritance proceedings, for procedure of courts in the course of enforcement of a decision and for office work at courts including administrative agenda. The Ministry may in particular provide for

a) what simple acts conferred upon the chairman of the panel (single judge) may be done by judicial candidates or administrative employees and what acts in inheritance proceedings may be conferred by the notary upon his employees;

b) in what cases employees of courts are entitled to verify signatures on documents and copies of documents;

c) in what cases the court may abstain from attendance of a minutes clerk in meetings before court and in what way the contents of the meeting are to be recorded in such cases;

d) what necessary expenses shall be reimbursed to the persons taking part in the proceedings.

(2) The chairman of the panel (single judge) entrusted with a case according to work schedule may reserve clearing certain cases conferred upon judicial candidates or administrative employees either fully or in individual cases.

(3) Where an appeal is filed against a decision issued by a judicial candidate or entrusted administrative employee, such appeal may be fully granted by the chairman of the panel (single judge). His decision shall be considered a decision of the first instance court may be appealed.

Section 374a

The Ministry shall issue an ordinance providing for

- a) the amount and way of calculation of remuneration and reimbursement of cash costs of notaries in the position of judicial commissioners and remuneration of administrators of inheritance;
- b) cases where inspection of a file can not be approved because the contents thereof must remain secret;
- c) lump rates of the amount of remuneration for representing the participants by an attorney of law or by a notary in the framework of his authorization provided by a special regulation<sup>57)</sup> for the purpose of deciding on reimbursement of costs of the proceedings;
- d) the amount of remuneration of trustees of enterprise, the way of calculation thereof and calculation of reimbursement of his cash expenses.

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57) Section 3 of the Act No. 358/1992 Sb., on notaries and their activity (Notarial Code), as amended by the Act No. 30/2000.

#### Repealing provision

#### Section 375

The following regulations shall be repealed:

1. Act No. 142/1950 Sb., on proceedings in civil cases (Civil Procedure Code), as subsequently amended;
2. Act No. 68/1952 Sb., amending the Civil Procedure Code;
3. Section 6 para. 2 of the Act No. 84/1952 Sb., on organization of money system;
4. Section 7 of the Act No. 85/1952 Sb., on insurance system;
5. Section 57 to 60 of the Act No. 115/1953 Sb., on copyright law;
6. Legislative Measure of the Presidium of the National Assembly No. 57/1955 Sb., on an accelerated recovery of receivables for covering personal needs of minor children;
7. Legislative Measure of the Presidium of the National Assembly No. 63/1955 Sb., on judicial execution by charging off an account with a money institution;
8. Act No. 46/1959 Sb., on change of jurisdiction of courts and on amendment to several provisions in the field of justice and notaries;
9. Decree of the Government No. 175/1950 Sb., on certificates as necessary for exemption from judicial fees and advance payments and for appointment of a representative;
10. Decree of the Government No. 176/1950 Sb., on way and scope of execution against cooperatives and other legal entities;
11. Decree of the Government No. 177/1950 Sb., on estimation of movable things;
12. Decree of the Minister of Justice No. 178/1950 Sb., defining an administration on a lower organizational level of several legal entities for the purpose of determination of competence of courts;
13. Decree of the Minister of Justice No. 180/1950 Sb., on execution against money receivables and salary;
14. Decree of the Minister of Justice No. 95/1952 Sb., issuing Rules of Procedure of courts;

15. Decree of the Minister of Justice No. 12/1953 Sb., on the scope and conditions of admissibility of execution against receivables from supply of agricultural products to the state;

16. Ordinance of the Minister of Justice No. 356/1952 Ú.l. (No. 409/1952 Ú.v.) listing legal entities enjoying protection in the court of execution and defining the relevant authorities of supervision;

17. Ordinance of the Minister of Justice No. 149/1958 Ú.l., on the scope of admissibility of execution against work remuneration of imprisoned persons and of wards in youth raising institutions, as amended by the Ordinance of the Minister of Justice No. 34/1961 Sb.;

18. Decree of the Minister of Justice No. 41/1960 Sb., on seats and districts of people's courts and on seats and districts of regional courts.

Section 376

Effectivity of the law

This law shall enter into force on April 1, 1964.

*Act No. 150/2002 Coll.,*

# **Code of Administrative Justice**

**as amended by Act. No. 192/2003 Coll., Act. No. 22/2004 Coll., Act No. 235/2004 Coll.,  
with effect from May 1, 2004**

The Parliament has adopted the following Act of the Czech Republic:

## **PART ONE**

### **PRINCIPAL PROVISIONS**

#### **Chapter I**

#### **GENERAL PROVISIONS**

##### **§ 1**

This Act provides for

- a) jurisdiction and competence of courts acting and making decisions in administrative justice and some of the issues concerning the organization of courts and the status of judges.
- b) procedure of courts, parties to proceedings (hereinafter “party”) and other persons in administrative justice.

##### **§ 2**

Courts in administrative justice provide protection to the individual public-law rights of both natural persons and legal entities in a manner specified by this Act and under the conditions specified by this Act or by a special law and make decisions in other matters provided for by this Act.

##### **§ 3**

(1) The bodies which hear and decide matters in the judicial review of administrative decisions (hereinafter “administrative justice”) are regional courts and the Supreme Administrative Court. In regional courts administrative justice is implemented by specialized benches and specialized judges sitting alone.

(2) Unless otherwise specified by law, the organization of courts and the status of judges making decisions in administrative justice is covered by general legal provisions.<sup>1) 1)</sup>

#### **Chapter II**

### **JURISDICTION AND COMPETENCE OF COURTS**

#### **Jurisdiction of Courts**

##### **§ 4**

(1) Courts of administrative justice decide on

- a) complaints against decisions made in the sphere of public administration by an executive authority, the autonomous unit of a local administrative authority, as well as by a natural

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<sup>1)</sup> For instance, Act No.6/2002 Coll. (Collection of Laws; Sb. in Czech) on judges, courts, judges on the bench and the state administration of courts and on the amendment to some other acts (the act on courts and judges), as amended by Act No.151/2002 Coll., Act No.7/2002 Coll., on the procedure concerning judges and prosecuting attorneys, as amended by Act No.151/2002 Coll.

person or legal entity or another authority if entrusted with decision-making about the rights and obligations of natural persons and legal entities in the sphere of public administration (hereinafter “administrative authority”),

- b) protection against the inaction of an administrative authority,
- c) protection against an unlawful interference of an administrative authority,
- d) competence complaints.

(2) Courts of administrative justice furthermore decide on

- a) election matters and in the matters of a local referendum,
- b) matters concerning political parties and political movements.

#### § 5

Unless otherwise provided for by this Act or by a special law, the protection of rights can be claimed in administrative justice provides only on the submission of a complaint and after the exhaustion of all appropriate remedial actions, if admissible under a special law.

#### § 6

Courts of administrative justice are excluded from deciding on matters as specified by this Act or by a special law.

#### § 7

### **Competence of Courts**

(1) Unless otherwise provided for by this Act or by a special law, a regional court shall have subject-matter competence in proceedings.

(2) Unless otherwise provided for by this Act or a special law, a proceeding shall be within the territorial competence of a court in whose jurisdiction lies the seat of the administrative authority which issued the last-instance decision in the matter or otherwise infringed the rights of the subject seeking protection at the court.

(3) In matters of retirement insurance and social security, a proceeding shall be within the competence of a regional court in whose jurisdiction the complainant has his or her domicile or in whose jurisdiction the complainant stays.

(4) In matters of sickness benefit insurance, social security insurance and state policy employment benefits, a proceeding shall be within the competence of a regional court in whose jurisdiction lies the seat of the administrative authority which issued a first-instance decision in the matter.

(5) If a complaint in a matter of administrative justice is filed with a court which does not have subject-matter competence to deal with it, this court then refers it to a court with respective subject-matter and territorial competence. If a matter has been incorrectly referred to the Supreme Administrative Court, the Supreme Administrative Court shall remand it to the regional court which has referred it or it shall refer to a regional court with subject-matter and territorial competence.

(6) If the court at which a complaint has been made does not have territorial competence to deal with it, it shall refer the complaint to the competent court for decision. If the latter court does not agree with the referral of the matter, it submits the file to the Supreme Administrative Court to decide on competence. The decision of the Supreme Administrative Court on this matter is legally binding on the courts.

### Chapter III

### EXCLUSION OF JUDGES, TRANSFER OF A MATTER TO ANOTHER COURT, REQUEST

§ 8

**Exclusion of judges and other persons**

(1) Judges shall be excluded from the proceedings and decision on a matter if there is a reason to doubt their impartiality in view of their relation to the matter, the parties or their representatives. Also those judges shall be excluded who have taken part in the proceedings or decision on the matter at the administrative authority or in the previous court proceedings. Reasons for excluding the judge do not include circumstances that consist in the judge's actions in the proceedings concerning the matter or in his decisions in other matters.

(2) For similar reasons other persons shall also be excluded who immediately participate in the execution of judicial power (hereinafter "court official"), and also the interpreter and the expert.

(3) A judge who finds a reason for his bias shall report this fact to the presiding judge and for the time being shall take only such steps as do not allow delay. The presiding judge shall appoint another judge in his place or another bench of judges according to the work schedule. If the presiding judge concludes that there is no reason for the judge's bias or if the matter concerns the presiding judge himself, the decision on exclusion shall be made by the Supreme Administrative Court and, if the judge concerned is of the Supreme Administrative Court, by another of its benches.

(4) The court official, interpreter or expert shall report reasons for their bias to the presiding judge of the bench. The bench then decides on the exclusion. The provision of paragraph 3 is used accordingly.

(5) The party or person participating in the proceedings may object to the bias of the judge, court official, interpreter or expert. They have to raise the objection within a week from the day they learnt of the bias. If they find a reason for bias during the proceedings, they have to raise the objection during these proceedings. Objections raised at a later date shall not be taken account of. Reasons have to be given for the objection and concrete facts adduced from which it is inferred. The decision on the exclusion of the judge shall be made by the Supreme Administrative Court by a resolution after hearing the judge's opinion; if the objection of bias concerns the court official, interpreter or expert, the decision is made by the bench of judges after hearing their opinion.

§ 9

**Transfer of a matter to another court**

(1) The Supreme Administrative Court shall transfer the matter to a regional court other than the regional court with territorial competence if, due to the exclusion of judges from the specialized benches, the court with territorial competence is unable to set up a bench of judges.

(2) The Supreme Administrative Court may transfer the matter to a court other than the regional court with territorial competence if such is suitable for reasons of the speed and economy of the proceeding or another important reason.

(3) The parties are entitled to express their opinion as to which court the matter is to be transferred and in the case of paragraph 2 also as to the reason for the transfer.

§ 10

**Request**

Tasks which could be performed by the competent court only with difficulty or unnecessary expenditure, or which cannot be performed within that court's locally defined jurisdiction, shall be performed at the competent court's request by a district court or a specialized bench of judges of a regional court.

**PART TWO**  
**ORGANIZATION**

Chapter 1

THE SUPREME ADMINISTRATIVE COURT

§ 11

- (1) There shall be set up the Supreme Administrative Court.
- (2) The seat of the Supreme Administrative Court is the city of Brno.

§ 12

(1) The Supreme Administrative Court, as the highest judicial authority in matters within the jurisdiction of courts of administrative justice, guarantees the unity and legality of decision-making by ruling on cassation complaints in cases prescribed by this Act and, furthermore, decides on other cases specified by this Act or a special law.

(2) The Supreme Administrative Court shall follow and assess the final decisions of courts of administrative justice and, on the basis of these decisions in the interest of uniform judicial decision-making, shall adopt a position on judicial decision-making in matters of specific kinds.

(3) In its decision-making, the Supreme Administrative Court may – in the interests of lawful and uniform decision-making by administrative authorities – make a ruling of an exemplary nature.

§ 13

(1) The Supreme Administrative Court consists of the President, Vice-President, heads of court divisions, presiding judges of benches and other judges.

(2) The President and the Vice-President of the Supreme Administrative Court (hereinafter “President and Vice-President”) are appointed from among the judges of this Court and removed by the President of the Republic.

(3) The decision-making function of the Supreme Administrative Court is exercised by judges. Apart from decision-making, the President and the Vice-President of the Supreme Administrative Court are entrusted with the state administration of the Supreme Administrative Court to the extent laid down by this Act. Apart from decision-making, the heads of the court divisions organize and direct the activities of the court divisions. Apart from decision-making, the presiding judges of the benches organize and direct the activities of the benches.

§ 14

(1) A judge of the Supreme Administrative Court is assigned at least one assistant. The position of a judge’s assistant (hereinafter “assistant”) is created by appointment and defined by the Labour Code, unless otherwise specified by this Act.

(2) A judge’s assistant is appointed and recalled from the position by the President of the Supreme Administrative Court at the proposal of the judge to be assigned the assistant. The position of the assistant is deemed to be terminated on the termination of the respective judge’s position.

(3) In order to be eligible for appointment, an assistant must be a citizen of integrity, a university graduate with a master’s degree in law earned at a school of law in the Czech

Republic. The condition of integrity is not fulfilled by those who have been lawfully sentenced for a criminal offence unless they are to be viewed as not sentenced.

(4) Assistants are bound to secrecy about matters which they may learn of in connection with the performance of their duties even after the termination of this position. The assistant may be released from the duty of secrecy by the President of the Supreme Administrative Court.

#### § 15

(1) The judges of the Supreme Administrative Court shall be assigned in the work schedule to court divisions according to their main areas of activity.

(2) The number of court divisions is determined by the Plenum of the Supreme Administrative Court (hereinafter "Plenum") on the proposal of the President of the Supreme Administrative Court.

#### § 16

(1) The Supreme Administrative Court makes decisions through benches of judges or extended benches of judges, unless this Act provides that a decision or specific action are to be taken by the presiding judge of the bench.

(2) A bench of judges consists of

- a) a presiding judge and six judges in election matters, in matters of political parties and political movements and in proceedings concerning competence complaints,
- b) a presiding judge and two judges in other cases,

(3) An extended bench of judges consists of

- a) a presiding judge and six judges in decisions concerning matters referred to it by a bench with a composition according to paragraph 2, letter b) above,
- b) a presiding judge and eight judges in other cases.

#### § 17

(1) If a bench of the Supreme Administrative Court has in its decision arrived at a proposition of law which differs from the proposition of law already expressed in a previous decision made by the Supreme Administrative Court, the bench shall refer the matter to an extended bench for its decision. On referring the matter, the bench shall provide reasons for its legal view.

(2) Paragraph 1 shall not apply if the differing proposition of law has already been expressed in a position adopted by the Supreme Administrative Court.

#### § 18

(1) If in its decisions a bench of the Supreme Administrative Court has repeatedly arrived at a proposition of law which is different from the proposition of law on which the administrative authority based its decision, the bench may submit this legal issue to an extended bench of judges for decision.

(2) If an extended bench of judges agrees on a proposition of law declared in the previous decision-making of the Supreme Administrative Court, it will adopt it as a ruling of an exemplary nature.

(3) The President of the Supreme Administrative Court shall publish rulings of an exemplary nature in the Collection of the Supreme Administrative Court and send them to the

administrative authority whom the decision given in paragraph 1 concerned and to the respective central administrative authority.

(4) The Rules of Procedure of the Supreme Administrative Court (hereinafter “Rules of Procedure”) shall specify in which other cases the President of the Supreme Administrative Court may submit other legal issues to an extended bench of judges for its decision.

#### § 19

(1) In the interests of uniform decision-making by courts the President of the Supreme Administrative Court, the head of a court division of the Supreme Administrative Court or an extended bench of judges may – on the basis of the appraisal of final court decisions – propose that the competent division adopt a particular legal position. The adoption of a legal position requires the approval of the majority of all members of that court division.

(2) If the issues under review concern more court divisions or if the court divisions disagree, the President may, in the interests of uniform judicial decision-making, on the basis of the appraisal of final court decisions, propose that the Plenum adopt a position.

(3) Before adopting a legal position, the Supreme Administrative Court may request the opinion of administrative authorities or other bodies, administrative benches of regional courts or other persons.

#### § 20

(1) The Plenum consists of all judges of the Supreme Administrative Court.

(2) The Plenum’s decisions are valid in the presence of at least two thirds of its members. The adoption of a decision requires the agreement of the absolute majority of the members present; the adoption of a legal stand, a decision on the number of court divisions require the absolute majority of all members.

(3) The President of the Supreme Administrative Court calls the Plenum, determines its agenda and chairs the session. The President of the Supreme Administrative Court is obliged to call the Plenum within one month at the request of at least two thirds of all judges of the Supreme Administrative Court. In the event the President of the Supreme Administrative Court sets the agenda according to the proposal of those who have requested the calling of the Plenum.

(4) Plenary sessions are closed.

(5) The Justice Minister and the President of the Supreme Administrative Court have a right to be present at a plenary session. It is also possible to invite other persons to a plenary session.

#### § 21

(1) After a discussion in the Plenum the President of the Supreme Administrative Court issues the Rules of Procedure of the Supreme Administrative Court.

(2) In the Rules of Procedure the Supreme Administrative Court specifies in detail especially the procedural steps in the administration of justice, in the proceedings of the court divisions and the Plenum, in the establishment of benches of judges and extended benches of judges, in the creation of the work schedule, in reviews of the decision-making by judges of the Supreme Administrative Court, in the monitoring and appraisal of final court decisions, in the making of decisions of an exemplary nature, in the adoption of legal positions, in the publication of the Collection of the Supreme Administrative Court, and in the internal organization of the Supreme Administrative Court.

§ 22

(1) The Supreme Administrative Court publishes the Collection of Decisions of the Supreme Administrative Court (hereinafter “Collection”) which contains notably selected decisions made by the Supreme Administrative Court and regional courts in the sphere of administrative justice and opinions and exemplary rulings of the Supreme Administrative Court.

**The Judicial Council of the Supreme Administrative Court**

§ 23

(1) There shall be set up the Judicial Council of the Supreme Administrative Court (hereinafter “Judicial Council”), consisting of five members.

(2) The position of a Judicial Council member is incompatible with the position of President, Vice-President or head of a court division of the Supreme Administrative Court.

(3) The Judicial Council is an advisory body to the President of the Supreme Administrative Court.

§ 24

(1) The Judicial Council is convened by the Chairman of the Judicial Council who sets its agenda and presides over its sessions. The Chairman of the Judicial Council is obliged to call the Judicial Council within one month if requested to do so by its member, the President or the Vice-President of the Supreme Administrative Court.

(2) The Judicial Council may take valid decisions in the presence of the absolute majority of all its members. The adoption of a decision requires the agreement of the absolute majority of all members of the Judicial Council.

(3) Sessions of the Judicial Council are closed.

(4) The President or the Vice-President of the Supreme Administrative Court may be present at the sessions of the Judicial Council and may voice their opinions on the issues under review. It is also possible to invite other persons to a Judicial Council session.

§ 25

(1) The Judicial Council

a) expresses its opinion on candidates for the head of a court division and the presiding judge of a bench of the Supreme Administrative Court,

b) expresses its opinion on judges who are to be assigned and transferred to serve at the Supreme Administrative Court or who are to be transferred from the Supreme Administrative Court to another court,

c) discusses proposals for the work schedule of the Supreme Administrative Court and its changes,

d) expresses its opinion on key issues of the state administration of the Supreme Administrative Court,

e) may ask the President of the Supreme Administrative Court to convene the Plenum and suggest the agenda of the session to him,

f) performs other tasks if specified by a special statute.

(2) Suggestions pursuant to paragraph 1, letters a) to d) are submitted to the Judicial Council by the President of the Supreme Administrative Court; at the same time the President

sets a time limit that must not be under five workdays within which the Judicial Council is to discuss a given suggestion. If the Judicial Council does not issue an opinion within this limit, the Judicial Council is understood to approve the suggestion.

### **State Administration of the Supreme Administrative Court**

#### **§ 26**

(1) The central authority of the state administration of the Supreme Administrative Court is the Ministry of Justice (hereinafter “Ministry”).

(2) The state administration of the Supreme Administrative Court is implemented by the Ministry through the President of the Supreme Administrative Court.

(3) The Ministry and the President of the Supreme Administrative Court implement the state administration of the Supreme Administrative Court in cases specified by this Act or by a special law, taking account of the opinions of the Judicial Council.

#### **§ 27**

(1) The President of the Supreme Administrative Court implements the state administration of the Supreme Administrative Court within the scope specified by this Act.

(2) The Vice-President of the Supreme Administrative Court participates in the state administration of the Supreme Administrative Court within the scope specified by its President.

(3) The President of the Supreme Administrative Court may with their approval entrust heads of the court divisions and other judges of the Supreme Administrative Court with the implementation of particular acts of state administration while retaining his or her own responsibility.

#### **§ 27a**

(1) The Head of the management of the Supreme Administrative Court (hereinafter “Head of the management of the Court”) runs the operation of the court within the scope specified by this Act and carries out some other activities related to the state administration of the Supreme Administrative Court; the responsibilities of the President of the Supreme Administrative Court as the representative of the state administration of the Court are not affected thereby. The President of the Supreme Administrative Court may specify matters on which he or she will make decisions directly.

(2) The Head of the management of the Court is appointed and removed<sup>1a)</sup> <sup>1a)</sup> by the President of the Supreme Administrative Court. The position of Head of the management of the Court is filled by a contract of employment.

#### **§ 28**

The Ministry implements the state administration of the Supreme Administrative Court by

a) ensuring the operation of the court in point of organization, especially by specifying each year the numbers of judges, assistants and other court employees in consultation with the President of the Supreme Administrative Court with regard to the number of matters to be dealt with,

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<sup>1a)</sup> § 27 paragraph 4 of the Labour Code.

b) ensuring the operation of the court in point of personnel in a manner prescribed by this Act,

c) ensuring the operation of the court by funding its management and material resources to the extent laid out in special legal regulations and by inspecting its management,<sup>1b)</sup> <sup>1b)</sup>

d) directing and checking the implementation of the state administration of the Supreme Administrative Court by its President in matters of state property and the state budget, and by organizing the state administration of the Court as performed by its President in other matters,

e) organizing and conducting professional training of the employees in the service of the Supreme Administrative Court,

f) channelling and directing the use of information technology,

g) organizing, directing and checking the implementation of tasks concerning defence and civic emergency planning, protection of confidential information, security of persons and property, fire protection and tasks relating to labour safety and health protection,

h) fulfilling other tasks if provided for by this Act or a special law.

## § 29

(1) The President of the Supreme Administrative Court implements the state administration of the Supreme Administrative Court by

a) ensuring the operation of the court from the organizational and personnel point of view, especially by seeing to the proper staffing of the Supreme Administrative Court by judges, assistants, technical and other employees and by dealing with the personal matters of the judges,

b) ensuring the professional standards of the judges and creating conditions for their improvement,

c) seeing to an increase in the professional standards of the assistants and other employees of the Supreme Administrative Court,

d) checking on the proper operation of court offices,

e) ensuring that the court provides information in keeping with a special Act,<sup>2)</sup> <sup>1)</sup>

f) supervising the activities of the Head of the management of the Court,

g) ensuring the safety of the Supreme Administrative Court and by performing crisis management tasks,

h) fulfilling other tasks if provided for by this Act or a special law.

(2) The President of the Supreme Administrative Court sees to the dignity of proceedings, the observation of the principles of judicial ethics and the smoothness of proceedings conducted at the Supreme Administrative Court. For this purpose the President of the Supreme Administrative Court

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<sup>1b)</sup> For instance, Act No. 218/2000 Coll. on budgetary rules and on the change of some related laws (budgetary rules) as amended by the subsequent regulations, and Act No. 219/2000 Coll., on the property of the Czech Republic and its actions in legal relations as amended by subsequent regulations.

<sup>1)</sup> Act No.106/1999 Coll. on free access to information, as amended by subsequent legislation.

- a) makes reviews of the judicial files,
- b) supervises the observance of the court procedural standards,
- c) deals with complaints.

(3) The Head of the management of the Court, except for the tasks which according to this Act or special legal regulations fall only to the President of the Court, has duties which include

a) ensuring the operation of the court from the economic, material and financial point of view,

b) dealing with the personal matters of the employees of the Supreme Administrative Court with the exception of the judges,

c) ensuring the proper operation of court offices,

d) fulfilment of other tasks related to the implementation of the state administration of the Supreme Administrative Court according to the instructions of the President of the Court.

## § 30

### **Complaints**

(1) The President of the Supreme Administrative Court deals with complaints of delays in proceedings, improper conduct or the violation of dignity of proceedings by the Vice-President, presiding judge of the bench, judges, assistants and other employees serving at the Supreme Administrative Court.

(2) Petitions expressing disagreement with the way the complaint has been dealt with by the President of the Supreme Administrative Court are attended to by the Ministry. The Ministry also deals with complaints pursuant to paragraph 1, if the Ministry stipulated for their settlement.

## Chapter II

### REGIONAL COURTS

## § 31

(1) Unless otherwise provided for by the Act, the regional court decides on matters of administrative justice in specialized benches comprised of a presiding judge and two judges.

(2) In matters of retirement insurance, social security, sickness benefit insurance, sickness care in the armed forces, job applicants and their material benefits according to the regulations governing employment, and state social benefits, in matters of infractions as well as in other matters provided for by a special law, decisions are made by a specialized judge sitting alone.

(3) If provided for by this Act, the presiding judge decides and performs particular tasks. The duties and obligations of the presiding judge are also discharged by a specialized judge sitting alone.

**PART THREE**  
**PROCEEDINGS IN ADMINISTRATIVE JUSTICE**  
Chapter I  
GENERAL PROVISIONS ON PROCEEDINGS

§ 32

**Initiation of proceedings**

(1) The proceedings are initiated on the day when the motion has reached the court; if the motion concerns matters specified in § 4 paragraph 1, it is called a complaint.

§ 33

**Parties to the proceedings and those acting for them**

(1) The parties include the movant (petitioner, complainant) and the respondent (defendant) or such persons as specified by this Act; the respondent (defendant) is a person denoted as such by the Act.

(2) Competent to be a party to the proceedings are either those who have the capacity to possess rights and duties or an administrative authority; otherwise competent are also subjects to whom the competence is accorded by the Act.

(3) Parties have the competence to act in proceedings on their own (hereinafter “procedural competence”) only if possessing procedural competence in full. An administrative authority and those entitled by law to submit a motion also have procedural competence.

(4) Persons competent to act on behalf of a legal entity are those who are entitled to do so by a special law. Those persons whose interests are contrary to the interests of the legal entity may not act on behalf of the legal entity. Persons acting on behalf of a legal entity must prove their authorisation at the request of the court. Only one person may act on behalf of a legal entity in the same matter at the same time.

(5) Unless otherwise specified by a special law, the person acting on behalf of an administrative authority is its head or another person authorized according to the authority’s internal regulations.

(6) If the party is a state, the person acting on behalf of it is a person specified by a special law. <sup>4) 1)</sup>

(7) If the party is a court, the person acting on behalf of the bench concerned in the matter is its presiding judge.

(8) If more persons submit a joint motion, each one is a party acting on behalf of himself or herself with effects for his or her person only.

§ 34

**Persons participating in the proceedings**

(1) Persons participating in the proceedings are those who have been directly affected in their rights and duties by the issue of the contested decision or by the decision not being issued and those who are liable to be directly affected by the rescindment or issue of the

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<sup>1)</sup> § 5 of Act No.219/2000 Coll. on the property of the Czech Republic and the Czech Republic entering into legal relations.

decision according to the motion seeking the court's decision, if they are not parties and have expressly stated that in the proceedings they exercise the rights of persons participating in the proceedings.

(2) The complainants are obliged to indicate in their motions individuals under consideration as persons participating in the proceedings, if these individuals are known to the complainants. The presiding judge notifies these individuals of the proceedings and call on them to say within a time limit given to them simultaneously whether they exercise in the proceedings the rights of persons participating in the proceedings; such a notification can be made only within this time limit. In the notification the presiding judge also informs them of their rights. The presiding judge takes similar steps if it transpires during the proceedings that there is another such person. The use of the personal data provided on these persons is accordingly governed by the provision § 37, paragraph 3.

(3) A person participating in the proceedings is entitled to submit a written statement, inspect the file, be informed about the order to hear the case and request the floor during the proceedings. This person is served a notification of the decision terminating the court proceedings. A person participating in the proceedings may not determine its subject-matter.

(4) The court by means of its resolution declares that the person who seeks the status of a person participating in the proceedings and does not meet the conditions for this status is not a person participating in the proceedings.

## § 35

### **Representation**

(1) A party without the legal competence to engage in proceedings must be represented in the proceedings by a legal representative.

(2) Unless otherwise specified by this Act, the party may be represented by a counsel or another person practising specialized legal counselling according to special laws provided the motion relates to the sphere of activity governed by these laws.<sup>5)</sup> <sup>2)</sup> Representation is in return for a fee; unless otherwise specified by a special provision, the amount of the fee is decided by a similar special provision which determines fees and reimbursements for counsels for the provision of legal services.

(3) The claimant may also be represented by a union organization of which the claimant is a member. The person acting for the union organization is its authorized employee or member.

(4) If judicial protection is sought by a party who claims that he or she has been discriminated against by an administrative authority on grounds of his or her sex, national, social or racial origin, membership of a national or ethnic minority, colour of skin, language, religion, belief, world outlook, political or other persuasion, disability, age, property, stock, or a different status or sexual orientation, the party may also be represented by a legal entity created on the basis of a special law,<sup>6)</sup> <sup>3)</sup> whose activities listed in its constitution involve protection against such discrimination. This legal entity is acted for by its authorized employee or member.

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<sup>2)</sup> For instance, Act No.237/1991 Coll. on patent attorneys, as amended by subsequent legislation, Act No.523/1992 Coll. on tax consultancy and the Chamber of Tax Advisors of the Czech Republic. Act No.358/1992 Coll. on notaries and their practice (Notarial Practice Code), as amended by subsequent legislation.

<sup>3)</sup> Act No.83/1990 Coll. on association of citizens, as amended by subsequent legislation.

(5) The party may also decide to be represented by a natural person with full legal capacity. The court shall not admit such representation by a resolution if such a person is patently incapable of proper representation or repeatedly represents in various matters.

(6) The party may have only one representative in one and the same matter. The representative must act in person unless otherwise expressly specified by a special law.

(7) The claimant with an assumed probability of being exempt from judicial fees, may on request by the resolution of the presiding judge, if necessary for the protection of the claimant's rights, be assigned a representative who may be a counsel; in such a case the cash expenses of the representative and the fee for the representation of persons specified in paragraph 2 are paid by the state. If the claimant was assigned a representative specified in paragraph 2 who is a value added tax (hereinafter "tax") payer, the amount of the cost to be reimbursed by the state shall be increased by the amount corresponding to the tax which the representative is obliged to pay out of the representation fee and of the reimbursement of cash expenditure according to a special law.<sup>6a)</sup> <sup>4)</sup> If the claimant applies for exemption from judicial fees or for the assignment of a representative, the time limit set for the submission of a motion to commence the proceedings is suspended pending the period between the submission of the application and the decision about it coming into effect.

#### § 36

##### **Rights and duties of the parties**

(1) The parties have equal status in the proceedings. The court is obliged to afford them the same possibilities to exercise their rights and instruct them in their procedural rights and duties to an extent necessary to avoid any detriment to the parties in the proceedings.

(2) Expenses incurred by the use of an interpreter<sup>7)</sup> <sup>5)</sup> are reimbursed by the state.

(3) The party who establishes lack of sufficient means may at his or her own request be exempted from judicial fees by the decision of the presiding judge. If, however, the court concludes that the proposal patently cannot be successful, it shall deny such request. The court shall rescind the granted exemption at any point during the proceedings, even retroactively, if before the conclusion of the proceedings by a final decision it transpires that the party's circumstances do not, or did not, warrant the granting of exemption.

#### § 37

##### **Acts by parties and persons participating in the proceedings**

(1) Parties and persons participating in the proceedings can make their acts in any form unless the Act does not prescribe a certain form for some acts. The presiding judge may always order the act to be made in writing or orally in the transcript.

(2) Petitions including an act determining the proceedings or their subject-matter can be made in writing, orally in the transcript, or in electronic form signed electronically pursuant to a special law.<sup>8)</sup> <sup>6)</sup> If such a petition is made in another form, it must be confirmed within three days by a written submission of the same contents or its original must be submitted, otherwise it shall be disregarded. If such an act is made by a corporate authority or a person who, according to a special law or on its basis, is acted for by a corporate body, the

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<sup>4)</sup> Act No. 235/2004 Coll. on the value added tax

<sup>5)</sup> Article 37, paragraph 4 of the Charter of Rights and Freedoms.

<sup>6)</sup> Act No.227/2000 Coll. on electronic signature and on the amendment of some other acts (Electronic Signature Act).

act must be accompanied by a copy of such a body's resolution approving the contents of the petition.

(3) Each petition must clearly indicate what it is concerned with, who makes it, whom it is directed against, what it proposes; and it must be signed and dated. The person who submits the petition (hereinafter "petitioner") gives personal data in the petition concerning his person only to a necessary extent; the petitioner shall always give his or her first name, surname and address at which he or she can be reached. The petitioner shall give other personal data only when requisite with regard to the nature of the matter to be dealt with by the court. If subject to a judicial fee, the petition must be provided with a duty stamp of appropriate value, and it must be accompanied by documents to which the petitioner refers. A petition which must be served on the other parties and persons participating in the proceedings must be submitted in the requisite number of counterparts.

(4) The petitioner may withdraw his or her petition in whole or in part until such a time as the court has decided on it.

(5) The presiding judge shall call on the petitioner by means of a resolution to correct or eliminate faults in the petition and shall set a time limit for this purpose. If the petition is not supplemented or corrected within this limit and the proceedings cannot continue on account of this fault, the court shall turn down the proceedings concerning such a petition, unless the Act provides for another procedural consequence. The petitioner must be notified of this.

## § 38

### **Provisional ruling**

(1) If a petition has been submitted for the commencement of proceedings and if it is necessary to take temporary measures to adjust the parties' circumstances liable to cause serious harm, the court may resolve to impose on the parties the obligation of having to do something, to restrain from doing something or to endure something by a provisional ruling. For the same reason the court may impose such an obligation on a third person, if he or she can be justly requested to do so.

(2) If necessary, the court may request the opinions of the other parties on the petition for a provisional ruling.

(3) The petition is inadmissible if the petition for the commencement of proceedings may be granted suspensory effect or if this effect becomes by virtue of the law.

(4) The court may rescind or modify the decision on a provisional ruling if the circumstances change even without a petition. The provisional ruling terminates at the latest on the day when the decision of the court whereby the proceedings are concluded has become enforceable.

## § 39

### **Joinder and separation of complaints**

(1) Independent complaints aiming against the same decision or against decisions whose subject-matter is interrelated may be joined by the presiding judge for common proceedings.

(2) If one complaint aims against several decisions, the presiding judge of the bench may resolve that each such decision is separated for independent proceedings if common proceedings are not possible or suitable.

## § 40

### **Time limits**

(1) A time limit provided for by this Act, by the call or decision of the court commences from the beginning of the day after the event marking the commencement of the time limit occurred. This does not apply to time limits determined in hours.

(2) A time limit determined in weeks, months or years, expires on the passage of the day the denomination of which equals that of the day appointed for the commencement of the time limit. If there is no such day in the month, the time limit expires with the passage of the last day of this month.

(3) If the last day of the time limit is a Saturday, Sunday or holiday, the last day of the time limit is the nearest following workday. This does not apply to time limits determined in hours.

(4) The time limit is met if on the last day of the time limit the submission was handed over to the court or sent to the court by a holder of a postal service licence, or a special postal service licence, or handed over to a institution which is obliged to deliver it, unless otherwise provided for by the law.

(5) Unless otherwise provided for by the law, the presiding judge of the bench may on request waive the neglect of time for performing the act on account of serious justifiable reasons. The request has to be submitted within two weeks after the obstacle ceases to exist and has to be linked to the neglected action. Similarly, the presiding judge of the bench may extend the time limit prescribed by the court.

(6) Unless the special law whereby time limits for the submission of a petition to the court are prescribed has a provision governing the calculation and running of time, the provisions of paragraphs 1 to 4 apply in similar fashion.

## § 41

### **Special provision for the course of time in some time limits**

If a special law providing for infractions, breaches of discipline or other administrative delicts (hereinafter “administrative delict”), prescribes time limits for the termination of liability or for the execution of a decision, these time limits are suspended during court proceedings according to this law. Similarly, this is true of time limits for the expiry of a right relating to taxes, fees, levies, advance payments of these incomes and levies for the violation of budgetary discipline which shall be used as revenues of the state budget of the Czech Republic, state funds and the budgets of self-governing regional units.

## § 42

### **Delivery**

(1) The court shall deliver documents through a judicial carrier, by means of a holder of a postal service licence, or a special postal service licence, or via a public data network. If necessary, the court may also ask another state agency to make delivery.

(2) If a party or a person participating in the proceedings has a representative, the delivery shall be made only to the representative. If, however, the party or the person participating in the proceedings has to perform something in person, the delivery is made to him.

(3) If the delivery of documents is evidently bound to be delayed or difficult, the presiding judge of the bench may oblige the person concerned to choose an authorized person

as the addressee of delivery to whom a delivery can be made without difficulty, or the presiding judge shall warn the person concerned that the documents are deposited at the court with the force of being delivered. The person to whom a delivery is made in reservation is entitled to collect the decision or resolution, or to ask that he or she be sent it to a specified address.

(4) If it is apparent that the delivery to persons participating in the proceedings will be inadequately protracted, expensive, administratively exacting or impossible, especially because of their large number or because they cannot be identified individually, it is possible on the basis of the presiding judge's measure to make a delivery to them by means of posting the decision or other documents on the official notice board of the court. The court may also make public its decision or another document in a manner allowing long-distance access or on the official notice board of a local authority.

(5) Unless otherwise provided for by this Act, the method of delivery is subject to similar provisions applicable to delivery in civil court proceedings.

#### § 43

### **Summons and bringing before the court**

(1) The court serves a written summons or, during proceedings, calls on the persons present orally. In emergencies it may also serve a summons by telephone, telegraph or electronically in a manner specified by a special law.<sup>8)</sup>

(2) If the person served a summons fails to appear before the court without just excuse, he or she may be brought before the court by order of the presiding judge of the bench, if forewarned of the possibility that this could happen. The act of bringing the person before the court is made by an officer of the Police of the Czech Republic at the request of the presiding judge of the bench at the expense of the person to be brought before the court or, if the person to be brought before the court is a member of an armed force, by the commander or chief of that force.

#### § 44

### **Procedural fine**

(1) A procedural fine of up to Kč 50 000 may, by a resolution, be imposed as a disciplinary sanction on a person who disobeys the call of the court or makes an offensive submission or speech; the fine is used as a revenue of the state budget. The fine may even be imposed repeatedly, or it may be by a resolution subject to partial or complete exemption on the basis of a justified request submitted before the decision concluding the proceedings comes into force.

(2) The fine is collected and enforced by the court which imposed it.<sup>9) 7)</sup>

#### § 45

### **Inspecting files**

(1) Parties, their representatives and persons participating in the proceedings are entitled to inspect the judicial files and their appendices with the exception of the report on voting, and are entitled to make extracts from and copies of the judicial files, and request that such an extract and copy be given to them.

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<sup>7)</sup> § 1 paragraph 4 of Act No.337/1992Coll. on the administration of taxes and charges, as amended by subsequent legislation.

(2) The presiding judge of the bench may allow other persons to inspect the files if they can prove that they have a legal interest or a serious reason and if it is not contrary to the rights and interests of some of the parties protected by law.

(3) When submitting the file, the administrative authority shall always mark those parts of the file that contain classified information protected by a special law<sup>10)</sup> <sup>10)</sup> or other information protected according to special laws. The presiding judge of the bench shall exclude these parts of the file from inspection. This also applies to the judicial files accordingly.

(4) It is not possible to exclude from inspection those parts of the file specified in paragraph 3 that have constituted or will constitute evidence in court. It is likewise impossible to exclude from inspection those parts of the file which the parties were entitled to inspect when dealing with the administrative authority.

(5) Parts of the files specified in paragraph 3 which were not excluded from inspection according to paragraph 4 may be inspected only by the parties and their representatives, or persons who can produce a certificate for a given level of security classification of the information under review protected by a special law <sup>10)</sup> if they can prove a legal interest in the inspection.

(6) Before the inspection of the file containing information mentioned in paragraph 3, the presiding judge of the bench shall instruct the inspecting person in keeping with a special law<sup>11)</sup> <sup>11)</sup> and warn the person of the criminal consequences of breaching the security of classified information. By signing a report on this instruction the person instructed becomes a person eligible for the disclosure of classified information in the required scope. On its completion the counterpart of the report is sent to the National Security Office.

## § 46

### **Rejection of a petition**

(1) Unless otherwise provided for by this Act, the court shall resolve to reject the petition if

- a) the court has already decided on this matter or proceedings concerning the same matter are under way before the court or if other conditions requisite for the proceedings are not met and this fault is irremovable or has not been eliminated despite a call by the court and in consequence the proceedings cannot continue,
- b) the petition was submitted prematurely or with delay,
- c) the petition was submitted by a patently unauthorized person,
- d) the petition is inadmissible under this Act.

(2) The court shall also reject the petition if the petitioner seeks a decision in a dispute or another legal matter which is to be heard and decided by a court in civil proceedings or if the petitioner seeks the review of a decision whereby the administrative authority decided in a private-law matter within its legal competence.<sup>12)</sup> <sup>8)</sup> In the resolution to reject the petition the petitioner must be instructed that within one month from the decision coming into force the petitioner may file a complaint and be informed of the court competent therefor according to subject-matter.

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<sup>10)</sup> Act No.148/1998 Coll. on protection of classified information and on the amendment of some acts, as amend by subsequent legislation.

<sup>11)</sup> § 15 paragraph 3 of Act No.148/1998 Coll.

<sup>8)</sup> Part Three and Part Five of the Civil Procedure Code.

(3) The provision of paragraph 2 is not applied if a private-law court has lawfully terminated the civil proceedings in the same matter on the ground that the matter is to be dealt with under administrative justice.<sup>13)</sup><sup>9)</sup> In such a case the court suggests to a bench set up under a special law,<sup>14)</sup><sup>10)</sup> that it decide the contest as to subject-matter competence.

(4) If a dispute arises between a specialized bench of a regional court for administrative justice matters and another bench of the same regional court as to whether the matter is to be dealt with and decided according to the Civil Procedure Code, it is resolved according to a special law;<sup>14)</sup> the provision of paragraph 2 is not applied.

(5) If the petitioner has submitted a motion by reason of following incorrect instruction by the administrative authority that there is no admissible remedy against its decision, the court rejects the petition on this account and refers the matter to the respective administrative authority to decide on a remedy. If the petition was submitted in time to the court, the rule is that the application for a remedy was also submitted in time.

#### § 47

### **Discontinuance of proceedings**

The court resolves to discontinue the proceedings,

- a) if the petitioner has withdrawn the petition; however, if it is a joint petition by several persons, the presiding judge notes by a resolution only the withdrawal of the petition by one of the petitioners,
- b) if the petitioner declares that subsequent to submitting the petition he has been fully satisfied with the procedure of the administrative authority (§ 62),
- c) if prescribed so by this Act or a special law.<sup>15)</sup><sup>11)</sup>

#### § 48

### **Suspension of proceedings**

(1) The presiding judge shall suspend proceedings by a resolution if

- a) a petition concerning the matter was submitted to the Constitutional Court in accordance with article 95, paragraph 2 of the Constitution,
- b) the party has lost legal capacity and is not represented,
- c) it is impossible to continue proceedings without unnecessary delay with the legal successor to the party,
- d) the decision depends on an issue which the court is not authorized to settle in the present proceedings,
- e) so provided for by this Act.

(2) The presiding judge of the bench may suspend the proceedings by a resolution if

- a) the presiding judge finds that a move admissible by law has been made regarding the matter or a petition to change or rescind the decision or that such proceedings have been instituted,
- b) the legal successor to the party has died or lost legal capacity,

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<sup>9)</sup> § 104b of the Civil Procedure Code.

<sup>10)</sup> Act No.131/2002 Coll. on decision-making in some competence contests.

<sup>11)</sup> For instance, Act No.549/1991 Coll. on judicial fees, as amended by subsequent legislation.

- c) the petitioner's place of residence or seat is unknown or the petitioner is prevented from taking part in the proceedings by an obstacle of a long-term nature,
- d) the bench or the judge sitting alone who are to decide on the petition have come to the conclusion that the legal regulation or specific provision which is to be applied in the matter is contrary to the law, if they have moved that such legal regulation or its specific provision be rescinded.
- e) the presiding judge finds that other proceedings are under way whose results may affect the decisions of the court in the matter itself, or if the presiding judge himself initiates such proceedings.

(3) If the proceedings are suspended, hearings do not take place and the time is not running under this Act.

(4) When the obstacle is removed, the presiding judge rules by a resolution even without a petition that the proceedings continue.

## § 49

### **Hearing**

(1) The presiding judge orders a hearing on the merits of the matter and serves summonses on the parties to attend it in such a way as to give them at least ten workdays for preparation. The presiding judge notifies participants in the proceedings of the hearing.

(2) The hearing is open to the public. The presiding judge may exclude the public, even for a certain part of the proceedings, only for reasons of protection of classified information, commercial secrets, morals, or public order. In such a case the presiding judge at the request of a party allows the presence of two of the party's confidants in the proceedings unless this apparently defeats the purpose of excluding the public and warns them of the consequences of violating the duty of non-disclosure. If the hearing involves classified information, the confidant must produce a certificate for a given level of security classification of the information under review protected by a special law.<sup>10)</sup> The presiding judge may also banish from court anyone who disturbs the order and dignity of the proceedings.

(3) The absence of properly summoned participants is no obstacle to the continuance and conclusion of the proceedings, unless there are reasons for adjournment pursuant to § 50.

(4) The hearing is opened and directed by the presiding judge of the bench. Objections to the presiding judge's measures in the handling of the proceedings are decided by the bench by means of a resolution. The presiding judge instructs the parties to mention even such factual and legal issues that in the court's opinion are relevant for the decision although they were not referred to in the parties' previous petitions.

(5) During the hearing the judges and, with the presiding judge's permission, the parties and persons participating in the proceedings may put questions to the parties, or witnesses and experts, or invite them to give their opinions on the matter.

(6) If classified information is heard, the presiding judge proceeds similarly in accordance with § 45, paragraph 6.

(7) If the court finds during the proceedings that there are reasons to suspend or discontinue the proceedings, or to reject the petition, the court decides on this by a resolution.

(8) At the close of the hearing, the parties must be given the floor to express their opinion on the final proposals.

(9) The judgement must be announced in the name of the Republic and publicly. Once the court has pronounced a judgement, the court is bound by it.

(10) If it is not possible to pronounce a judgment after the conclusion of the hearing that preceded it, the presiding judge informs the parties of the day and hour of its pronouncement which the presiding judge sets in such a way as to take place within one month at the latest or, if all parties are present, within ten days after the conclusion of this hearing.

(11) The judgement is pronounced orally if there has been a hearing in the matter and at least one party or a person participating in the proceedings or the public are present at the pronouncement. If only court officials are present at the pronouncement of the judgement, the court pronounces the judgement by posting an abridged written copy of judgment without a justification of the judgement on the official notice board of the court for a period of fourteen days; the day of pronouncement is entered in the written copy.

(12) The hearing and other acts in which the court deals with the parties and produces evidence are described in a record. Personal data entered in the record are subject to the provision in § 37, paragraph 3 accordingly.

(13) Details of the course of the hearing, consultation, voting and writing of the report are specified by the Rules of Procedure.

#### § 50

#### **Adjournment of hearing**

The hearing may be adjourned for serious reasons. The court may also adjourn the hearing if the parties jointly move for an adjournment.

#### § 51

#### **Decision-making without an order to hear the matter**

(1) The court may decide on the matter without a hearing, if the parties jointly move for this or agree to this. It is understood that agreement is also given when the party has not expressed disagreement with such a procedure within two weeks from the delivery of the call by the presiding judge; the party has to be notified of this in the call.

#### § 52

#### **Producing evidence in court**

(1) The court decides which of the proposed evidence shall be produced; it may also produce other evidence.

(2) The court is bound by decisions of other courts on whether a crime was committed and who committed it as well as by a court decision on personal status. In all other matters the court forms its own conclusions; if, however, there has been a decision on them, the court shall proceed from it, or, where the decision on the matters is up to the court, it may oblige the party to initiate such a decision by the party's own motion.

#### § 53

#### **Decision**

(1) The court decides on the matter proper by a judgement; it decides by a resolution only where provided for by law.

(2) The court decides on other matters by a resolution where provided for by law.

(3) Remedies against the decision of the court are admissible only if provided for by this Act.

## § 54

### **Judgement**

(1) The bench decides on the judgement by an absolute majority vote in closed deliberation at which no-one but the judges of the bench and a recorder may be present.

(2) The judgement must be produced in writing, it must contain the name of the court, the names of all judges who decided on the matter, the specification of the parties, their representatives, the matter concerned, statement of judgement, justification, instruction as to the remedy and the day and place of pronouncement. The judgement is signed by the presiding judge of the bench or, if not possible, by another judge of the bench. Personal data entered in the judgement are subject to the provision in § 37, paragraph 3 accordingly.

(3) The court shall produce the judgement within one month of its pronouncement at the latest and shall take the necessary steps to deliver the counterparts of the judgement into the parties' own hands or to make a delivery to the persons participating in the proceedings. The presiding judge may extend this time limit on serious grounds, not more, however, than by two months.

(4) The presiding judge shall correct errors in writing and numbers, or any other obvious errors, in the judgement even without a motion. If the correction concerns the statement of judgement, the presiding judge makes a rectifying resolution on this and may postpone the enforceability of the judgement until the rectifying resolution comes into force.

(5) A judgement that has been delivered to the parties is in force.

(6) The statement of final judgement is binding on the parties, persons participating in the proceedings and on public authority bodies.

(7) The judgement is enforceable upon its coming into legal force once the time limit for discharge prescribed by the court in the statement of judgement expires, or if the liability for discharge is not stated, or if the time limit for discharge is not prescribed.

## § 55

### **Resolution**

(1) The resolution is pronounced publicly if made during the hearing. A resolution which need not be delivered and is not part of the report on the hearing contains only a brief specification of the matter, the statement and the date of issue.

(2) The court is bound by a resolution once it has pronounced the resolution, and if the resolution is not pronounced, then upon its delivery. The court, however, is not bound by a resolution which only regulates the procedure.

(3) The written copy of the resolution is delivered to the parties and persons participating in the proceedings only if the proceedings are concluded by this resolution, otherwise only to those on whom a duty is imposed by the resolution, or if necessary for the conduct of the proceedings.

(4) A resolution whereby the proceedings are not concluded and which do not impose a duty on anybody need not contain a justification.

(5) The resolution is subject to the provision governing a judgement accordingly.

## § 56

### **Preferential dealing with matters**

(1) Regardless of the chronological order in which petitions reach it, the court preferentially disposes of petitions for adjudication of suspensory effect, petitions for provisional rulings, petitions for exemption from judicial fees and petitions for the appointment of a representative.

(2) The court furthermore preferentially deals with petitions and complaints concerning asylum, decisions on detention of a foreigner and decisions on the termination of special protection of and aid to witnesses and other persons in connection with criminal proceedings as well as in other cases, if provided for by a special law.

### **Costs of proceedings**

#### **§ 57**

(1) Costs of proceedings involve especially cash expenses of parties and their representatives, judicial fees, loss of earnings of the parties and their legal representatives, expenses related to producing evidence, representation fees, the representative's cash expenses and interpretation fees.

(2) If the representative of the claimant is a counsel who is a tax payer, the costs of the proceedings include also the amount corresponding to the tax which the counsel is obliged to pay out of the representation fee and of the reimbursement of costs according to a special law <sup>6a</sup>(6).

#### **§ 58**

(1) The witness is entitled to reimbursement of cash expenses and loss of earnings. The right becomes extinct if not exercised within three days of the examination or on the day when the witness was notified that the examination does not take place. The court has to inform the witness of this. The same rights are enjoyed by a person on whom the court has imposed a duty in the course of producing evidence.

(2) The expert and the interpreter are entitled to the reimbursement of cash expenses and a fee for expert and interpreting activities. The amount of the fee is specified by a special legal regulation.

(3) Reimbursements in accordance with paragraphs 1 and 2 are decided on by the presiding judge.

#### **§ 59**

### **Costs of proceedings payment**

(1) Each of the parties and persons participating in the proceedings pays for the costs incurred by them or their representatives.

(2) The state pays costs incurred for witnesses', experts', and interpreters' fees, and other expenses related to producing evidence. However, the presiding judge may by a resolution oblige a party who was not exempt from judicial fees to deposit advance payment for the costs of producing evidence which the party proposed.

#### **§ 60**

### **Costs of proceedings reimbursement**

(1) Unless otherwise specified by this Act, the party who has been fully successful in the matter is entitled to the reimbursement of costs of proceedings which the party justifiably incurred versus the party that has not been successful in the matter. If the party has been only

partially successful, the court awards the party proportional compensation for costs of proceedings.

(2) Paragraph 1 does not apply, should the compensation be awarded to an administrative authority in matters of retirement insurance, social security, sickness benefit insurance and sickness care in the armed forces and social care.

(3) None of the parties is entitled to reimbursement of the costs of proceedings if the proceedings have been discontinued or the petition rejected. If, however, the complainant has withdrawn the complaint on account of the defendant's subsequent action, or if the proceedings have been discontinued on account of the complainant's satisfaction, the complainant versus the defendant is entitled to reimbursement of the costs of proceedings.

(4) The state versus the unsuccessful party is entitled to costs of proceedings reimbursement which it incurred except when the party is exempt from judicial fees.

(5) A person participating in the proceedings is entitled to the reimbursement of only those costs which the person incurred in connection with the duties imposed on this person by the court. The court may on request, for reasons worthy of special consideration, award the person the right to be reimbursed for further costs of proceedings.

(6) The court may oblige the party, witness, expert, interpreter or a person with a duty imposed on him or her during the producing of evidence to reimburse the state or the other party for costs incurred through their fault.

(7) If there are reasons worthy of special consideration, the court may exceptionally decide that the reimbursement of costs of the parties or the state is to be completely or partly denied.

(8) If there are reasons worthy of special consideration the court may award the party who has been at least partially successful in the matter the right to be reimbursed for the costs of proceedings even in those cases when this Act specifies that none of the parties are entitled to reimbursement of the costs of proceedings.

## § 61

### **Statement of the court determining costs of proceedings reimbursement**

(1) As a rule the court decides on the duty to reimburse costs of proceedings in the judgement or resolution of the court whereby the proceedings are concluded.

(2) The presiding judge may determine the amount of costs only in the written copy of the judgement or resolution.

## § 62

### **Satisfaction of the complainant**

(1) Until the court has decided, the defendant may make a new decision or measure, or take another action whereby the defendant may satisfy the complainant providing this procedure does not affect the rights and duties of a third party. The administrative authority informs the court of its intention to satisfy the complainant and asks for the administrative documents if it has already submitted them to the court.

(2) The presiding judge shall set the time limit within which it is necessary for the defendant to take a decision, measure or action and to inform both the complainant and the court of them; if the time lapses to no effect, the court continues the proceedings.

(3) If the defendant's communication pursuant to paragraph 2 reaches the court, the presiding judge calls on the complainant to state within a period prescribed whether he or she is satisfied with the action of the administrative authority. Default of time may not be waived.

(4) The court shall discontinue the proceedings by a resolution once the complainant states that he or she is satisfied. The court shall discontinue the proceedings even though the complainant does not say so within the period prescribed if all the circumstances of the case make it clear that satisfaction has been achieved.

(5) The decision, measure or action pursuant to paragraph 1 come into force or have similar legal effects upon the day the court's decision to discontinue the proceedings comes into force.

### § 63

#### **Execution of a decision**

The execution of the court's decision which was made pursuant to this Act requires that if an obligation is imposed on an administrative authority which is

- a) an authority of the Executive, it is the duty of its respective structural unit to discharge it for the state,<sup>16)</sup> <sup>12)</sup>
- b) a natural person or a legal entity on which the performance of state administration is transferred by law, it is the duty of this person or entity to discharge it,
- c) a body of a public corporation, it is the duty of the public corporation to discharge it.

### § 64

#### **Application of the Civil Procedure Code**

Unless otherwise provided for by this Act, provisions of the first and third parts of the Civil Procedure Code shall be applied accordingly in administrative justice proceedings.

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<sup>12)</sup> § 3 of Act No.219/2000 Coll.

Chapter II  
SPECIAL PROVISIONS ON PROCEEDINGS  
*Division 1*

*Proceedings concerning a complaint against a decision of an administrative authority*

§ 65

**Complaint legitimation**

(1) Anyone who claims that their rights have been prejudiced directly or due to the violation of their rights in the preceding proceedings by an act of an administrative authority whereby the person's rights or obligations are created, changed, nullified or bindingly determined (hereinafter "decision") may seek the cancellation of such a decision, or the declaration of its nullity, unless otherwise provided for by this Act or by a special law.

(2) A complaint against a decision of an administrative authority can be made even by a party to the proceedings before the administrative authority who is not entitled to file a complaint under paragraph 1, if the party claims that his or her rights have been prejudiced by the administrative authority's acts in a manner that could have resulted in an illegal decision.

(3) If the administrative authority has decided on a penalty on account of an administrative delict, the person on whom the penalty was imposed may seek a release from the penalty or its reduction within the limits provided for by the law by means of a complaint.

§ 66

**Special complaint legitimation to protect the public interest**

(1) Under conditions prescribed by laws governing the procedure before administrative authorities the complaint can be made by an administrative authority which is specified as eligible to do so by such a law.

(2) The complaint can be made by the Attorney General if he or she finds a compelling reason for the submission in the public interest.

(3) The authorization to make a complaint is also given to a person to whom the authorization is expressly granted by a special law or by an international agreement which is part of the national law.

(4) A complaint under paragraphs 1 to 3 is inadmissible if the legal causes put forward in it have been applied in the same matter in another complaint already rejected by the court.

(5) A complaint under paragraphs 1 to 3 is, furthermore, inadmissible if there has been another complaint made under the same paragraph even if submitted by another entitled person although the person has not filed a complaint in the matter so far.

§ 67

**Complaints in matters concerning self-government**

Provisions in this division shall be applied accordingly also in cases when a special law<sup>17)</sup> vests

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<sup>17)</sup> Act. No.128/2000 Coll. on communities (local government), as amended by subsequent legislation.  
Act. No.129/2000 Coll. on regions (regional government), as amended by subsequent legislation.  
Act. No.131/2000 Coll. on the Capital City of Prague, as amended by subsequent legislation.

- a) an administrative authority with the power to file a complaint against a resolution or a measure taken by an authority of a territorial self-governing unit with self-government competence,
- b) an authority of a territorial self-governing unit with the power to file a complaint against a decision to dissolve a self-government body council.

#### § 68

#### **Inadmissibility of a complaint**

The complaint is also inadmissible if

- a) the complainant has not exhausted ordinary remedies in the procedure before an administrative authority if admissible by a special law, unless the decision of the administrative authority was changed to the detriment of the complainant's right upon a remedy submitted by another subject,
- b) it concerns a decision of an administrative authority in a private law matter issued within the jurisdiction of this administrative authority,<sup>18) 2)</sup>
- c) its only cause is the claim of nullity of the contested decision, and if the complainant did not seek that the nullity be declared in proceedings before the administrative authority,
- d) it aims only against the reasons of the decision,
- e) it seeks the review of a decision which is excluded from review in accordance with this Act or a special law.

#### § 69

#### **Parties to the proceedings**

The defendant (respondent) is an administrative authority which has made the last instance decision or an administrative authority which assumed its competence.

#### § 70

#### **Jurisdiction exclusions**

Those acts of an administrative authority are excluded from judicial review

- a) which are not decisions,
- b) which are of a provisional nature,
- c) which regulate the administration of proceedings before the administrative authority,
- d) whose issue depends exclusively on the assessment of the health condition of persons or the assessment of the technical condition of things, unless they do not in themselves represent a legal obstacle to the performance of an occupation, employment or business, or any other economic activity, unless otherwise provided by a special law,
- e) concerning the denial or withdrawal of professional competence of natural persons, unless they do not in themselves represent a legal obstacle to the performance of an occupation or employment or another activity,
- f) whose review is excluded by a special law.

#### § 71

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<sup>2)</sup> Part Five of the Civil Procedure Code.

### **Elements of a complaint**

(1) Apart from essential elements (§ 37 paragraphs 2 and 3) the complaint must contain

- a) the specification of the contested decision and the day of its delivery, or the specification of another notification delivered to the complainant,
- b) the specification of persons participating in the proceedings, if known to the complainant,
- c) the specification of the statements of the decision contested by the complainant,
- d) counts of charges from which it must be clear for which factual and legal reasons the complainant considers the statements of the decision illegal or null,
- e) evidence in support of his or her claims which the complainant proposes to produce,
- f) proposal of the statement of judgement.

(2) The complainant shall attach one counterpart of the contested decision to the complaint. The complainant may at any point during the proceedings restrict the counts of charges. The complainant may extend the complaint to statements of the decision not yet contested or to extend it by further counts of charges only within the time limit for filing a complaint.

### § 72

#### **Time limit for filing a complaint**

(1) The complaint can be filed within two months after the complainant was notified of the decision by being delivered its written copy or by another manner prescribed by law, unless a special law prescribes another time limit. The time limit is met if the complaint is submitted within the time limit to the administrative authority whose decision is contested.

(2) The complaint pursuant to § 66 paragraphs 1 and 2 may be filed by an authorized complainant within three years after the decision came into force, unless otherwise provided for by a special law and unless the decision comes into force from the moment of the delivery of the decision to the last party who could have filed a complaint against it on his or her own. The complaint pursuant to § 66 paragraph 3 may be filed by an entitled complainant until the lapse of the time limit for filing a complaint for all parties, unless otherwise provided for by a special law.

(3) If the court deciding in civil court proceedings discontinues the proceedings because they concern a matter in which a complaint against a decision of an administrative authority should have been filed, the person who filed such a complaint in civil court proceedings may file an administrative justice complaint before a court competent locally and according to subject-matter within one month of the discontinuance of the proceedings coming into force. In such a case the rule is that the complaint was filed on the day when it reached the court deciding in civil court proceedings.

(4) Default of time may not be waived.

### § 73

#### **Suspensory effect of a complaint**

(1) The filing of a complaint does not have suspensory effect unless otherwise provided for by this Act or a special law.

(2) At the complainant's request after hearing the defendant's opinion the court shall by a resolution award suspensory effect to the complaint providing the execution of the decision or other legal consequences of the decision would result in irreparable damage to the complainant, the award of suspensory effect does not unreasonably affect the acquired rights of third persons and is not contrary to the public interest.

(3) The award of suspensory effect stays the effect of the contested decision until the conclusion of the proceedings before the court.

(4) The court may by a resolution revoke the resolution to award suspensory effect even without a request if it transpires during the proceedings that there are no causes for the award of suspensory effect or that these causes have disappeared in the meantime.

#### § 74

### **The hearing of a complaint**

(1) The presiding judge shall have the complaint delivered into the defendant's own hands and shall have it delivered to persons participating in the proceedings whose range is clear from the complaint. At the same time the presiding judge shall oblige the defendant to submit administrative documents and the defendant's statement with respect to the complaint within two months at the latest. The presiding judge delivers the statement to the complainant and to persons participating in the proceedings; the presiding judge may also require the complainant to make a reply. The presiding judge may require other persons or authorities to submit their documents requisite for the hearing of the matter or to express their opinions on the matter.

(2) If the court finds at any time before ordering the hearing that there are other persons participating in the proceedings, the presiding judge notifies them of the proceedings.

#### § 75

### **Review of the contested decision**

(1) In its review of the decision the court proceeds from the facts of the case and the legal situation existing at the time of decision-making by the administrative authority.

(2) The court shall review the contested statements of the decision within the scope of counts of charge. If the binding grounds for the decision under review were another act of the administrative authority, the court likewise reviews its lawfulness together with the complaint unless the court itself is bound by it and unless this law enables the complainant to contest such an act by means of an independent administrative justice complaint.

#### § 76

### **Decision-making without an order to hear the matter**

(1) The court shall revoke the contested decision for procedural faults without a hearing by means of judgement

- a) on grounds of non-reviewability consisting in incomprehensibility or for absence of reasons for the decision,
- b) because the facts of the matter which the administrative authority took as the grounds for the contested decision are contrary to the documents or are not supported by them or require extensive or essential supplementing,
- c) for substantial breach of the regulations on proceedings before an administrative authority if it could result in an unlawful decision on the matter itself.

(2) If the court finds that the decision suffers from such faults that they cause its nullity, the court declares this nullity even without a motion. If the causes of nullity concern only some part of the decision, the court declares nullity of only that part of the decision, if it does not follow from the nature of the matter that it cannot be separated from the other parts of the decision.

(3) If there are no causes for a procedure in accordance with paragraphs 1 and 2 or in accordance with § 51, the presiding judge orders a hearing. The court revokes the contested decision for reasons given in paragraphs 1 and 2 or declares its nullity even as these faults come to light during the proceedings.

#### § 77

### **Producing evidence**

(1) The court produces evidence during the hearing.

(2) As part of producing evidence the court may repeat or add evidence produced by the administrative authority, unless the scope and manner of producing evidence is provided for by a special law otherwise. The court appraises the evidence produced by the administrative authority individually and aggregately together with evidence produced in the proceedings before the administrative authority and bases its decision on the facts and the legal situation thus ascertained.

#### § 78

### **Judgement**

(1) If the complaint is justified, the court revokes the contested decision as unlawful or for procedural faults. The court also revokes the contested decision as unlawful if it finds that the administrative authority exceeded the legally defined bounds of discretionary power, or abused it.

(2) If the court decides on a complaint against a decision whereby the administrative authority imposed a penalty on account of an administrative delict, the court may, if there are no causes for the revocation of the decision in accordance with paragraph 1 but the penalty imposed was apparently unreasonably large, either waive the penalty or decrease it within lawful limits, if such a decision can be made on the basis of the facts from which the administrative authority started and which the court may have supplemented through its own evidence in nonessential ways and if such a procedure was proposed by the complainant in his or her complaint.

(3) If the court revokes a decision, it may, depending on circumstances, also revoke the decision of a lower-level administrative authority which preceded it.

(4) If the court revokes a decision, it simultaneously declares that it returns the matter to the defendant for further proceedings.

(5) The legal position adopted by the court in the vacating judgement or a judgement declaring nullity is binding on the administrative authority in subsequent proceedings.

(6) If the court revokes a decision of an administrative authority in a matter in which the court itself produced evidence, the administrative authority includes the evidence among the grounds for a new decision in the subsequent proceedings.

(7) The court shall dismiss a complaint if not justified.

#### *Division 2*

*Protection against inaction of an administrative authority*

§ 79

**Complaint legitimization and parties to the proceedings**

(1) The person who has ineffectively exhausted the remedies which the rules of procedure applying to proceedings before an administrative authority prescribe for the protection of the person against the inaction of an administrative authority may request by means of a complaint that the court oblige the administrative authority to issue a decision or an attest in the merits of the matter. This does not apply if a special law connects the inaction of an administrative authority with the legal fiction that a decision with certain contents has been issued or another legal consequence.

(2) The defendant is an administrative authority which in accordance with the claimant's statement has an obligation to issue a decision or an attest.

§ 80

**Time limit for filing a complaint and its elements**

(1) The complaint may be filed within one year at the latest from the day when the time lapsed to no effect prescribed by a special law for the issue of a decision or an attest on the matter in which the complainant seeks protection and if such time is not prescribed, from the day when the complainant versus the administrative authority or the administrative authority versus the complainant took the last action.

(2) Default of time may not be waived.

(3) Apart from essential elements for a petition the complaint must contain

- a) indication of the matter in which the complainant seeks protection against inaction,
- b) indication of the decisive facts,
- c) designation of evidence on which the claimant relies,
- d) proposal of the statement of the judgement.

§ 81

**Judgement**

(1) The court decides on the basis of facts ascertained up to the day of its decision.

(2) If the motion is justified, the court by means of a judgement imposes on the administrative authority the obligation to issue a decision or an attest and accordingly prescribes a time limit for it, but not longer than prescribed by a special law.

(3) The court shall dismiss a complaint if not justified.

*Division 3*

*Proceedings concerning protection against unlawful interference, instruction or enforcement from an administrative authority*

§ 82

**Complaint legitimization**

Anyone who claims that he or she has been directly prejudiced in their rights by unlawful interference, instruction or enforcement (hereinafter "interference") from an administrative authority which is not a decision and was aimed directly against the person or

as a consequence of it the person was directly acted against, may seek protection against it before a court by means of a complaint, if such interference or its consequences continue, or if there is danger of its being repeated.

### § 83

#### **Defendant**

The defendant is an administrative authority which in accordance with the claimant's statement has committed interference; if it is interference by the armed forces, public armed corps or another similar type of force which is not an administrative authority, or by a member of such a force, the defendant is the administrative authority in charge of such a force or the authority to which such a force is subject or, in the case of the municipal police, the defendant is the community.

### § 84

#### **Time limit for filing a complaint and its elements**

(1) The complaint has to be filed within two months from the day when the complainant learned of the unlawful interference. The latest date for filing the complaint is within two years from the moment the interference took place.

(2) Default of time may not be waived.

(3) Apart from essential elements for submission the complaint must contain

- a) indication of the matter in which the complainant seeks protection against inaction,
- b) indication of the decisive facts,
- c) designation of evidence on which the claimant relies,
- d) proposal of the statement of the judgement.

### § 85

#### **Inadmissibility of a complaint**

The complaint is inadmissible if protection or rectification may be sought by other legal remedies or if the complainant only seeks determination that the interference is unlawful.

### § 86

#### **Discontinuance of proceedings**

The court shall discontinue proceedings if it finds that following the submission of the complaint neither interference nor its consequences persist and there is no danger of repeated interference.

### § 87

#### **Judgement**

(1) The court decides on the basis of facts ascertained up to the day of its decision.

(2) By its judgement the court forbids the administrative authority to continue in the violation of the complainant's right and orders that, if possible, the authority restores the state prior to interference. If it was interference by the armed forces, public armed corps or another similar type of force, the court imposes this prohibition or order on the administrative authority or community in charge of such a force or on the authority to which such a force is subject.

(3) The court shall dismiss a complaint if not justified.

*Division 4*

*Justice in electoral matters and in matters of a local referendum*

§ 88

**Protection in matters of the register of electors**

(1) If an administrative authority which under a special law keeps a regular electoral register does not remove errors and shortcomings in the regular electoral register and its addendum,<sup>19)</sup> <sup>3)</sup> the person affected by this may turn to a court competent according to the seat of the administrative authority with a petition that a decision is made to make corrections or to supplement the register or its addendum.

(2) Parties to the proceedings are the petitioner and the administrative authority mentioned in paragraph 1.

(3) The court shall decide without proceedings by a resolution within three days after the petition has reached the court.

§ 89

**Protection in matters of registration**

(1) It is possible to seek judicial protection in matters in which the administrative authority under special laws<sup>20)</sup> <sup>4)</sup>

- a) has rejected a list of candidates or rejected an application for registration,
- b) has deleted a candidate on the list of candidates,
- c) has registered the list of candidates or application for registration,

(2) By means of a petition in accordance with paragraph 1, letter a) a political party, political movement or their coalition (hereinafter “political party”), independent candidate, association of independent candidates or association of political parties or political movements or independent candidates if they submitted a list of candidates, or in elections for the Senate of the Parliament of the Czech Republic (hereinafter “Senate”) an independent candidate or a political party which has applied for registration, seeks a decision on the duty of the administrative authority to register a list of candidates or an application for registration. The parties are the petitioner and the administrative authority.

(3) By means of a petition in accordance with paragraph 1, letter b) a political party, coalition of independent candidates or association of political parties or political movements or independent candidates that submitted a list of candidates, or the person who was deleted from this list of candidates by a decision of the administrative authority seek the issue of a decision on keeping the candidate on the list of candidates. The parties are the petitioner and the administrative authority.

(4) By means of a petition in accordance with paragraph 1, letter c) a political party, independent candidate, association of independent candidates or association of political

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<sup>3)</sup> § 28 of Act No.491/2001 Coll. on local community elections and on the amendment to some acts.

<sup>4)</sup> Act No.247/1995 Coll. on the elections to the Parliament of the Czech Republic and on the amendment and supplement to some other acts, as amended by subsequent legislation.

Act No.130/2000 Coll. on regional government elections and the amendment to some acts, as amended by subsequent legislation.

Act No.491/2001 Coll.

parties or political movements of independent candidates that submitted a list of candidates or, in Senate elections an independent candidate or political parties that applied for registration may seek the issue of a decision on the cancellation of registration of a list of candidates of another political party, independent candidate, association of independent candidates or association of political parties or political movements or independent candidates, or on the cancellation of registration of another candidates. The parties are the petitioner, the administrative authority which made the registration and the person whose registration is concerned.

(5) The court shall decide by a resolution within fifteen days after the petition has reached the court. Proceedings need not be ordered.

## § 90

### **Invalidity of elections and voting**

(1) Under conditions provided for by special laws<sup>20)</sup> <sup>20)</sup> a citizen, political party or independent candidate or association of independent candidates and association of political parties and political movements and independent candidates may by a petition seek a court decision on the invalidity of elections, or invalidity of voting, or the invalidity of the vote for a candidate.

(2) The parties are the petitioner, the respective electoral body and the person whose vote is being contested.

(3) The court shall decide by a resolution within twenty days after the petition has reached the court. Proceedings need not be ordered.

## § 91

### **Protection in matters concerning the termination of a mandate**

(1) Under conditions provided for by special laws<sup>21)</sup> <sup>5)</sup> a councillor whose mandate has been terminated or a political party, association of independent candidates or association of political parties and independent candidates on whose list of candidates the councillor was included may seek the cancellation of a resolution by the council of a territorial self-governing unit or the cancellation of a resolution by the administrative authority which decided on the termination of the councillor's mandate.

(2) The parties are the petitioner and any person who was authorized with respect to the petition, the territorial self-governing unit whose community is concerned, or the administrative authority which issued the decision.

(3) The court shall decide by a resolution within twenty days after the petition has reached the court. Proceedings need not be ordered.

## § 91a

### **Protection in matters concerning a local referendum**

(1) Under conditions provided for by a special law<sup>21a)</sup> <sup>21a)</sup> it is possible by a petition to the court to seek

- a) determination that the proposal for holding a local referendum has no faults,
- b) announcement of a local referendum,

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<sup>5)</sup> Act No.130/2000 Coll., as amended by subsequent legislation.  
Act No.491/2001 Coll.

<sup>21a)</sup> ) §§ 54 and 58 of Act No. 22/2004 Coll. on a local referendum and on the amendment to some acts.

- c) declaration of the decision made in a local referendum being invalid,
- d) declaration of the vote made in a local referendum being invalid.

(2) The parties of the proceedings are the preparatory committee<sup>21b)</sup> <sup>21b)</sup> and the respective community, urban section, or urban district of a regionally subdivided statutory town, or metropolitan district of the capital city Prague, or the capital city Prague; in the case of a proposal according to paragraph 1, letters c) and d) the party is also a person entitled to vote in a local referendum.

(3) The court shall decide by a resolution within thirty days. Proceedings need not be ordered.

## § 92

### **Inadmissibility of the petition**

The petition is also inadmissible if submitted before a court which is not competent locally or according to the subject-matter.

## § 93

### **Special provisions on proceedings**

(1) Provisions of this Act for compulsory representation shall not be applied; this does not apply to representation by a statutory representative.

(2) The petition whereby the proceedings are commenced, or acts whereby the proceedings or their subject-matter are determined can be made only in writing or orally in the transcript at a court competent locally and according to subject-matter.

(3) Default of time for the submission of the petition may not be waived.

(4) No party is entitled to reimbursement of costs of proceedings.

(5) The court delivers the resolution to the parties and posts it upon the official notice board of the court. The resolution comes into force upon the day of posting.

## *Division 5*

### *Special proceedings in matters of political parties and political movements*

## § 94

### **Petition**

(1) Under conditions provided for by a special law a petition submitted to a court can be a means of seeking

a) determination that a proposal for registration, or a proposal for the registration of the amendment of statutes has no faults,<sup>22)</sup><sup>6)</sup>

b) dissolution of a political party or political movement, discontinuation or resumption of their activity.<sup>23)</sup><sup>7)</sup>

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<sup>21b)</sup> § 9 of Act No. 22/2004 Coll.

<sup>6)</sup> §§ 7 and 11 of Act No. 424/1991 Coll. on association in political parties and political movements, as amended by subsequent legislation.

<sup>7)</sup> §§ 14 and 15 of Act No.424/1991 Coll., as amended by subsequent legislation.

(2) A proposal in accordance with paragraph 1 letter b), with the exception of a proposal for the resumption of activity, is inadmissible, if submitted at a time for which a special law provides that the activity of a political party or political movement cannot be discontinued, or the party and the movement cannot be dissolved during this time. If, however, the proposal was submitted prior to this, the court shall interrupt the proceedings for this time.

(3) Parties are those specified by a special law.

§ 95

### **Competence**

The body competent to hear the petition in accordance with § 94 paragraph 1, letter b) is the Supreme Administrative Court.

§ 96

### **Judgement**

The petition in accordance with § 94 paragraph 1, letter b) is decided by the court on the basis of the facts of the matter existing at the time of the court's decision.

*Division 6*

*Competence complaint proceedings*

§ 97

### **Competence contest**

- (1) The court decides on a positive, or negative, competence contest whose parties are
- a) an administrative authority and a body of territorial, interest-group or professional self-governance, or
  - b) bodies of territorial, interest-group or professional self-governance versus each other, or
  - c) central administrative authorities versus each other.

(2) A positive competence contest is one in which administrative authorities claim competence to issue a decision on the same right or duty of the same party to the proceedings before the administrative authority.

(3) A negative competence contest is one in which administrative authorities disclaim competence to issue a decision on the same right or duty of the same party to the proceedings before the administrative authority.

(4) The proceedings fall within the competence of the Supreme Administrative Court.

§ 98

### **Complaint legitimation and parties to proceedings**

- (1) The subject entitled to file a complaint is
- a) an administrative authority which in a positive competence contest claims jurisdiction to issue a decision on the matter and contests the competence of an administrative authority which conducts the proceedings or has decided on the matter,
  - b) an administrative authority which in a negative competence contest disclaims jurisdiction to issue a decision on the matter and claims that this jurisdiction rests with another administrative authority which has denied its competence,

c) a person whose rights or duties are, or should have been, decided in the proceedings before the administrative authority.

(2) The defendant is the administrative authority which is the other party to the competence contest; if the complaint has been made by a subject specified in paragraph 1 letter c) the defendants are administrative authorities with contentious competence.

(3) If the court holds that the proceedings and issue of a decision may lay within the competence of yet another administrative authority than the one identified in the complaint as party to the competence contest, the court by a resolution includes this administrative authority as another defendant.

(4) If the party to the competence contest is an administrative authority, it is acted for by the central body of state administration competent according to the section of state administration; if there is none or if this competence of the central body is likewise contentious, the administrative authority itself acts in the proceedings.

(5) Anyone who was a party to the proceedings in which the competence contest arose has the status of a person participating in the proceedings unless they themselves submitted the complaint.

#### § 99

#### **Inadmissibility**

The complaint is inadmissible,

- a) if it does not involve a competence contest, or
- b) if the decision on a competence contest rests with another authority under a special law, or
- c) if the competence contest may be resolved at the complainant's request, even as a preliminary issue, in other proceedings under this Act or a special law, with the exception of a constitutional complaint.

#### § 100

#### **Decision**

(1) The court proceeds from the facts of the matter and the legal situation existing at the time of its decision.

(2) If the court does not reject the complaint, if it does not discontinue the proceedings, or does not decide on referring the matter, the court determines by a judgement which of the administrative authorities has the competence to issue a decision on the matter specified in the complaint. At the same time it declares the nullity of all decisions of administrative authorities or their separate statements if they are contrary to the determination of competence by the court; the provision of § 76 paragraph 2 applies similarly.

#### § 101

#### **Costs of proceedings reimbursement**

None of the parties are entitled to costs of proceedings reimbursement.

## Chapter III

### REMEDIES

#### *Division 1*

#### *Cassation complaint*

#### § 102

#### **Admissibility**

Cassation complaint is a remedy against the final decision of a regional court in administrative justice whereby a party to the proceedings from which this decision arose, or a person participating in the proceedings (hereinafter “complainant”), seeks the quashing of a court decision. A cassation complaint is admissible against any such decision unless provided for otherwise in the following.

#### § 103

#### **Causes for a cassation complaint**

(1) A cassation may be submitted only on grounds of the claimed

- a) unlawfulness consisting in incorrect consideration of a legal issue before the court in the previous proceedings,
- b) fault of proceedings consisting in that the merits of the matter from which the administrative authority proceeded in the contested decision had no support in the documents or is in contradiction with them, or in that in determining the merits of the matter the law was violated in provisions on proceedings before the administrative authority in a way that could have affected its lawfulness, and for this justly claimed fault the court deciding on the matter should have quashed the contested decision of the administrative authority; such procedural faults include non-reviewability of the administrative authority’s decision on grounds of its incomprehensibility,
- c) irregularity of proceedings before the court consisting in the absence of conditions for the proceedings, in the decision being made by an excluded judge, in the court being incorrectly staffed, or in the decision being made to the detriment of the party as a consequence of the judge’s criminal act,
- d) non-reviewability consisting in incomprehensibility or lack of causes for a decision, or in some other procedural fault before the court, if such a fault could result in an unlawful decision on the matter itself,
- e) unlawfulness of the decision on rejection of the petition or on discontinuation of the proceedings.

(2) The provision of paragraph 1 is applied accordingly also to causes for a cassation complaint opposing a regional court decision concerning a procedural fine.

#### § 104

#### **Inadmissibility**

(1) A cassation complaint in electoral matters and in matters of a local referendum is inadmissible.

(2) A cassation complaint opposing a statement on costs of proceedings or against causes for the court’s decision is inadmissible.

(3) A cassation complaint is, furthermore, inadmissible against a decision

- a) whereby the court decided after its original decision had been vacated by the Supreme Administrative Court; this does not apply if the cause for a cassation complaint is an objection that the court did not comply with the binding legal position of the Supreme Administrative Court,
- b) whereby the proceedings are merely adjusted, or
- c) which is, in keeping with its nature, only temporary.

(4) A cassation complaint is inadmissible if it rests solely on other reasons than those specified in § 103, or on reasons which the complainant did not put forward in the proceedings before the court whose decision is to be reviewed although the complainant could have done so.

#### § 105

##### **Parties to the proceedings concerning a cassation complaint and their representation**

(1) The parties to the proceedings concerning a cassation complaint are the complainant and all who were persons participating in the original proceedings.

(2) The complainant must be represented by a counsel; this does not apply if the complainant, his employee or a member acting for the complainant or representing the complainant has a university-level legal education which is required for the practice of law under special acts.

#### § 106

##### **Elements of a complaint, the place of and the time limit for submission**

(1) Apart from the general elements the cassation complaint must contain the specification of the decision it opposes, the specification as to what extent and on which grounds the complainant contests the decision, the date of its being delivered to the complainant. The provision of § 37 applies similarly.

(2) The cassation complaint must be submitted within two weeks after the delivery of the decision, and if a rectifying resolution was issued the time limit again runs from the delivery of this resolution. The person who claims that the court incorrectly described him or her as not being a person participating in the proceedings, and the person who exercised the rights of a person participating in the proceedings only after the issue of the contested decision, have the time limit running for the cassation complaint from the day of the delivery of the decision to the last of the participants. Default of time may not be waived for the submission of a cassation complaint.

(3) If the cassation complaint does not have all elements on its submission, the elements must be supplied within one month from the delivery of the resolution whereby the complainant was called on to complete the submission. The complainant may extend the cassation complaint to include statements so far uncontested and extend its causes only within this time limit. This time limit may be extended by the court at the complainant's timely request for serious reasons by one more month at the most.

(4) The cassation complaint is submitted at the court which issued the contested decision; the time limit is preserved, if the cassation complaint is submitted at the Supreme Administrative Court.

#### § 107

### **Suspensory effect**

The cassation complaint does not have suspensory effect; the Supreme Administrative Court may, however, award it at the complainant's request. The provision of § 73 paragraphs 2 to 4 is used accordingly.

### **§ 108**

#### **Procedure of a regional court after the submission of a cassation complaint**

(1) If the cassation complaint has faults but is not apparently delayed, or submitted by a person who is patently not entitled to do so, the presiding judge sees to the faults being eliminated. If there are no reasons for a different proceeding, the court delivers the cassation complaint to the other parties to the proceedings and persons participating in the proceeding, gives them an opportunity to express their opinion on its contents and requests the documents of the administrative authority, or gathers further material necessary for making a decision. After that the court submits the cassation complaint together with the documents to the Supreme Administrative Court; when submitting the complaint the court expresses its opinion as to whether the time limit for the submission of the cassation complaint was met and whether the complaint was made by a person entitled to do so.

(2) If the cassation complaint is withdrawn before the submission of the matter to the Supreme Administrative Court, the regional court discontinues the proceeding on the cassation complaint by a resolution.

### **§ 109**

#### **Proceedings before the Supreme Administrative Court**

(1) As a rule, the Supreme Administrative Court decides on a cassation complaint without a hearing. If the Supreme Administrative Court sees fit or if it produces evidence, the Supreme Administrative Court orders a hearing to determine the cassation complaint.

(2) The Supreme Administrative Court is bound by the scope of the cassation complaint; this does not apply if depending on the contested statement there is a statement which was not contested, or if the decision of the administrative authority is null.

(3) The Supreme Administrative Court is bound by the reasons of the cassation complaint; this does not apply if the proceedings before the court were invalid (§ 103 paragraph 1, letter c)) or if it was affected by a fault which may result in an unlawful decision on the matter itself or if the contested decision is non-reviewable (§ 103 paragraph 1, letter d)), nor in cases where the decision of the administrative authority is null.

(4) The Supreme Administrative Court shall not take into account facts which the complainant put forward after the contested decision was made.

### **§ 110**

#### **Judgement**

(1) If the Supreme Administrative Court arrives at the conclusion that the cassation complaint is justified, it shall vacate the decision of the regional court by means of a judgement and refer the matter back to the regional court for further proceedings; if there were reasons for discontinuance of the proceedings, rejection of a proposal or referral of the matter even at the time of the proceedings before the regional court, the Supreme Administrative Court decides on this simultaneously with the vacation of the decision made by the regional court. If the cassation complaint is not justified, the Supreme Administrative Court shall reject it.

(2) If the Supreme Administrative Court vacates the decision made by the regional court and refers the matter back to the regional court for further proceedings, the regional court decides in the new proceedings also about the reimbursement of costs of proceedings for the cassation complaint. If the Supreme Administrative Court simultaneously decides on the rejection of the proposal, discontinuance of proceedings or on the referral of the matter, it also decides on the costs of proceedings which preceded the vacated decision of the regional court.

(3) If the Supreme Administrative Court vacates the decision made by the regional court and refers the matter back to the regional court for further proceedings, the regional court is bound by the legal position adopted by the Supreme Administrative Court when making a vacating decision.

(4) The decision of the Supreme Administrative Court shall be delivered to the parties to the proceedings and the persons participating in the proceedings by the regional court.

## *Division 2*

### *Resumption of proceedings*

#### § 111

#### **Causes for resumption**

Proceedings concluded by a final judgement are resumed at the request of a party, if new evidence and facts have come to light that without the party's fault were not or could not be produced in the original proceedings, or if a different decision on the preliminary issue was made, providing the result of the resumed proceedings may be more favourable for the party.

#### § 112

#### **Parties to the proceedings**

A party to the proceedings is a person who submitted a petition to resume the proceedings and also those who were parties to the proceedings at the court whose decision the petition for the resumption of the proceedings opposes.

#### § 113

#### **Competence**

Competence for the proceedings rests with the court which issued the decision which the petition for the resumption of the proceedings opposes.

#### § 114

#### **Admissibility of the petition**

(1) Resumption of the proceedings is admissible only against a decision made in the proceedings concerning

- a) protection from interference by an administrative authority,
- b) matters of political parties and political movements.

(2) Resumption of the proceedings is not admissible if opposing a decision on a cassation complaint.

(3) Nor is the resumption of the proceedings admissible, if the petition opposes only the causes for the decision, or the statement on costs of proceedings.

#### § 115

### **Time limit for the submission of a petition**

(1) The petition to resume proceedings can be submitted within three months from the day when the person petitioning for the resumption of proceedings learnt of the cause for resumption.

(2) However, after three years from the contested decision coming into force the petition can be submitted only if a criminal judgement by which the court had been bound in its decision-making is cancelled.

(3) Default of time may not be waived.

§ 116

### **Elements of the petition**

The petition must contain the specification of the decision which it opposes, the scope to which the decision is contested, the legal cause for the petition, description of facts indicating that the petition is submitted within the appropriate time limit, and a proposal to produce evidence whereby the justification of the petition is to be established.

§ 117

### **Suspensory effect of the petition**

(1) The submitted petition does not have suspensory effect; the court may, however, award it on request. Provisions of § 73, paragraph 2 to 4 are used accordingly.

(2) The enforceability of the decision affected by resumption is delayed by the effect of the decision to permit resumption until the decision on the matter of resumed proceedings comes into force.

§ 118

### **Proceedings concerning the permission to resume proceedings**

(1) The court is bound by the adduced causes for the petition. This does not apply in the case of a uncontested statement dependent on the contested statement.

(2) If the court finds the causes for the permission to resume proceedings justified, it permits the proceedings by a resolution; otherwise it shall reject the petition by a resolution.

§ 119

### **Resumed proceedings**

(1) If the resumption of proceedings is lawfully permitted, the court continues the proceedings concerning the original petition. In order to investigate properly the facts of the matter existing at the time of its original decision, the court newly produces evidence and decides on the original petition.

(2) The new decision replaces the original decision. In its statement on costs of proceedings the court also decides on the costs of proceedings concerning the permission to resume proceedings.

*Division 3*

*Common provision*

§ 120

Unless otherwise specified in the provisions of divisions 1 and 2, the provisions of part three of Chapter 1 are used accordingly.

**PART FOUR**  
**SPECIAL PROVISIONS ON THE STATUS OF JUDGES IN**  
**ADMINISTRATIVE**  
**JUSTICE**

§ 121

**Assignment of judges**

(1) A judge may be assigned to a regional court to perform judicial duties of acting and deciding on matters of administrative justice in accordance with his or her previous consent if the judge has practised Constitutional, Administrative or Finance Law for a period of at least five years, or has been engaged in scientific, or pedagogical activities, or if the results of the judge's preparatory service or judiciary examinations provide grounds for it.

(2) A judge may be assigned to the Supreme Administrative Court in accordance with his or her previous consent following a previous consent by the President of the Supreme Administrative Court if the judge has practised Constitutional, Administrative or Finance Law for a period of at least ten years, or has been engaged in scientific or pedagogical activities.

**Transfer of judges**

§ 122

A judge may, with his or her consent or at his or her request, be transferred to the Supreme Administrative Court, if the judge has practised for at least ten years and the judge's expert knowledge and experience are a guarantee of the functions being properly executed.

§ 123

If by law there has been a change in the organization of administrative justice courts or a change in judicial districts, or if the proper execution of justice cannot be ensured otherwise, a judge assigned or transferred to a regional court may, even without the judge's consent or request, be transferred to another regional court or the Supreme Administrative Court, if the conditions are met pursuant to § 122. Similarly, a judge assigned or transferred to the Supreme Administrative Court may be transferred to a regional court.

§ 124

A judge may be transferred to the Supreme Administrative Court only with the consent of the President of this Court.

**PART FIVE**  
**TRANSITIONAL AND DELEGATING PROVISIONS**

§ 125

**Transitional provision on a specialized judiciary examination**

Within the period of five years from the effect of this Act a person may sit a specialized judiciary examination if this person meets the qualifications for the position of judge, with the exception of a specialized judiciary examination, and has practised Constitutional, Administrative or Finance Law for a period of at least six years, or has been engaged in scientific, or pedagogical activities; the Ministry shall make it possible for the person to take a specialized judiciary examination within six months following the person's application to take the examination.

§ 126

**Transitional provisions on the assignment and transfer of judges**

(1) Judges assigned or transferred to high courts who on the effective day of this Act decide on matters of administrative justice according to the work schedule become judges transferred to the Supreme Administrative Court on the effective day of this Act, if they consent to this.

(2) Judges assigned or transferred to regional courts who on the effective day of this Act decide on matters of administrative justice according to the work schedule become judges of specialized benches of judges of regional courts, dealing with matters of administrative justice, on the effective day of this Act.

(3) For a period of five years from the effective day of this Act a judge may be transferred to the Supreme Administrative Court if the judge's knowledge, experience and hitherto performance of judicial functions are a guarantee of the proper execution of the duties of this position; provision of § 122 is not applied.

(4) For a period of five years from the effective day of this Act a judge may be transferred to the position of administrative justice at a regional court if the judge's knowledge, experience and hitherto performance of judicial functions are a guarantee of the proper execution of the duties of this position; the provision of a special law concerning the length of the performance of judicial functions after the judge's transfer to a regional court is not applied.<sup>24)</sup><sup>24)</sup>

**Transitional provisions on the Judicial Council**

§ 127

Until the Judicial Council has been set up, the provision of § 25 is not applied.

§ 128

The first assembly of the judges of the Supreme Administrative Court to vote the Judicial Council is convened by the President of the Supreme Administrative Court within one month of the effective day of this Act.

§ 129

**Transitional provisions on remedial actions against decisions of an administrative authority**

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<sup>24)</sup> § 71 paragraph 3 of the Courts and Judges Act.

(1) In matters of administrative justice in which a special law entrusts the court with ruling on remedial actions against decisions of administrative authorities pursuant to part five chapter three of the Civil Procedure Code as read with effect from December 31, 2002, a complaint may be filed from the effective day of this Act pursuant to part three chapter two division one of this Act within the time limit of thirty days of the decision being delivered, unless a special law provides for a time limit otherwise, if the conditions stated there are met. Unless otherwise provided for by a special law, the submission of a complaint has suspensory effect.

(2) Proceedings concerning remedial actions filed prior to the effective day of this Act which the court did not decide by the effective day of this Act, will be finished within proceedings pursuant to the provisions of part three chapter two division one of this Act; if these proceedings concern legal matters to be heard and decided by a court in civil proceedings, the court proceeds according to § 68, letter b). Effects of procedural acts made in these proceedings remain preserved and are considered accordingly under the provisions of this Act. The provisions of § 46 paragraph 2 to 4 apply similarly.

(3) If an appeal against the decision of a court on a remedial action against the decision of an administrative body was lodged before the effective day of this Act in matters permissible by law and the appeal had not been decided by the effective day of this Act, the proceedings concerning the appeal are discontinued on the effective day of this Act. A party to these proceedings may file a cassation complaint against the decision of the court on a remedial action in accordance with this Act by January 31, 2003.

(4) If an application for appellate review of the decision of a high court on an appeal against the decision of a regional court on a remedial measure was lodged before the effective day of this Act, and the application had not been decided by the effective day of this Act, the Supreme Administrative Court shall finish these proceedings within proceedings pursuant to part three chapter three division one of this Act. Effects of procedural acts made in these proceedings remain preserved and are considered accordingly under the provisions of this Act.

#### § 130

##### **Transitional provisions on other unfinished matters**

(1) Proceedings pursuant to part five chapter two of the Civil Procedure Code with effect from the day before this Act taking effect in which no decision was made by the effective day of this Act shall be finished in accordance with the provision of part three chapter two division one of this Act; if these proceedings concern legal matters to be heard and decided by a court in civil proceedings, the court proceeds according to § 68, letter b). Effects of procedural acts made in these proceedings remain preserved and are considered accordingly under the provisions of this Act. The provisions of § 46 paragraph 2 to 4 apply similarly.

(2) Proceedings concerning matters of election justice and matters of political parties and political movements initiated according to the Civil Procedure Code and not finished by the effective day of this Act shall be heard and finished by a competent court in accordance with the current legal regulations.

#### § 131

##### **Transitional provision on cassation complaints**

A cassation complaint may be filed against decisions of regional courts made after the effective day of this Act.

#### § 132

##### **Transitional provision on the subject-matter competence of courts**

Matters of administrative justice in which no decision was made by the effective day of this Act and in which the subject-matter competence was given to regional courts shall be assumed and finished by a regional court with respective subject-matter competence in accordance with this Act. Unless otherwise provided for by this Act, matters of administrative justice, in which no decision was made by the effective day of this Act and in which the subject-matter competence was given to high courts or the Supreme Administrative Court, shall be assumed and finished by the Supreme Administrative Court.

§ 133

**Transitional provision on a representation fee**

The fee for the representation by a counsel or a notary public in proceedings that were initiated prior to the effective day of this Act will be determined according to current legal regulations.

§ 134

**Delegating provision**

The Ministry, by means of a legal regulation, shall specify details of dealing with matters of administrative justice by regional courts, the organization of work and tasks of their employees in the execution of administrative justice.

**PART SIX**

**EFFECT**

§ 135

This Act takes effect on January 1, 2003.

**Klaus** v. r. (manu propria)

**Havel** v. r. (manu propria)

v z. **Rychetský** v. r. (per pro, manu propria)

**Please note that the translation is not an official version and it is a summary.**

Act No. 85/1996 Coll., on the Legal Profession as amended by Act No. 210/1999 Coll.

The Parliament has thus decided on the following act of law of the Czech Republic:

## PART ONE

### OPENING PROVISIONS

#### Section 1

This act defines the conditions under which legal services may be provided as well as provision of legal services by attorneys at law (further referred to as "legal counsel").

Provision of legal services stands for legal representation before courts of justice and other authorities, defence in criminal cases, provision of legal counsel, elaboration of documents, elaboration of legal analyses and other forms of legal services if provided continuously and for a fee.

#### Section 2

Legal services may be provided only by attorneys at law under conditions as stipulated by this act of law and in manner specified therein.

The provision of Clause 1 above does not affect the title

of notary public, patent agents and tax advisers,<sup>1</sup> and/or other persons entitled so by special acts of law to provide legal services,

of employees of legal entity or natural person, or a member of a co-operative to provide legal services to a person in employment or other relation if provision of such legal services is a part of liabilities resulting from this relation.

#### Section 3

An attorney at law is in provision of legal services independent, bound by legal regulations and within the boundaries set by the regulations also by instructions of clients.

Attorneys at law provide legal services in all matters.

The provision of the Clause 2 above does not affect the limitation of extent of license of attorneys to provide legal services as specified herein (Section 5 paragraph 3).

## PART TWO

### ATTORNEY AT LAW

#### HEAD ONE

##### Propositions for exercise of legal counsel

###### Section 4

An attorney at law is a person registered in the list of attorneys at law maintained by the Czech Advocacy Chamber (further referred to as "Chamber").

###### Section 5

The Chamber will register in the list of attorneys at law anyone, who is fully eligible for legal acts, has reached graduate-level education within BA study programme in the field of law at a university in the Czech Republic, has exercised legal practice for at least three years in paralegal, in unblemished, has not been punished by scratching off the list of attorneys at law or who is considered as not punished in such way, has not been scratched off the list of attorneys at law in compliance with the Article 7b, paragraph 1, letter e) or f), of period of five years of cancellation of registration has elapsed, is not employed or otherwise related, with the exception of university tutor, or does not exercise other activity incompatible with exercise of legal counsel, has passed the bar exam, and after compliance with conditions and stipulated in clauses a) through h) has sworn to the Chairperson of the Chamber the following oath: "I promise to keep confidentiality and preserve the honour of the advocacy profession."

The Chamber will also register in the list of attorneys after the oath anyone, who

complies with the conditions as stipulated in paragraph 1 above, letters a) and d) through g), and

proves license to provide legal services in manner defined in Section 3 in other country under conditions compatible with this act of law, and

passes certification exam (Section 54 para. 2).

An attorney at law registered in the list of attorneys as per the paragraph 2 above is entitled to provide legal services only within the field of the country where license to provide legal services had been obtained, and in the field of international law.

The Chamber will issue to attorney at law after payment of fee specified by the Chamber and not exceeding the amount of CZK 5,000 certificate of registration in the list of attorneys at law. In the certificate the Chamber will indicate any limitation of extent of provision of legal services in accordance with paragraph 3 above.

###### Section 6

As advocacy exam also judicial, judge exam, unified judge exam, unified judge and advocacy exam, prosecutor exam, public prosecutor final exam, arbitrary exam and notary exam are considered. The Chamber may recognise other professional exam in the field of legal practice as the advocacy exam.

Practice of judge, prosecutor, public prosecutor, public arbiter, notary public, notary, notarial candidate, judicial candidate of prosecution office, public prosecution, arbitrary candidate, judicial candidate of public prosecution and notary public candidate are also considered as practice of paralegal. The Chamber may also recognise other legal practice as practice of paralegal.

Other professional exam in the field of legal practice in accordance with the paragraph 1 above may be recognised as advocacy exam only in relation to application to register in the list of attorneys at law, other legal practice in accordance with the paragraph 2 above may be recognised as legal practice of paralegal only in relation to application to take the advocacy certification exam or application to register in the list of attorneys at law.

## Section 7

Unless this act of law specifies otherwise the Chamber will enable anyone to take the advocacy certification exam to anyone who proves compliance with conditions of Section 5, para. 1, letters a) through d) and has paid the fee specified by the Chamber and not exceeding CZK 5,000 within nine months of application; within the same period of payment of examination fee the Chamber shall enable to take the certification exam to anyone complying with conditions specified in Section 5, para .1 letters a) and d) through g), and Section 5, para. 2, letter. a).

Any applicant failing the advocacy exam or the certification exam may apply in writing to the Chamber within one month of the exam for retaking of the exam. The Chamber allows repeated taking of the advocacy or certification exam not sooner than six month of the unsuccessful attempt. The exam may be repeated twice only,

Applicants who fail the advocacy or certification exam and do not apply for repeated examination as per the provisions of the paragraph 2 above, or applicants who fail the exam for the second time may apply for re-examination in advocacy or certification exam after three years of the date of taking the failed exam. Such applicants must prove that within the three-year period they have exercised the practice of paralegal for at least another two years. Other provisions of paragraph 1 apply accordingly.

The Chamber will enable applicants who have proved compliance with conditions specified in Section 5, para. 1, letters a) through h), or in Section S, para. 2. taking of the oath and registration in the list of attorneys at law. The Chamber will include the applicants in the list of attorneys at law as of the day of the oath, unless the period between the oath and the day of the application exceeds three months, in other cases the Chamber refuses such application on the grounds of invalidity of other exam or other practice in compliance with Section 6.

Scratching off the list of attorneys at law

## Section 7a

License to exercise legal practice terminates upon scratching off the list of attorneys at law:

if any of situation specified in Section 7b occurs,

if the Chamber so decides in cases specified in Section 8 and Section 10.

#### Section 7b

Attorneys at law, who

die are scratched off the list of attorneys at law as of the day of decease,

has been declared deceased is scratched off the list as of the day of enforcement of the judicial declaration deceased,

has been stripped off eligibility to legal acts or whose legal eligibility has been limited is scratched off the list of attorneys at law as of the day of enforcement of the judicial decision removing or limiting legal eligibility,

has been punished with disciplinary measure of scratching off the list of attorneys at law is scratched off the list of attorneys at law as of the day of enforcement of the decision to impose the disciplinary measure,

has filed for bankruptcy, received affirmation of settlement or refusal of bankruptcy due to assets insufficient to cover costs of bankruptcy is scratched off the list of attorneys at law as of the day of enforcement of the declaration of bankruptcy, affirmation of settlement or refusal of bankruptcy,

is a partner in a legal entity established to exercise legal counsel (Section 15), object of bankruptcy, affirmed settlement or refused bankruptcy due to assets insufficient to cover the costs of bankruptcy proceedings is scratched off the list of attorneys at law as of the day of enforcement of the declaration of bankruptcy, affirmation of settlement or refusal of bankruptcy,

has applied in writing to the Chamber to be scratched off the list of attorneys, provided with officially verified signature is scratched off the list of attorneys at law after expiration of one month following the month in which the application to scratch off the list of attorneys at law was delivered to the Chamber.

Scratching off the list of attorneys at law in compliance with the paragraph 1 above is registered by the Chamber without delay, no later than within one month of announcement of the fact. The regarded person is notified by the Chamber in writing in cases specified in paragraph 1 above, letters d) through g); in other cases the Chamber notifies in writing related persons of the applicant if known to the Chamber.

#### Section 8

The Chamber scratches off the list of attorneys at law anyone, who

has been registered in the list of attorneys at law without fulfilling any of the required conditions as specified in this act of law,

has been sentenced to unconditional imprisonment for deliberate criminal offence related to exercise of legal counsel,

has been convicted of other offence than specified in clause b) above, or who has been sentenced to another form of punishment than unconditional imprisonment for criminal offence specified in clause b) above, if such offence poses threat to faith in proper exercise of legal counsel,

is in default with payment of the contribution to operation of the Chamber exceeding six months and has not paid the contribution within one month of being challenged by the Chamber in writing and warned of the consequences of failure to contribute,

whose suspension of legal counsel practice as per provisions of the Section 9, para. 1 exceeds period of four years. This stipulation does not apply if the reason for suspension is office of Cabinet member or member of local self-administration, Representative or Senator, or other public elected office.

The Chamber may decide on scratching off the list of attorneys at law as per the paragraph 1, letter a), within one year of discovery of incompliance with a condition for registration in the list of attorneys at law; this does not apply in cases of incompliance with conditions specified in Section 5, para. 1, letters a), b) or d), or in Section 5, para. 2, letter a).

Scratching off the list of attorneys at law is executed by the Chamber without delay, yet no later than within one month of date of enforcement of the decision on scratching off.  
Suspension of exercise of legal counsel

#### Section 8a

Exercise of legal counsel is suspended if

any of situations specified in Section 8b arises,

the Chamber decides so in case specified in Section 9 and Section 10.

#### Section 8b

to an attorney at law

who has become object of bankruptcy proceeding, has been allowed settlement or refused bankruptcy due to assets insufficient to cover expenses of bankruptcy proceedings, is suspended from exercise of legal counsel as of the day of enforcement of the declaration of bankruptcy, approval of settlement, or of the day when the refusal of bankruptcy becomes effective,

who is a partner in a legal entity established to exercise legal counsel (Section 15) that has become object of bankruptcy, been allowed settlement, or refused bankruptcy due to assets insufficient to cover the expenses of bankruptcy proceedings, is suspended from exercise of legal counsel as of the day of enforcement of the declaration of bankruptcy, approval of settlement or refusal of bankruptcy, or of the day when the refusal of bankruptcy becomes effective,

who has been disciplinarily punished by temporary ban of exercise of legal counsel [Section 32, para. 3, letter d)], is suspended from exercise of legal counsel as of the day of the decision of the disciplinary punishment comes into force,

has been taken into police custody, is suspended from exercise of legal counsel as of the day of enforcement of the decision of custody,

has commenced imprisonment sentence, is suspended from exercise of legal counsel as of the day of the commencement. The stipulation of Section 8, para. 1, letters b) and c) are not affected by this provision,

has been punished by ban of exercise of activity<sup>1b</sup> resting in ban of exercise of legal counsel, is suspended from exercise of legal counsel as of the day of the decision enforcing such punishment coming into force. The stipulation of Section 8, para. 1, letters b) and c) are not affected by this provision.

Suspension of exercise of legal counsel is executed by the Chamber without delay, yet no later than within one month of date of discovery of the fact; the regarded attorney at law will be notified by the Chamber in writing.

## Section 9

The Chamber will suspend exercise of legal counsel to an attorney at law if

such attorney has acquired employment or similar relation with the exception of that of university tutor, or if such attorney has begun to exercise another activity incompatible with the exercise of legal counsel,

if other obstacle forbids exercise of legal counsel for a period of time exceeding four months.

The Chamber may suspend exercise of legal counsel to an attorney at law if

prosecution has been commenced against such attorney for reasons of deliberate criminal offence; the suspension must not exceed the date when decision to terminate such prosecution has been enforced,

proceedings to determine legal eligibility has been commenced, the suspension must not exceed the date of enforcement of the decision to terminate such proceedings,

proceedings to declare bankruptcy or allow settlement has been commenced against the natural person or legal entity established to exercise legal counsel (Section 15) where such an attorney is a partner.

Suspension of exercise of legal counsel is executed by the Chamber without delay, yet no later than within one month of date of discovery of the fact.

## Section 9a

For the duration of the suspension of exercise of legal counsel

the affected attorney at law is not entitled to provide legal services,

the affected attorney at law is not entitled to exercise other activities as per Section 5G, if a condition of their exercise is eligibility to exercise legal counsel,

membership of the affected attorney in bodies specified in Section 41, para. 1, letters b), d) and e), of the Chamber ceases,

the affected may not be elected or appointed to bodies of the Chamber specified in Section 41, para. 1, letters b), d) and e).

Suspension of exercise of legal counsel

does not terminate participation of the affected attorney at law in association as per Section 14, or legal entity established to exercise legal counsel (Section 15),

does not affect the liability of the affected attorney at law specified in Section 24, para. 3,

does not terminate the obligation of the affected attorney at law to contribute payments as per Section 30, para. 1,

does not affect the accountability of the affected attorney at law including disciplinary misconduct committed during the suspension of exercise of legal counsel.

#### Section 9b

Suspension of exercise of legal counsel is terminated

on the day of extinction of the condition reasoning the suspension of exercise of legal counsel, in cases as per Section 9, para. 2, letters a) or b), on the day of expiration of period of suspension of exercise of legal counsel,

on the day of enforcement of decision that alters or overrules the decision to suspend the exercise of legal counsel.

Extinction of suspension of exercise of legal counsel is recorded by the Chamber in the list of attorneys at law without delay, yet no later than within one month of the extinction has been registered. The Chamber notifies the affected attorney at law of the record in writing.

#### Section 10

If an attorney at law registered in the list of attorneys at law in compliance with Section 5, para. 2, is suspended from exercise of legal counsel or his license to provide legal services is terminated in foreign country, the Chamber will suspend such attorney from exercise of legal counsel in accordance with this act of law or scratches such attorney from the list of attorneys at law.

#### HEAD TWO

Manner of exercise of legal counsel

#### Section 11

An attorney at law exercise legal counsel individually, in association (Section 14) or as a partner in public company (Section 15).

The Chamber maintains a list of associations and public companies exercising legal counsel; stipulations of special regulations<sup>2</sup> are not affected.

#### Section 12

An attorney at law is liable to use the qualification "attorney at law" in exercise of legal counsel; under conditions specified in the regulations of the profession an attorney at law

is entitled to use another qualifications or amendments signifying his/her professional orientation.

### Section 13

The location of undertaking of an attorney at law as per special regulations<sup>3</sup> is the location registered in the list of attorneys at law (further referred to as "registered residence").

The registered residence of an attorney at law must be within the territory of the Czech Republic.

### Shared exercise of legal counsel

#### Section 14

##### Association

If attorneys at law exercise legal counsel jointly and it is not exercise of legal counsel within public company (Section 15), their mutual relations are settled in written contract in accordance with special regulations<sup>4</sup> (further referred to as "association"). Only attorneys at law may participate in such association and they are obliged to exercise legal counsel under shared name.

The use of the shared name is accordingly governed by the stipulations of Section 12 above.

Attorneys at law who participate in an association must have a shared residence, if this stipulation is breached effects of delivery occur even if written document directed to one of participants of association is delivered to any of the participants of such association.

Attorney at law, who is a participant in an association must not exercise legal counsel individually, as a partner in a public cp (Section 15) or within another association.

The stipulations of the above paragraphs do not apply if attorneys at law have agreed on temporary shared conduct in exercise of legal counsel in one or more specified cases.

#### Section 15

##### Public company

Attorneys at law may exercise legal counsel as partners in a public company if the object of business undertaking of such public company is exercise of legal counsel only and partners in the company are attorneys at law only (further referred to as "company").

Attorneys who are partners in a company, exercise legal counsel on behalf and account of the company. If special regulations 4a in special cases forbid exercises of legal counsel on behalf of a company, they exercise legal counsel in their own name and on account of

the company. The company acts as participant of legal relations based in provision of legal services to clients as well as third persons. These relations are, with exception specified in this act of law, governed by special regulations.<sup>5</sup>

Unless company ceases to exist with decease of a partner, a heir may apply to participate in the company under conditions specified in special regulations,<sup>6</sup> only if he/she is an attorney at law. If a heir is not an attorney at law, or fails to apply for share in company he/she is entitled to financial reimbursement of settlement share in compliance with special regulation.<sup>7</sup>

Stipulations of special regulations on warranty of partners for liabilities of company are not affected.

Effects of delivery occur even if written document directed to an attorney who is a partner in a company is delivered to the company.

An attorney who exercises legal counsel within a company must not exercise legal counsel individually, within an association or as a partner of another company.

Provisions of Section 1G through 18, Section 19, letters a) and c), Section 20, Section 21, para. 4, Section 22, para. 1, Section 23, Section 24, para. 1 and 2, Section 25, Section 2G, para. 2, Section 27, 28 and Section 29, para. 1, apply to company accordingly.

### HEAD THREE

#### Rights and liabilities of attorneys at law

##### Section 16

An attorney at law is obliged to protect and enforce rights and lawful interests of clients, and observe their instructions. Attorneys at law are not bound by instructions of clients if they are in dissent with law or professional regulations, of which attorney at law must forewarn clients accordingly.

In exercise of legal counsel attorneys at law must act honestly and conscientiously, they must thoroughly utilise all lawful means and within their scope apply in the interest of clients whatever considered favourable.

##### Section 17

An attorney at law takes such manner of conduct to avoid degradation of the legal profession, in order of which they are namely obliged to observe rules of professional ethics and rules of competition. Rules of professional ethics and rules of competition are specified in professional regulation.

##### Section 18

An attorney at law is entitled to refuse provision of legal services unless appointed in compliance with special regulations or by the Chamber to provide legal services as per paragraph 2 above; stipulation of Section 19 is not affected.

If anyone is not able to achieve legal counsel as per this act of law, he/she is entitled to apply to the Chamber to appoint an attorney at law. If there are no reasons for refusal as per Section 19, the attorney at law appointed by the Chamber is obliged to provide legal services under conditions specified in the appointment.

#### Section 19

An attorney at law is obliged to refuse provision of legal services if

legal services have already been provided in the same or similar matter to another whose interests are in dissent with the applicant for legal services,

person whose interests are in dissent with the applicant for legal services has received legal services in the same or similar matter by an attorney at law with whom the requested has been exercising legal counsel in association or company,

information acquired about a client or a former client could unjustly favour the applicant for legal services,

proceedings in the regarded matter include an attorney at law or another person close to the requested attorney,<sup>8</sup>

interests of the applicant for legal services are in dissent with the interests of the requested attorney at law or a person close to the attorney at law.

Participation in matters specified in paragraph 1, letter d), above is not considered as provision of legal services by attorney at law or persons specified in Section 2, para. 2.

#### Section 20

An attorney at law is obliged to cancel contract of provision of legal services or request cancellation of a provision of the contract or request the Chamber to appoint an attorney at law (Section 18, para. 2) if situation as specified in Section 19 is subsequently discovered.

An attorney at law is entitled to cancel a contract of provision of legal services or request cancellation of a provision of the contract or request the Chamber to appoint an attorney at law (Section 18, para. 2) if necessary trust between the attorney and the client or if the client fails to provide necessary concurrence.

An attorney at law is entitled to cancel a contract of provision of legal services if the client has failed to pay reasonable retainer fee for provision of legal services although having been asked by the attorney at law.

Unless an attorney at law makes other agreement with client or unless client makes other arrangements, the attorney at law is obliged to conduct all necessary acts within the period of 15 days of cancellation of contract of provision of legal services as per paragraphs 1 through 3 above in order to prevent damage to rights and lawful interests of the client. This stipulation does not apply if the client notifies the attorney of non-insisting on this liability of the attorney at law.

#### Section 21

An attorney at law is liable to maintain confidentiality of all facts learned in relation to provision of legal services.

The confidentiality liability may be lifted only by client or, after decease of client or expiration of legal entity legal representative. Even after release of confidentiality attorney at law must maintain confidentiality if apparent that client or legal representative has lifted the liability under pressure or stress.

An attorney at law is not bound by the liability of confidentiality in relation to person charged with individual chores of legal services if such person is bound by the liability of confidentiality.

The liability of confidentiality does not apply to attorney at law in extent required for proceedings before court of law or other authority if the object of the proceeding is a dispute between the attorney and the client or his/her legal representative; the confidentiality liability also does not apply in case of proceedings as per Section 55, in plaint proceedings or corrective measure against decision of the Chamber (Section 55a), as well as in proceedings as specified in Section 55b, to extent necessary for protection of his/her rights or interests protected by law as rights or interests of an attorney at law.

The liability of confidentiality of attorney at law does not affect liabilities stipulated in special regulations on administration of taxes and duties;<sup>9</sup> in this case still remains the liability of confidentiality of nature of matters in which attorney at law had provided legal services.

The liability of confidentiality cannot be applied in disciplinary proceedings as well as towards an attorney at law appointed by the Chairperson of Supervisory Board to conduct preliminary actions to verify occurrence of disciplinary misconduct (Section 33, para. 3).

The confidentiality liability does not affect the legal obligation to prevent commitment of criminal offence.<sup>10</sup>

Confidentiality liability remains intact after scratching off the list of attorneys at law.

Confidentiality liability in the extent as specified in paragraphs 1 through 8 above applies accordingly to

employees of attorney at law or of company, as well as to other persons that partake with attorney at law or company in provision of legal services,

members of Chamber bodies and its employees as well as all persons that partake in disciplinary proceedings, including attorneys at law appointed by the Chairperson of the Supervisory Board to conduct preliminary actions to verify occurrence of disciplinary misconduct (Section 33, para. 3).

Members of bodies of the Chamber, its employees and attorneys at law appointed by the Chairperson of the Supervisory Board to conduct preliminary actions to verify occurrence of disciplinary misconduct are not bound by confidentiality liability as per paragraph 9 above in the extent required for proceedings before court of law in matters specified in paragraph 4 above in the clause following semicolon. Members of bodies of the Chamber and its employees are furthermore not bound by confidentiality in extent required to provide information to authorities in foreign country as per Section 35d.

Section 22

Legal counsel is usually conducted against payment, client may be requested to pay reasonable retainer fee.

The manner of specification of commission and remunerations to attorney at law, and possibly its amount, is determined by the Ministry of Justice in the form of legal instruction.

#### Section 23

If attorney at law is appointed the commission is paid by the government.

#### Section 24

Attorney at law is accountable for damage caused to client in relation to exercise of legal counsel. Attorney at law is accountable for damage caused to client even if the damage has been caused in relation to exercise of legal counsel by his/her deputy or employee, any accountability of these persons in accordance with special regulations is not affected.

Attorney at law may avoid accountability as per paragraph 1 above if he/she proves that the damage could not have been avoided even with exertion of all efforts reasonably expected of the attorney at law.

Attorney at law must be insured for cases of accountability for damage incurred in relation to provision of legal counsel to extent reasonably expected to likely to be encountered. If attorney at law exercises legal counsel within a company, this liability applies to the company.

#### Section 25

Attorney at law must maintain reasonable account of provision of legal services.

The stipulation of paragraph 1 does not affect special regulations on bookkeeping.<sup>11</sup>

#### Section 26

Attorney at law may use representation by another attorney at law within the scope of his/her appointment.

Unless a special regulation specifies otherwise,<sup>12</sup> attorney at law may be represented for individual acts by employee or paralegal of the attorney at law.

#### Section 27

If attorney at law who exercises legal counsel individually faces an obstacle that prevents exercise of legal counsel and no other measure has been taken to protect rights and lawful interests of clients, such attorney at law must without delay, yet no later than within one month of the occurrence of such an obstacle, appoint another attorney at law subject to agreement as his/her deputy (Section 26, para. i) and notify clients without delay in writing; provision of Section 29, para. 2, is not affected. If attorney at law breaches this obligation the Chamber appoints the deputy attorney at law and in correspondence with the circumstances of the case defines the commission due to the deputy attorney at law from the represented attorney at law.

Unless the deputy attorney at law appointed by the Chamber as per paragraph 1, second clause, agrees otherwise with client within one month of the day of notification of client of the appointment of deputy attorney at law or the client makes another arrangements within the same period, rights and liabilities of the represented attorney at law are reassumed by the deputy attorney at law, as resulting from contract of provision of legal

services, including rights and liabilities resulting from legal representation of client in proceedings before courts of law or other authorities, and rights and liabilities of defence attorney in criminal proceedings. That applies even in case when the relation between client and attorney at law has been founded by appointment as per Section 18, para. 2, or appointment as per special legal regulations. The Chamber will certify the succession of rights and liabilities upon request from the deputy attorney at law.

The object of succession of rights and liabilities as per paragraph 2 above does not include the accountability of the represented attorney at law for damage incurred (Section 24, para. 1), as well as obligation to return items, including financial resources provided by client. The deputy also does not assume other liabilities and rights resulting from the original contractual relations between attorney at law and client if the deputy attorney at law would be unreasonably favoured or impaired against the represented attorney at law as result of succession of such rights or if observance of such liabilities should not be reasonably required of the deputy attorney at law.

If attorney at law who has been exercising legal counsel individually is scratched off the list of attorneys at law and if required due to nature of case the Chamber will make such suitable arrangements to protect rights and lawful interests of clients of such attorney at law, namely appoint another attorney at law as successor of the disbarred attorney at law. The Chamber notifies clients without delay in writing. Stipulations of paragraphs 2 and 3, governing succession of rights and liabilities between the represented attorney at law and the deputy attorney at law apply accordingly for succession of rights and liabilities between succeeded attorney at law and succeeding attorney at law.

If attorney at law who has been exercising legal counsel individually deceases, court of law, in accordance with special regulation 12a and upon proposal by the Chamber, appoints a successor of the deceased attorney at law as administrator of the portion of heritage that had been used by the deceased for exercise of legal counsel, upon agreement of the succeeding attorney at law with the appointment.

## Section 28

Attorney at law or paralegal are obliged in the sake of honour and respectability of the profession to apply arbitration before bodies of the Chamber before legal suit against another attorney at law or paralegal, this does not apply if at least one of the participants in the dispute is a third person.

Arbitration is usually supervised by the Chairperson of the Chamber or another member of the Directorship of the Chamber. Its purpose is to bring reconciliatory solution to dispute.

Details on arbitration are specified in regulations of the profession.

## Section 29

Attorney at law is liable to announce to the Chamber without delay after commencement of exercise of legal counsel his/her registered residence, manner of exercise of legal counsel as well as other facts necessary for maintenance of the list of attorneys at law as specified in regulations of the profession. Attorney at law must also announce to the Chamber without delay changes in these facts within one week of their occurrence.

Attorney at law must announce to the Chamber within the period specified in paragraph 1 above all facts that could present grounds for suspension of exercise of legal counsel or scratching off the list of attorneys at law.

#### Section 30

Attorney at law is liable to pay contributions for operation of the Chamber and donations to the social fund of the Chamber, as well as other opportune payments foreseen by this act of law [Section 43, letter c)].

Overdue liabilities occurred on the grounds of financial obligations as specified in paragraph 1 above to not expire with disbarment; that does not apply in case of disbarment for reasons specified in Section 7b, para. 1, letters a) through c).

#### Section 31

Attorney at law or company that employ paralegals are obliged to create such working conditions that enable paralegals proper preparation for the profession of attorney at law. Paralegals must namely be allowed participation at trainings provided by the Chamber, study preparation for the advocacy exam as well as taking of the advocacy exam.

### HEAD FOUR

Disciplinary accountability

and disciplinary proceedings

#### Section 32

Attorneys at law and paralegals are accountable for any disciplinary misconduct.

Disciplinary misconduct in a serious or repeatedly performed breach of liabilities of attorney at law or paralegal specified in this act of law or regulations of the profession.

Attorney at law may be penalised for disciplinary misconduct by either of the following disciplinary measures:

warning,

public warning,

fine to the amount of hundredfold the minimum monthly wage as specified in special legal regulation,

temporary ban of exercise of legal counsel for time period of six months up to three years,

disbarment.

Paralegal may be penalised for disciplinary misconduct by either of the following disciplinary measures:

warning,

public warning,

fine to the amount of hundredfold the minimum monthly wage as specified in special legal regulation,<sup>13</sup>

scratching off the list of paralegals.

If the misconduct is of less severe nature infliction of disciplinary measures unto attorney at law or paralegal may be avoided if the dealing with the misconduct itself may be considered as sufficient.

### Section 33

The decision whether attorney at law or paralegal has committed disciplinary misconduct and on the manner of penalisation is made in disciplinary proceedings initiated upon disciplinary complaint filed by disciplinary complainant (Section 46, para. 3, and Section 51, para. 2) and conducted by three-member disciplinary jury, composed of members of Disciplinary Committee of the Chamber. Parties of the disciplinary proceedings are the disciplinary complainant and the attorney at law or paralegal subject to the disciplinary proceedings (further referred to as "disciplinary culprit").

Disciplinary complaint must be filed within six months of the day when the disciplinary complainant learnt of disciplinary misconduct, yet not later than two years after the date of the disciplinary misconduct. The six-month period does not include time when preliminary measures were conducted in order to determine whether disciplinary misconduct occurred, this time period must not exceed two months.

If the Chairperson of the Supervisory Board is to act as the disciplinary complainant in disciplinary proceedings, he/she is entitled to appoint another attorney at law, subject to agreement, to carry out preliminary measures required to verify occurrence of disciplinary misconduct; such appointed attorney at law bears authorisation of a member of Supervisory Board as per Section 46, para. 4, in the clause after semicolon.

Disciplinary culprit may be legally represented in the disciplinary proceedings by an attorney at law. The jury will appoint a custodian to attorney at law who is not legally represented if required for purposes of protection of interests of the disciplinary culprit, namely if the attorney at law subject to the disciplinary proceedings has suffered mental dysfunction or illness that prevents due legal defence. The jury appoints custodian attorney at law upon agreement with the attorney at law.

Disciplinary culprit is entitled to express his/her views to all facts being stated as his/her guilt, to defend himself/herself and propose evidence to be produced.

During disciplinary proceeding witnesses, experts or participants may be deposed only if they decide voluntarily to partake in the proceedings and provide their statements. Other evidence may be produced only if voluntarily provided. Evidence that cannot be thus produced will be secured by court of law upon request by the Chamber and at the expense of the Chamber; court of law is obliged to accommodate the request unless production of such evidence is forbidden by law. Court of law makes all decisions required to secure the requested evidence.

### Section 33a

Costs of disciplinary proceedings occurred to party of the proceedings are borne by the party. The Chamber bears expenses related to activities of the disciplinary jury and appellate jury, costs of interpreter and costs of production of evidence.

If the jury in the verdict terminating the disciplinary proceedings declared the culprit guilty of disciplinary misconduct, it will also bind the culprit to cover the expenses of the disciplinary proceedings, borne by the Chamber as per paragraph 1 above, in single payment defined accordingly in compliance with regulations of the profession.

The Chamber will reimburse expenses and salary evidently lost to witnesses. The claim must be applied with the Chamber within three days of the deposition, otherwise it expires; witnesses must be warned of the expiration.

Reimbursement of ready expenses and rewards to experts and interpreters is governed in special regulations.13a

#### Section 34

Decisions in disciplinary proceedings are made on the grounds of factual and legal status at the time of the disciplinary misconduct; subsequent legal regulations should be used only if more favourable for the disciplinary culprit.

Written elaboration of verdict that terminates the disciplinary proceedings must include declaration, reasoning and instructions on corrective measures, and must be delivered to parties; in case specified in Section 33a, para. 2, the written form of verdict includes clause imposing liability to reimburse expenses of disciplinary proceedings.

Delivered verdict that terminates disciplinary proceedings and that cannot be appealed against is in virtue and effective, unless relating to case specified in paragraph 4 below. Other verdicts come into virtue with their declaration; unless declaration is prescribed by disciplinary order verdicts come into virtue with their legislation.

If fine is used as disciplinary measure it must be paid within fifteen days of the date of virtue of the verdict, unless the verdict specifies longer period or instalment form of payment. Verdict imposing this form of disciplinary measure is effective upon expiration of the performance period.

Provision of paragraph 4 above applies accordingly to verdicts imposing obligation to cover expenses of disciplinary proceedings.

#### Section 35

Party to disciplinary proceedings may appeal against verdict that terminates the proceeding before disciplinary jury within fifteen days of delivery of written elaboration of the verdict; the appeal has deferring effect.

Appeal is decided over by three-member jury appointed by the directorate of the Chamber; or deputies of the directorate (further referred to as "appellate jury").

Appellate jury of the Chamber in appellate proceedings overrules the verdict or the appeal and sustains the verdict. If the appellate jury overrules the appealed verdict the jury either decides in the matter or returns it to the disciplinary jury for further proceedings and decision. The disciplinary jury is in this case bound by the legal opinion of the appellate jury.

## Section 35a

Verdict on disciplinary measure of warning, disbarment or scratching off the list of paralegals is effectuated on the day of coming into virtue.

Verdict on disciplinary measure of public warning is executed by the Chairperson of the Chamber through publishing of the warning in the Bulletin of the Czech Advocacy Chamber (further referred to as "Bulletin"); it is effectuated in the day that is specified in the header of the Bulletin as the date of distribution. The verdict may not be effectuated if the period since the date of virtue exceeds six months.

Verdict on disciplinary measure of temporary ban of exercise of legal counsel is effectuated on the day of expiration of the ban as stated in the verdict. This period begins on the day of virtue of the verdict; if the virtue of the verdict is postponed, the course of the ban is interrupted.

Verdict on disciplinary measure of fine is effectuated on the day of payment if the fine to the Chamber in amount specified in the verdict; if the fine is to be paid in instalments, the verdict is effectuated on the date of payment of the last instalment. If the fine is not paid within the period as specified herein or in the period specified in the verdict then the verdict shall be executed upon proposal of the Chamber by court of law in compliance with special legal regulation.<sup>14</sup> If the fine is to be paid in instalments the Chamber is entitled to propose court execution in even in case any of the instalments is not duly paid; the execution then relates to the whole overdue amount of the fee. This title may be used by the Chamber only before the date of the next instalment maturity.

Verdict imposing liability to cover expenses of disciplinary proceeding is effectuated on the day of payment of the amount of expenses of the proceeding (Section 33a, para. 2) to the Chamber. If this obligation is not performed by due date in accordance with this act of law or the verdict, provisions on execution of verdict on disciplinary measure of fine as specified in paragraph 4 above apply to execution of the verdict on compensation of expenses of disciplinary proceeding accordingly.

## Section 35b

Attorney at law or paralegal, and applicant of registration in the list of attorneys at law or the list of paralegals is viewed as having committed no disciplinary misconduct, or has not been subject to disciplinary measure

as of the day of virtue of verdict that overrules imposition of disciplinary measure,

as of the day of effectuation of disciplinary measure of warning or public warning, if disciplinary measure of warning or public warning had been imposed. If disciplinary measure of public warning is not effectuated within the period specified in Section 35a, para. 2, the culprit of the measure is viewed having committed no misconduct as of the day of expiration of the term,

if period of one year of effectuation of verdict on disciplinary measure expired, in case the disciplinary measure imposed was fine or temporary ban of exercise of legal counsel,

if period of five years of the date of disbarment expired, in case the disciplinary measure imposed was disbarment from the list of attorneys at law,

if period of three years of scratching off the list of paralegals expired, in case the disciplinary measure imposed was scratching off the list of paralegals.

### Section 35c

If disciplinary proceeding terminated with verdict that has come into force, proceedings against the same disciplinary culprit for the same disciplinary misconduct may be reassumed only if resumption of disciplinary proceeding has been permitted; resumption of disciplinary proceedings may not be permitted if effective verdict has terminated the disciplinary proceeding.

Motion to resume disciplinary proceeding may be filed by participant of the proceeding if new facts or evidence appear that could not have been used during the disciplinary proceeding through no fault of the participant and that could either on their own or in connection to facts and evidence formerly known result in more favourable verdict for the disciplinary culprit.

Motion to resume disciplinary proceeding may be filed within six months of the date when the participant of the disciplinary proceeding who motions for resumption of the proceedings learnt of reason to resume the proceeding in accordance with paragraph 2 above, or of the date when first it could have been applied; motion is not applicable against verdict that does not present decision in the very matter.

The motion to permit resumption of disciplinary proceeding is decided over by for the purpose specially appointed disciplinary jury; the disciplinary jury either sustains or overrules the motion to permit resumption of disciplinary proceeding. Participant of disciplinary proceeding may appeal against the decision on motion to permit resumption of disciplinary proceeding (Section 35).

If the verdict that permits resumption of disciplinary proceeding comes into force, all previous verdicts passed in the disciplinary proceeding are cancelled and disciplinary jury that has permitted the resumption of disciplinary proceeding contemplates the matter in disciplinary proceeding again.

### Section 35d

The Chamber notifies in necessary extent appropriate authority in foreign country of initiation and results of disciplinary proceeding against attorney at law who has been registered in the list of attorneys at law as per Section 5, para. 2, as well as of temporary suspension from exercise of legal counsel of such attorney at law, or of his/her disbarment.

### Section 35e

Details of disciplinary proceedings are specified in disciplinary order.

Unless this act of law or the disciplinary order specifies otherwise, stipulations of the Criminal Code are applied in disciplinary proceedings accordingly.

## PART THREE

### PARALEGAL

#### Section 36

Paralegals are registered in the list of paralegals, maintained by the Chamber.

## Section 37

The Chamber will register in the list of paralegals anyone, who

is fully eligible to legal acts,

has reached graduate education of BA programme in the field of law at university in the Czech Republic,1a

is unblemished,

has not been subject to disciplinary measure of scratching off the list of paralegals or who is conceived as not having been subject to this disciplinary measure, and

who is employed with attorney at law or company, with the exception of part time employment.

If an applicant complies with conditions specified in paragraph 1 above the Chamber will register the applicant in the list of paralegals on the grounds of a written request of the applicant, as of the day given in the application. If no such date is provided in the application the Chamber will register the applicant in the list of paralegals within two months of reception of the application.

The Chamber will scratch a paralegal off the list of non-compliance with any of the conditions specified in paragraph 1 above if subsequently discovered.

Paralegal who

has been penalised by disciplinary measure of scratching off the list of paralegals is scratched off the list of paralegals as of the date of virtue of the verdict on penalisation with such disciplinary measure,

has applied in writing to the Chamber to be scratched off the list of paralegals, provided with officially verified signature is scratched off the list of paralegals after expiration of one calendar month after the month of reception of the request to be scratched off the list of paralegals to the Chamber.

The Chamber will suspend from exercise of legal practice paralegal on the grounds of written request provided with officially verified signature; the Chamber may suspend paralegal from exercise of legal practice for reasons specified in Section 9, para. 2. Paralegal is suspended from exercise of legal practice is taken into police custody, has commenced imprisonment sentence or penalised with ban of exercise of activity of legal practice of paralegal.

In case of scratching off the list of paralegals or suspension from exercise of legal practice of paralegal provisions of Section 7b, para. 2, Section 8, para. 3, Section Sb, para. 1, letters d) through e), and Section 8b, para. 2, Section 9, para. 3, Section 9a, para. 1, letters a) and b), and Section 9a, para. 2, letter d), and Section 9b apply accordingly.

## Section 38

Paralegal exercises legal practice with attorney at law in order to acquire knowledge and experience necessary for exercise of legal counsel under the supervision of attorney at law.

In exercise of legal practice paralegals are obliged to comply with stipulations of this act of law and regulations of the profession.

#### Section 39

Stipulations of Section 16, 17, 21 and 29 apply to paralegals accordingly.

### PART FOUR

#### CZECH ADVOCACY CHAMBER

#### Section 40

Czech Advocacy Chamber is established with registered residence in Prague.

The Chamber is a self-administrating professional organisation of all attorneys at law.

The Chamber is a legal entity.

#### Section 41

The Chamber comprises of the following bodies:

Assembly,

Directorate,

Chairperson of the Chamber,

Supervisory Board

Disciplinary Committee,

Examination Committee for advocacy exams and certification exams.

The Chamber may establish advisory bodies.

#### Section 42

#### Assembly

The supreme body of the Chamber is the Assembly.

All attorneys at law are entitled to partake in the Assembly. Substitution of an attorney at law by another attorney at law is not permitted.

The Directorate summons the Assembly in case when at least one third of all attorneys at law requests summoning of the Assembly within two calendar months or if requested by the Supervisory Board. The Directorate is in such cases liable to summon the Assembly within two months, if the Directorate fails to do so, the Supervisory Board becomes

entitled to summon the Assembly. The Assembly must be summoned in manner ensuring the soonest possible meeting, no later than three months of the summons.

The Assembly has a quorum irrespective of the number of present attorneys at law; resolutions of the Assembly, including election of members and alternates of bodies of the Chamber [Section 43, letter a)], is passed if simple majority of present attorneys at law votes in favour of the resolution.

The Assembly is summoned through an invitation published in the Bulletin, the Assembly is summoned as of the date specified in the header of the issue of Bulletin where the invitation is published as the date of distribution.

#### Section 43

The Assembly has powers to

elect through direct closed vote members and alternates of the Directorate, Supervisory Board and Disciplinary Committee from among attorneys at law for the term of three years. Members of these bodies of the Chamber are also discharged by the Assembly in closed vote,

pass organisational orders of the Chamber in the form of regulation,

establish through regulation social fund of the Chamber, as well as other funds and specify the rules of their creation and use,

pass regulations defining fees of attorneys at law as per Section 30, para. 1, and/or define the principles of definition of the fees by the Directorate,

pass regulations defining the compensation for time missed in exercise of office in bodies of the Chamber, and/or specify rules of their defining by the Directorate,

negotiate and approve the report of activities of other bodies of the Chamber,

overrule or alter decisions of the Directorate, with the exception of decision as per Section 44, para. 3. Rights that would have arisen from the overruled decisions of the Directorate must not be impaired,

pass the election order (Section 49, para. 2) and the order of proceedings of the Assembly,

affirm regulations of the profession legislated by the Directorate in reserved cases, and

decide over all other matters reserved to the Assembly, with the exception of ruling in disciplinary proceedings.

#### Section 44

Directorate

The Directorate is the executive body of the Chamber.

The Directorate comprises of eleven members and five alternates, if the number of members of the Directorate decreases under the number specified in this act of law, the Directorate is entitled to supplement members from among the alternates.

The Directorate has powers to decide on

disbarment of attorneys at law as per Section 8 and 10, and scratching paralegals off the list as per Section 37, para. 3,

suspension of exercise of legal counsel of as per Section 9 and 10, and suspension of legal practice of paralegal as per Section 37, para. 5, except suspension of legal practice of paralegal upon request.

The Directorate has further powers to

elect from among its members and discharge Chairperson and Deputy Chairpersons of the Chamber. The number of Deputy Chairpersons of the Chamber will have been specified in the organisational order,

pass regulations, with the exception of regulations that must be approved, in compliance with this act of law or resolution of the Assembly, by the Assembly. If the Assembly reserves approval of a regulation by the Directorate [Section 43, letter h)], such regulation becomes void is disapproved by the next meeting of the Assembly; rights arisen from such regulation must not be impaired,

issue the Bulletin,

administrate resources of the social fund of the Chamber as well as other funds of the Chamber,

summon the Assembly,

express opinions to examination orders for advocacy exams and certification exams,

express opinion to the disciplinary order,

administer assets of the Chamber,

secure publishing, documentation and educatory activities of the Chamber,

exercise all measures necessary to secure proper operation of the Chamber as well as conduct other activities in compliance with this act of law if not reserved to other bodies of the Chamber.

The Directorate is liable to regularly inform attorneys at law of the activities of the Chamber bodies.

The Directorate meets usually once a month, meetings are summoned by the Chairperson of the Chamber.

Section 45

Chairperson of the Chamber

The Chairperson of the Chamber acts on behalf of the Chamber in all matters.

The Chairperson of the Chamber has powers to decide on  
appointment of attorney at law as per Section 18, para. 2,  
appointment of attorney at law as per Section 27, para. 1,  
appointment of deputy attorney at law as per Section 27, para. 4,  
suspension of exercise of legal practice of paralegal upon request.

The Chairperson of the Chamber conducts recording into the list of attorneys at law, the list of paralegals and in the list of associations and public companies exercising legal counsel.

The Chairperson of the Chamber is entitled to implement other measures or decisions that are within the powers of the Chairperson as per this act of law or regulation of the profession. The Chairperson is entitled to implement other measures during the period between two meetings of the Directorate that are necessary to secure proper operation of Chamber bodies unless they are reserved in this act of law or regulation to another Chamber body.

Section 46

### Supervisory Board

The Supervisory Board is the supervisory body of the Chamber.

The number of members and alternates of the Supervisory Board is specified in the organisational order of the Chamber` if the number of members decreases under the number so specified, the Supervisory Board is entitled to supplement members from among the alternates.

The Supervisory Board elects and discharges the Chairperson of the Supervisory Board from among members of the Supervisory Board, as well as Deputy Chairpersons, if so specified in the organisational order. The Chairperson of the Supervisory Board is entitled to act as the disciplinary complainant in disciplinary proceedings as per the provisions of this act of law.

The Supervisory Board is entitled to supervise observance of this act of law and regulations of the profession by other Chamber bodies and attorneys at law, members of the Supervisory Board must be enabled access to all documents of attorneys at law and the Chamber.

If the Supervisory Board is of the opinion that a resolution, with the exception of resolution as per Section 44, para. 3, or other measure implemented by the Directorate, including regulations passed by the Directorate is in dissent with a legal regulation or resolution of the Assembly, the Supervisory Board is entitled to terminate execution of such resolution; the termination becomes void if the terminated resolution is affirmed by two-thirds majority of all members of the Directorate. The Supervisory Board is entitled to terminate execution of reaffirmed resolution, if the Supervisory Board terminates execution of such reaffirmed resolution, the Supervisory Board must at the same time

request the Directorate to summon the Assembly to decide over the resolution in accordance with Section 43, letter g).

#### Section 47

##### Disciplinary Committee

The Disciplinary Committee exerts powers specified in this act of law and the disciplinary order in disciplinary proceedings.

The number of members of the Disciplinary Committee is specified in the organisational order.

The Disciplinary Committee elects and discharges the Chairperson of the Disciplinary Committee from among the members of the Disciplinary Committee and if the organisational order so specifies, Deputy Chairpersons as well. the Chairperson of the Disciplinary Committee appoints from among the members of the Disciplinary Committee members of disciplinary juries (Section 33, para. 1).

##### Common provisions

on bodies of the Chamber

#### Section 48

Offices of Chamber bodies are honorary, their execution is reimbursed only by compensation for ready expenses and missed time.

#### Section 49

Details of organisation of the Chamber and its bodies are specified in the organisational order and other regulations of the profession.

Details of election of Chamber bodies as well as discharge of their members are specified in election order.

## PART FIVE

### POWERS OF THE MINISTRY OF JUSTICE

#### Section 50

The Chamber is liable to submit to the Ministry of Justice within 30 days

all regulations legislated by bodies of the Chamber.

If the Justice Minister considers a regulation of the Chamber in dissent with a legal regulation, the Minister is entitled to propose examination by court of law within two

months of the legislation of such Chamber regulation; provisions of Section 247 through Section 250k of the Civil Judicial Order apply accordingly.

#### Section 51

The Ministry of Justice issues in the form of legal regulation disciplinary order upon prior expression of the Chamber.

The Justice Minister is entitled to act in disciplinary proceeding as specified herein in the position of disciplinary complainant.

The Justice Minister is entitled to propose initiation of proceeding to disbar or suspend from exercise of legal counsel.

#### Section 52

The Ministry of Justice issues in the form of legal regulation examination order for advocacy exams and certification exams upon expression of the Chamber.

The Justice Minister appoints members of the examination committee for advocacy exams and certification exams; at least one third of the members of the examination committee are appointed by the Justice Minister upon recommendation of the Chamber and one third upon recommendation of the Supreme Court.

### PART SIX

#### COMMON, TEMPORARY AND

#### CONCLUSIVE PROVISIONS

##### Common provisions

#### Section 53

Regulation of the profession govern issues appointed herein, they furthermore specify

fees for advocacy exam or certification exam and details of their payment,

fee for issue of certificate of registration in the list of attorneys at law and details of its payment,

details of payments to attorneys at law as per Section 30, para. I,

rules of publishing of the Bulletin,

details of individual manner of exercise of legal counsel,

details of provision of legal services by attorneys at law, and/or paralegals,

details of rights and liabilities of attorneys at law and paralegals specified herein, with the exception of rights and liabilities in disciplinary proceedings and proceedings as per Section 55 and 55a,

details of rights and liabilities of attorneys at law and paralegals defined by special legal regulation if related to exercise of legal counsel.

The Chamber declares regulations of the profession in the Bulletin; the date specified in the header as the date of distribution of the Bulletin is considered as the date of declaration.

Regulation legislated in compliance with this act of law that is declared in manner specified in paragraph 2, becomes obligatory for attorneys at law and paralegals on the thirtieth day after declaration, unless the regulations specifies a later date.

Regulation as specified in paragraph 1, letter a) , is also obligatory for applicants of advocacy exam or certification exam.

Stipulation of Section 50, para. 2, 3 and 4 remains unaffected.

#### Section 54

The purpose of advocacy exam is to test the knowledge of constitutional regulations of the Czech Republic, public and private law, including capability to explain and apply legal regulations in particular cases, as well as knowledge of professional regulations. Advocacy exam may be taken in the Czech or Slovak languages only.

The purpose of certification exam is to test the knowledge of legal regulations on provision of legal services and basic knowledge of the legal system of the Czech Republic; the purpose of the certification exam also includes test of knowledge of professional regulations. The certification exam may be taken in some of foreign languages commonly used in international liaison.

Details of advocacy exam and certification exam are given in examination orders (Section 52, para. 1).

#### Proceedings

##### Section 55

In matters specified in Section 44, para. 3 and Section 45, para. 2, bodies of the Chamber take action in accordance with the provisions of the Administration Order, 15 unless specified otherwise herein. Provisions of Section 1 and 2, Section 5 through 8, Section 13, Section 16, para. 1, the clause after semicolon, and Section 16, para. 2, Section 17, para. 1, Section 26, Section 31, para. 2, Section 35 through 38, Section 41 through 45 Section 47, para. 1, and 4, Section 48 through 50, Section 52 through 80, and Section 82 through 85, of the Administration Order are not applicable.

Participant in proceedings may be represented in proceedings as per paragraph 1 above by attorney at law. The Chamber will appoint custodian to participant of proceeding if required for protection of interests of the participant, namely if suffering from mental disorder or illness that prevents due self-defence and legal representative is not present.

Witnesses, experts or participants may be deposed in proceedings as per paragraph 1 above, and other evidence produces in compliance with stipulations of Section 33, para. 6.

In proceeding on disbarment due to reasons specified in Section 8, para. 1, letters a) through c), in proceeding on scratching off the list of paralegals, in proceeding on suspension of exercise of legal counsel due to reasons specified in Section 9, para. 2, letter a), as well as in proceeding on suspension of exercise of legal practice of paralegal due to reasons specified in Section 9, para. 2, letter a), verbal proceeding is always ordered.

Written elaboration of decision of Chamber that terminates proceedings as per paragraph 1 above must contain verdict, reasoning and instructions on corrective measure if applicable by law, otherwise instructions on inadmissibility of corrective measures; reasoning and instructions are not required if the verdict satisfies all participants in full extent.

Delivered decision of the Chamber where corrective measure is inadmissible is in force.

Decision of the Chamber becomes effective upon coming into force. The Chamber may include in the decision its preliminary effects if considerable or irreparable damage threatens; in such case the verdict is effective as of the day of delivery of its written elaboration.

Unless this act of law specifies otherwise (Section 55a, para. 1), corrective measures against verdicts of the Chamber are inadmissible.

If participant of proceeding as per paragraph 1 above fails to perform voluntarily the obligation imposed by the verdict that is effective, effectuation of the verdict is exercised by court of law upon request by the Chamber.<sup>14</sup>

#### Section 55a

Corrective measure against verdict of the Chamber on disbarment as per Section 8, para. 1, letters a) and d), on scratching off the list of paralegals as per Section 37, para. 3, or on suspension of exercise of legal counsel as per Section 9, para. 1, may be applied in compliance with special legal regulations<sup>16</sup> with court of law. Before verdict of the court the Chamber may issue new verdict if the verdict complies fully with the corrective measure.

If plaint is filed at court of law as per special regulations 16a against verdict of the Chamber, the Chamber may, before the court of law rules, alter or cancel the verdict,

#### Section 55b

Person who

would have not been registered in the list of attorneys at law or list of paralegals within terms specified herein,

would have not received certificate of registration in the list of attorneys at law,

would have not been enabled to take advocacy or certification exam within period specified herein,

would have not been enabled to take the oath within period specified herein,

would have become subject to record in the list of attorneys at law or list of paralegals as specified in Section 55 c, para. 1, letters c) through f), in dissent with this act of law,

would have not been recorded as per Section 55c, para. 1, letters g) or h), within the period specified herein, in the list of attorneys at law or list of paralegals, may turn to court of law to rule on the right of such person.

Disputes over performance of obligation occurred on the grounds of liabilities of attorney at law as specified in Section 30, para. 1, are decided by court of law.

#### Section 55c

Record in the list of attorneys at law or the list of paralegals constitutes of recording of the following facts:

registration in the list of attorneys at law,

registration in the list of paralegals,

scratching off the list of attorneys at law,

scratching off the list of paralegals,

suspension of exercise of legal counsel,

suspension of exercise of legal practice of paralegal,

extinction of suspension of exercise of legal counsel,

extinction of suspension of legal practice of paralegal,

other facts specified by professional regulations.

The Chamber publishes records as per paragraph 1, letters a) through h) in the Bulletin.

#### Section 55d

The list of attorneys at law and list of paralegals are public lists; any person is allowed to view the lists in the seat of the Chamber and make excerpts from the lists.

Certificates of registration in the list of attorneys at law (Section 5, para. 4), certificates as per Section 27, para. 2, as well as excerpts from the list of attorneys at law and list of paralegals issued by the Chamber are public documents.

#### Section 55e

Documents designated to attorney at law are delivered by the Chamber to the seat of attorney at law; stipulations of Section 14, para. 3, and Section 15, para. 5, remain unaffected. Documents designated to paralegal are delivered by the Chamber to the seat of attorney at law that employs the paralegal; if paralegal is employed by cp (Section 15), the Chamber delivers documents designated to paralegal to the seat of the company or seat of any attorney at law who is partner in the company.

Summons to payment as per Section 8, para. 1, letter d), disciplinary plaint, verdicts issued in disciplinary proceeding, where specified by disciplinary order, verdicts issued in proceedings as per Section 55 that terminate the proceeding, as well as verdicts altered or cancelled by the Chamber after application of plaint or corrective measure with court of law against such verdicts (Section 55a), are delivered to attorney at law or paralegal to the address specified in paragraph 1 personally.

Stipulations of special legal regulations on delivery of verdicts issued in administration proceeding<sup>16b</sup>, are applied accordingly for delivery of documents as per paragraph 2, irrespective of whether the recipient stays at the delivery address.

If attorney at law or paralegal is represented in disciplinary proceeding or in proceeding as per Section 55 by representative or custodian, documents as per paragraph 2 above are delivered to the representative or custodian.

#### Section 56

Stipulations of Head Two and Three of Part Three of this act of law apply accordingly to other activities of attorneys at law exercised in accordance with special regulations.<sup>17</sup>

#### Temporary provisions

#### Section 57

Attorneys at law registered in the list of attorneys at law maintained in compliance with current regulations become attorneys at law as per this act of law as of the day of virtue of this act of law; the Chamber will register them in the list of attorneys at law without request.

Commercial lawyers registered in the list of commercial lawyers maintained in compliance with current regulations become attorneys at law as per this act of law as of the day of virtue of this act of law; the Chamber will register them in the list of attorneys at law without request.

#### Section 58

Paralegals registered in the list of paralegals maintained in compliance with current regulations become paralegals as per this act of law as of the day of virtue of this act of law; the Chamber will register them in the list of paralegals without request.

Legal candidates of commercial lawyership registered in the list of candidates maintained in compliance with current regulations become paralegals as per this act of law as of the day of virtue of this act of law; the Chamber will register them in the list of paralegals without request.

Practice exercised by paralegals and legal candidates of commercial lawyership as per current regulations is considered legal practice as per this act of law.

#### Section 59

Advocacy exam passed before the date of virtue of this act of law in accordance with current regulations is considered advocacy exam as per this act of law.

Exam of commercial lawyer passed before the date of virtue of this act of law as per current regulations is considered advocacy exam in accordance with this act of law.

Advocacy exam passed before 31 December 1992, in accordance with the Act of the Slovak National Council No. 132/1990 of the Collection, on Legal Counsel, is considered advocacy exam as per this act of law.

#### Section 60

Suspension of exercise of legal counsel as per Section 9, para. 1, letter a) does not apply in case of employment of scientific expert in the field of law,<sup>18</sup> if the attorney at law has been registered in the list of attorneys at law in compliance with Section 57, and the employment lasted on the date of virtue of this act of law.

#### Section 61

Graduate education referred to in Section 5, para. 1, letter b), and Section 37, para. 1, letter b), includes graduate education acquired at college of law seated within the territory of the Czech and Slovak Federative Republic or its legal predecessors.

#### Section 62

Disciplinary measure of disbarment and disciplinary measure of scratching off the list of commercial lawyers applied in accordance with current regulations are considered disciplinary measures of disbarment in compliance with Section 5, para. 1, letter e), and Section 8, para. 1, letter f).

Proposal to initiate disciplinary proceeding in compliance with this act of law, if an act occurred that could be considered as disciplinary misconduct as per current regulations before the date of virtue of this act of law, may be placed only by the Chairperson of the Supervisory Board as the complainant, with terms as specified for proposal to initiate disciplinary proceeding in such regulations.

Disciplinary proceeding initiated before the date of commencement of this act of law in compliance with current regulations shall be concluded in compliance with the current regulations; the powers of the disciplinary bodies as per the current regulations shall be executed by appropriate bodies of the Chamber.

#### Section 63

The right of persons who would have not been registered in the list of attorneys at law or the list of commercial lawyers, who would have been scratched off these lists or who would have been suspended from exercise of legal counsel or exercise of activity as commercial lawyer as per current regulations to request protection from court of law is not affected by this act of law.

#### Section 64

The terms and periods specified in Section 5, para. 1, letter e), Section 7, Section 8, para. 2, and Section 37, para. 2, include terms and periods that commenced during virtue or in compliance with current regulations.

#### Section 65

Until election of Directorate as per this act of law its powers are exercised by Directorate composed of Directorate of the Czech Advocacy Chamber and the Directorate of the

Chamber of Commercial Lawyers of the Czech Republic elected in compliance with current regulations.

Directorate referred to in paragraph 1 above elects from among its members Chairperson and possibly Deputy Chairpersons of the Chamber.

The Directorate exercises the powers of the Assembly as specified in this act of law in Section 43, letter b) through f), until the day of the first meeting of the Assembly (Section 68).

#### Section 66

Before election of Supervisory Board as per this act of law its powers will be exercised by Supervisory Board composed of members of Review Committee of the Czech Advocacy Chamber and the Supervisory Board of the Chamber of Commercial Lawyers of The Czech Republic, elected in compliance with current regulations.

The Supervisory Board referred to in paragraph 1 above elects form among its members Chairperson and possibly Deputy Chairpersons of the Supervisory Board.

#### Section 67

Before election of Disciplinary Committee its powers will be exercised by Disciplinary Committee composed of members of Disciplinary Committee of the Czech Advocacy Chamber and of members of Disciplinary Committee of the Chamber of Commercial Lawyers of the Czech Republic, elected in compliance with current regulations.

The Disciplinary Committee referred to in paragraph 1 above elects form among its members Chairperson and possibly Deputy Chairpersons of the Disciplinary Committee.

#### Section 68

Directorate referred to in Section 65 shall summon the first meeting of the Assembly in compliance with this act of law within three months of the date of virtue of this act of law.

#### Section 69

Rights and liabilities of the Czech Advocacy Chamber, established by the Act of the Czech National Council No. 128/1990 of the Collection, on legal counsel, and of the Chamber of Commercial Lawyers established by Act of the Czech National Council No. 209/1990 of the Collection, on commercial lawyers, are succeeded by the Chamber as of the date of virtue of this act of law.

#### Conclusive provisions

#### Section 70

Trade certificates for provision of legal services issued in accordance with special regulations<sup>19</sup> are terminated as of the date of virtue of this act of law.

Partners (members) or bodies of trade companies and cooperatives, whose object of undertaking includes provision of legal services must adjust their charters or statutes as well as legal environment to this act of law within six months of the date of virtue of this act of law and within the same term apply to registration with the Companies Registrar; if they fail to do so, stipulations of Section 764, para. 2, second and third sentence of the Commercial Code apply accordingly.

#### Section 71

The following are cancelled:

Act of Czech National Council No. 128/ /1990 of the Collection, on legal counsel,

Act of Czech National Council No. 209/ /1990 of the Collection, on commercial lawyers and legal assistance provided.

#### Section 72

This act of law comes into force on 1 July 1996

**Please note that the translation is not an official version.**

The Decree of the Ministry of Justice No. 177/1996 of the Collection dated 4 July 1996 ,on commission and compensations of attorneys at law for provision of legal services (legal counsel tariff) ,in wording of Decree no. 235/1997 of the Collection, dated 25 September 1997

The Ministry of Justice legislates as follows, in compliance with Article 22 para. 2, of the Act No. 85/1996 of the Collection, on legal counsel:

## PART ONE

### GENERAL PROVISIONS

#### Article1

Commission of attorney at law for provision of legal services (further referred to as "commission of attorney at law") is governed by contract with client (further referred to as "contractual commission"); if commission of attorney at law is not thus specified, it is governed by provisions of this Decree on extra-contractual commission.

In setting of expenses of proceeding warded to client in verdict of court of law or other authority the amount of commission as per provisions on extra-contractual commission is used; Article 12 para. 2 and 5 do not apply. Attorney at law is obliged to warn client of the fact in negotiating contractual commission.

Stipulation of paragraph 2, first clause governs setting of commission of attorney at law appointed by court of law.

#### Article2

Attorney at law is, besides commission of attorney at law, entitled to compensation of ready expenses and compensation of missed time under conditions and in amounts specified in this Decree.

Other expenses, namely expenses of regular administration of office are included in the commission of attorney at law.

## PART TWO

### COMMISSION OF ATTORNEY AT LAW

#### SECTION ONE

## Contractual commission

### Article3

Contractual commission is result of agreement between attorney at law and client on amount for which legal service will be provided, or on manner of its definition.

Agreement on contractual commission is either part of contract forming grounds for provision of legal service or is negotiated separately.

### Article4

If contractual commission is set separately according to billed time in hours or other time units (further referred to as "time commission"), the agreed amount of time commission is due for each commenced time unit, unless specified otherwise. Attorney at law is liable to present to client time specification of provision of legal services upon request.

If attorney at law provides rough advance estimate of total time commission in agreement the attorney at law must forewarn client of significant excess of the amount in writing; otherwise payment of the part in excess may not be requested.

### Article5

If attorney at law is not providing legal services in the agreed extent, the attorney at law is entitled to corresponding portion of contractual commission, unless specified otherwise.

## SECTION TWO

## Extra-contractual commission

### Article6

#### Amount of extra-contractual commission

Amount of extra-contractual commission is specified in accordance with extra-contractual commission for single act of legal service and the quantity of acts of legal service, conducted by attorney at law in given matter.

Commission of 10% of annual revenue from assets are due to attorney at law for administration of such assets, no less than CZK 1000 per year.

### Article7

#### Tariff of extra-contractual commission

Amounts of extra-contractual commission per single act of legal service as set by tariff:

up to CZK 500 CZK 250

above CZK 500 to CZK 1,000 CZK 500

above CZK 1,000 to CZK 5,000 CZK 750

above CZK 5,000 to CZK 10,000 CZK 1,000

above CZK 10,000 to CZK 200,000 CZK 1,000

plus CZK 25 per each commenced CZK 1,000 in excess of CZK 10,000

over CZK 200,000 CZK 5,750

plus CZK 25 per each commenced CZK 10,000 in excess of CZK 200,000

over CZK 10,000,000 CZK 30,250

plus CZK 25 per each commenced CZK 100,000 in excess of CZK 10,000,000.

#### Tariff value

#### Article 8

Unless specified otherwise, tariff value is the value of item or right and appurtenances at time of commencement of act of legal service related to; the value of receivable as well as liability is considered value of right.

If legal service consists of recurring performance tariff value is set as sum of such performances; if the period of recurrence exceeds five years the value is five times the annual performance value.

If law requires joined processing of two or more matters the highest value is taken as the tariff value.

In effectuation of recurring performance only the value of due instalments is decisive for tariff value.

In matters of cancellation and settlement of ratio-shared co-ownership the value of items minus share of client is taken if proposal is to ascribe such item to client or sell such item. If proposal is to ascribe such item to other co-owners the value of item after minus values of shares of other co-owners is taken. In case of proposal to divide item the whole price of item is taken.

In matters of settlement of joint co-ownership of spouses half of value of all items, receivables and liabilities subject to settlement is taken.

#### Article 9

If value of item or right cannot be expressed in money or if assessable with significant difficulties only the amount of CZK 1,000 is used as tariff value unless specified otherwise.

In matters of custody of underage children, adoption, guardianship, eligibility to legal acts, matters of custody, declaration of deceased, and matters of claims of natural persons in field of social security, old pension or illness and general health insurance the value of CZK 500 is taken as tariff value.

The amount of CZK 10,000 is taken as tariff value in the following cases:

ascertaining of existence or legal relation or right, invalidity of legal act, with the exception of ascertaining of right to appraisable item or invalidity of legal act whose object is item or performance appraisable in money,

plaints against expression of will, unless object of legal act, origination, alteration or extinction of which is the aim of expression of will, is appraisable in money,

establishment or cancellation of factual burden and other rights and liabilities of factual burdens,

protection of personality, personal copyright, matters in compliance with act of law on periodical printed matter and other information means without proposal to compensate non-property damage,

rent of inhabitable space, buildings and land, if not financially reimbursed,

plaints and corrective measures against resolutions of administration authorities deliberated in compliance with Part Five of the Civil Judicial Order, with the exception of matters as per paragraph 2 below, and

constitutional complaints, with the exception of matters in compliance with paragraph 2 below.

In matters of protection of personality, personal copyright, in compliance with act of law on periodical printed matter and other information means with proposal to compensate property damage the value of CZK 30,000 is taken as the tariff value.

#### Article 10

In cases of representation in proceeding of misconduct tariff value is CZK 1,000.

In legal defence in criminal proceeding in matters ruled by first level court of law in closed hearing tariff value is CZK 500.

In case of legal defence in criminal proceeding, in matters other than specified in paragraph 2 above, the following tariff values apply:

CZK 1,000 for criminal offence penalised according to law with imprisonment for up to one year,

CZK 10,000 for criminal offence penalised according to law with imprisonment from one year to five years,

CZK 30 000 for criminal offence penalised according to law with imprisonment from five years to ten years,

CZK 50 000 for criminal offence penalised according to law with imprisonment above ten years or exceptional penalty.

Legal decrease of penalisation of juveniles does not apply to tariffs.

## Article 11

### Deeds of legal service

Attorney at law is entitled to extra-contractual commission for each of the following deeds of legal service:

acceptance and preparation of legal representation or defence on grounds of contract of provision of legal services,

first counsel to client including acceptance and preparation of legal representation or defence if legal representative or barrister is appointed by court of law,

subsequent counsel with client exceeding one hour,

written motion to court of law or other authority directly related to matter,

participation in investigation acts in preparatory proceeding, per each commenced two hours,

study of file upon conclusion of investigation, per each commenced two hours,

participation in act of administration or other authority, participation at proceeding before court of law or other authority, per each commenced two hours,

written elaboration of legal analysis of matter,

negotiation with counter-party, per each commenced two hours,

motion to impose preliminary measure if filed before commencement of proceeding, appeal against resolution on preliminary measure and statements to such,

appeal, challenge, motion to restore proceeding, complaint against resolution on restoration of proceeding and statements to such,

inducement to file complaint for breach of law and statement to complaint for breach of law,

written elaboration of document of legal deed.

Attorney at law is entitled to extra-contractual commission of one half for each of the following deeds of legal service:

motion to impose preliminary measure if filed after commencement of proceeding, motion to secure evidence or inheritance,

motion to correct reasoning of resolution, removal of effects of default and alteration of resolution imposing performance of future instalments or to instalment performance,

appeal against resolution if not directly related to matter, and statement to such appeal,

motions and complaints in matters ruled on in public hearing, statements to such, with the exception of appeal, motion to restore proceeding and inducement to file complaint for breach of law,

in case of effectuation of resolution, first counsel to client, including acceptance and preparation of legal representation, written elaboration of motion to initiate proceeding, statement to motion, representation in proceeding and written elaboration of appeal against resolution,

participation in proceeding where declaration is announced only.

Legal deeds not specified in paragraphs 1 and 2 above are rewarded with commission as deeds closest in nature and objective.

Article 12

Increase or decrease

of extra-contractual commission

In case of legal deeds of exceptional difficulty, namely requiring use of foreign law or foreign language, or legal deeds exceptionally demanding in time, attorney at law may increase extra-contractual commission up to three times.

Attorney at law may decrease extra-contractual commission by as much as one half.

In joined processing of two or more matters that is not required by law, the extra-contractual commission of the matter with highest commission is increased by half of extra-contractual commission that would otherwise be applied in other joined matters.

If regarded are joined legal deeds in representation or defence of two or more persons or defence in criminal proceeding of criminal offences committed in concurrence attorney at law is entitled to extra-contractual commission for each prosecuted offence decreased by 20 %.

If the Czech Advocacy Chamber appoints attorney at law to person that cannot afford provision of legal service and social circumstances of such person justify, the Czech Advocacy Chamber may specify in conditions of provision of legal service that extra-contractual commission is decreased or services provided free of charge.

PART THREE

COMPENSATION OF READY

EXPENSES AND COMPENSATION

OF MISSED TIME

Article 13

## Compensation of ready expenses

Attorney at law is entitled to compensation of ready expenses effectively spent in relation to provision of legal service, namely to court fees and other duties, travelling expenses, telecommunication charges, expert reports and statements, translations, transcripts and photocopies.

Attorney at law may agree with client of appropriate flat payment as compensation for all or some ready expenses whose expounding is expected in relation to provision of legal service. Client in such case may not require specification of such ready expenses and attorney at law may not request compensation of ready expenses included in such flat payment.

Unless attorney at law agrees with client on another flat payment amount as compensation for domestic postage, local telephone calls and transportation expenses, amount of CZK 75 is charged per single deed of legal service.

Unless specified otherwise, compensation of travelling expenses is governed by legal regulations on compensation of travelling expenses.<sup>1</sup>

## Article 14

### Compensation

#### of missed time

Attorney at law is entitled to time missed in relation to provision of legal service.

in deeds conducted at locations that are not seat or residence of attorney at law, for time spent en route to and from such place,

for time missed as result of delay in commencement of proceeding before court of law or other authority if such delay exceeds 30 minutes.

Attorney at law is entitled to compensation for time missed in relation to provision of legal service in amount equal to half of extra-contractual commission for participation in proceeding adjourned without processing of matter, and for attendance of proceeding cancelled without notification to attorney at law if reasons for adjournment or cancellation of proceeding rest on the side of client of attorney at law if such reasons had been known to client two days previous to the date of proceeding attorney at law is entitled to compensation equal to one quarter of extra-contractual commission.

Unless specified otherwise, compensation as per paragraph 1 above is CZK 50 per each commenced half-hour.

## PART FOUR

### TEMPORARY AND TERMINAL

#### PROVISIONS

## Article 15

Attorney at law or commercial lawyer is entitled to commission for legal services provided before effectuation of this Decree in compliance with current regulations.

## Article 15a\*

Extra-contractual commission for deeds of legal services provided by attorney at law appointed as barrister in criminal proceeding after 1 October 1997 is decreased by 10%.

## Article 16

Decree of the Ministry of Justice of the Czech Republic No. 270/ /1990 of the Collection, on commissions pf attorneys at law and commercial lawyers for provision of legal services, in wording of Decree No. 573/1990 of the Collection, is cancelled.

## Article 17

This Decree comes into force on 1 July 1996.

Minister:

Novák, LLD, personally

Footnotes:

Act No. 119/1992 of the Collection, on travelling expenses, in wording of Act No. 44/1994 of the Collection

\*) Article 15a came into force on 1 October 1997.