

ISSUE OF EXECUTION COSTS IN 2022

Katarína Maisnerová

Abstract: Execution costs are a much-discussed topic in society. On the one hand, this fact appears to be a logical consequence of the "inconvenience" of execution proceedings for the obligee or entitled party, who in some cases not only do not satisfy their claim, but also pay the costs of execution proceedings. The costs of execution proceedings should enable the executor to carry out his activities. How execution costs are adjusted at present is covered in detail in the article below. It describes both the genesis and the current setting of the executor's remuneration, reimbursement of finished expenses, as well as an evaluation of the current situation with regard to the decision-making practice of the courts.

Keywords: execution, debt, justice, executor

JEL classification: K35

1 INTRODUCTION

During my almost 17-year experience in execution law, I had, and still have, the opportunity to actually devote myself to execution practice. This personal experience naturally led me to choose a topic from the field of execution proceedings for the topic of my dissertation.

Execution law at first glance is a very narrowly specialized section of the field of law and it would seem, perhaps, to choose a topic as too practical and providing little scope for scientific inquiry and research. However, with a deeper look, many topics can be found in the given area that deserve attention, not only the media, but serious, pragmatic, substantive.

In a state governed by the rule of law, there is a certain set of norms that make up a complex legal order. This set of standards is then the basis and starting point for the judiciary (or other bodies and persons endowed with the power to make decisions), which applies the given standards. The result of such

activity are decisions that are binding for the parties to the dispute. However, it is also absolutely necessary for the rule of law to have a mechanism by which it is possible to enforce respect for the decisions on the part of the parties. One such mechanism is precisely the execution law.

Like any other area of law, this one has its specifics and problems that come with time. Some come and appear as a reaction to new social phenomena, some reveal unfortunate or inadequate legal regulation. Application practice itself brings other problems.

A whole range of decisions can be enforced in execution proceedings, and the range of possible execution titles is quite wide. It is therefore logical that individual execution proceedings have their specific differences, and the range of problems that application practice brings is in itself a deep well of possible topics for detailed legal disputes.

Executors have been operating in this area on our territory in modern history since 2001, that means almost 20 years. They have their own executor's chamber, they are entrusted with the office by the Minister of Justice, they carry out execution activities, they manage the office, they are an official person, they have responsibility. They are also the most scrutinized legal profession ever.

Although execution law, as I have already indicated above, offers a number of substantive and interesting topics to be addressed, the topic of execution costs is constantly relevant and accompanies executors practically throughout their existence.

The aim of this contribution is to describe in detail the structure of execution costs according to the applicable legislation

2 CURRENT STATE OF KNOWLEDGE

The area of execution costs is still lacking a truly comprehensive and in-depth analysis of execution costs, which would provide answers to the questions posed by current application practice.

Indeed, such an analysis should examine this area in the context of the time, in the context of the legal environment, and also take into account a number of related phenomena.

There is still a lot of jurisprudence, which, however, reacts to problems in a certain time. Since 2001, many things have changed in the field of foreclosures. More decision-making powers were transferred to the executor (accelerating the number of decisions previously made by the executor), the introduction of data boxes contributed to the expansion of the electronic filing service and the automation of systems. Last but not least, there was also, certainly as a result of various excesses, a tightening of supervision over executors, who are now the most controlled legal profession (EKČR, Ministry of Justice, execution court).

Currently, the question of introducing local jurisdiction of executors is also increasingly discussed, and it is also linked to the question of the cost of execution.

Works or analyzes prepared so far compare the costs and success of executions within the European Union or across legal professions.

However, none, in my personal opinion, took into account all aspects of the given issue. Among other things, I am attempting such a comprehensive analysis as part of my dissertation

3 RESEARCH METHODS AND PROCESSING OF THE ISSUE

In processing this topic and to achieve the goals of this contribution, I will use the basic methods of social-scientific and legal research.

I mainly use the methods of description of legal regulation (especially in parts of the work related to legal regulation that preceded the valid legal regulation in time, as well as when describing the current legal regulation). As part of my dissertation, I also use quantitative and qualitative research methods.

The heuristic basis is mainly available sources of normative regulation, professional literature, available jurisprudence, but also from decisions and data provided by entities addressed on the basis of Act 106/1999 Coll. on free access to information. In this way, entities that have data, information, or decisions that are relevant for processing the topic are addressed.

4 EXECUTION COSTS - THE HISTORICAL CONTEXT OF THE MODERN CONCEPT OF EXECUTORS

This turbulent and socially explosive topic appears continuously. When simply studying the literature and jurisprudence in the field of executions, it is obvious at first glance that the question of determining the amount and awarding the costs of execution is the most discussed, most amended, most adjusted area of application practice. I repeatedly asked myself why. Why exactly the costs of execution? However, this question cannot be simply answered laconically. There are certainly many reasons for the current state of affairs.

When court executors were introduced as a separate profession, among other things, the execution code¹ was adopted, which, together with the civil procedural code², is the regulation that governs the execution proceedings conducted by the court executor. In addition, a special regulation was adopted, the so-called execution tariff³, which regulates the issue of execution costs (in addition to the execution regulations). The rules for the area of execution costs are thus set in a completely similar manner and according to the same principle as in other procedures for other legal professions.

Execution proceedings are designed as forced execution of execution titles. That is, the creditor, entitled, possessing the writ of execution, proposes that the court executor enforce the obligation stipulated by the writ of execution on the debtor, the obligee, who did not properly and on time within the payment period.

Execution proceedings begin with the rightful party's proposal and end with execution or the suspension of execution.

For the above-mentioned activity, the executor is entitled to remuneration, and reimbursement of finished expenses, as well as to the authorized or obligated person, depending on the circumstances of the case.

¹ Act no. 120/2001 Coll. as amended

² Act no. 99/1963 Coll. as amended

³ Decree of the Ministry of Justice No. 330/2001 Coll., on the remuneration and compensation of the executor, on the remuneration and compensation of the out-of-pocket expenses of the company administrator and on the conditions of liability insurance for damages caused by the executor, as amended

This concept and legal regulation, as they were adopted at the very beginning of the establishment of executors, appeared to me personally, and still appears to be relatively clear and appropriate, suitable for the given purposes. It was hard to imagine that the costs of execution would become such a hot topic. The first problems were brought by the application practice of the courts when deciding on the costs of execution. In particular, the courts of higher instance and especially the Constitutional Court brought their own perspective to this area, which then usually resulted in legislative changes. There were several such interventions and they were always accompanied by social and political discussion.

There are many factors that have influenced the current situation.

To a significant extent, the efforts of the beneficiaries to maximize the costs of execution by different splitting of claims, the reluctance of court executors to combine the proceedings of the same beneficiaries and debtors and thus reduce the costs of execution, as well as the low financial literacy of debtors, or their so far lax approach to solving their own debt situation, have had a significant impact on the current situation.

Last but not least, the non-uniform decision-making practice of execution courts⁴ in combination with the nationwide jurisdiction of executors also contributed. The judicial system began to react to the situation by correcting the application of existing standards in order to mitigate the effects of what has been practiced in a socially acceptable way. Not only the system of general execution courts responded, but also control authorities, and the Supreme Administrative Court and the Constitutional Court⁵ also operate significantly in the area.

⁴ The opinion of the Constitutional Court, expressed in the judgement no. IV. ÚS. 630/03 dated 2.11.2004 "Decree No. 330/2001 in § 7 is not formulated happily and therefore necessarily requires a judicial interpretation; it belongs to the general court...However, with this interpretation...it will be the task of the Municipal Court in Brno to convincingly justify the interpretation made, especially in the event that the Municipal Court in Brno would like to supplement or deviate from the literal wording of § 7 ET. "

⁵ for example, the judgement of the Constitutional Court No. 94/2007 Coll., dated 1 March 2007, in the matter of the proposal to cancel § 5, paragraph 1, second sentence of Decree No. 330/2001 Coll., as amended, and the proposal to cancel Article II, paragraph 1 of Decree No. 233/2004 Coll., which amends Decree No. 330/2001 Coll., on the remuneration and

Currently, the last significant correction of the execution tariff was made by the Ministry of Justice, which amended it within the framework of its legislative authority.

This standard responds to the social need to "solve" the issue of the cost of foreclosures.

In the area of receivables and debts, the question of cost and enforceability is always topical. For example, the amount of contractual fines, the amount of contractual interest, the issue of consumer credit, or the costs associated with insolvency proceedings, issues related to arbitration in consumer disputes, etc., are certainly also related to this issue.

One of the significant initiatives was the introduction of the institute of "voluntary performance"⁶ as mandatory within the framework of execution

compensation of the court executor, on the remuneration and compensation of out-of-pocket expenses of the company administrator and on the conditions of liability insurance for damages caused by the executor .

⁶ At the time when this phenomenon first appeared in the execution tariff, however, the Constitutional Court changed this regulation by its decision, and that by its judgement no. 94/2007 Coll., dated 1 March 2007:., "The Constitutional Court, without denying the right of executors to a fair remuneration for carrying out execution activities, considers the fact that the basis of the executor's remuneration also includes the amount paid by the obligee without direct participation executor to carry out the execution for unjustified favoritism towards those executors who will actually carry out the execution (because such differentiation is not rationally justifiable). In addition, in the adopted construction, the Constitutional Court also lacks an "educational" element, when de jure there is no possibility to "appreciate" the fact that the obliged debtor will fulfill his obligation himself (without direct execution), even at the last possible moment. The provisions of the decree do indicate that in such a case the executor is entitled to a remuneration of 50%, but only if the executor waived execution of the execution, while the execution rules allow him to do so only if the costs of the execution have also been paid, which also include executor's fee. It follows that if the obligee does not pay the executor's remuneration in full, according to the literal wording of the law, the execution cannot be waived, even if the enforced claim has been paid, and therefore the executor has the right to the remuneration in full (it is a circular movement). The Constitutional Court considers the aforementioned construction to be inconsistent with Article 1, paragraph 1 of the Constitution, as the creation of an unfulfillable condition for the use of a reduced remuneration rate is contrary to the principles of the rule of law (see the aforementioned decision in the case Pl. ÚS 38/04). In the final consequences, such legislation also represents an interference with the obligee's fundamental right to protect property enshrined in Article 11, paragraph 1 of the Charter

proceedings. This institute is unsurpassed and is part of the execution process until now. Personally, I consider the name of this institute inappropriate. If it is fulfilled as part of execution proceedings after the parity period, then, in my opinion, the wording "voluntary" does not reflect reality and is misleading. However, the introduction of "voluntary performance" resulted in the division of the execution process into several phases, and the costs of the execution are then determined depending on the phase in which the execution proceedings end⁷. This certainly has its meaning and logic, and to a certain extent it certainly moderates or more fairly sets the amount of execution costs, as it can better take into account the debtor's behavior during the execution and his willingness, even within the execution, to pay the debt.

I consider another important milestone to be the moment when the Constitutional Court intervened within the complaint agenda in the decisions of the general courts, starting to review and moderate the amount of costs of

(see also one of the basic principles of execution – the principle of legal protection of the obligee, the purpose of which is that execution can only serve to satisfy the beneficiary's right and to reimburse the costs of execution proceedings, including an adequate remuneration of the executor). However, it may not cause disproportionate harm to the obligee because it does not properly take into account a certain degree of "voluntariness" in the fulfillment of the enforced obligation, even after the order of execution, but still before its enforced execution. The regulation under consideration denies the preventive function of execution as a means, the purpose of which is not liquidation of assets of the liable entity (see also the purpose of insolvency proceedings). Therefore, a reduced amount of remuneration can be considered equivalent to the executor's efforts, which is also in accordance with the principle of proportionality measuring the adequacy of intervention in the obligee's property for the purpose of protecting the beneficiary's property (recovery of his claim). The Constitutional Court concludes that the constitutionally compliant adjustment of the executor's remuneration should not be based on the direct dependence of the remuneration on the amount of the enforced performance, but should reflect the complexity, responsibility and effort of the execution activity according to the individual types and methods of execution. Until such legislation is adopted, it will be up to the general courts to interpret the "amount of performance enforced by the executor" in accordance with the indicated principles when deciding on the executor's remuneration

⁷ this practice is constant and continues to this day - see judgement of 10 March 2020, file no. stamp I. ÚS 3302/19

court executors, with the argument that the costs of execution should always reflect the difficulty and effort performed work of executors⁸.

A very significant and, dare I say it, unprecedented change then came with the wave of mass annulment of arbitration awards as execution titles. In this case, it happened that the execution proceedings that had been completed for many years, which were recovered by the execution courts, stopped and changed the decisions issued so far on the costs of the execution.

During the existence of executors, a number of legislative changes were adopted, and there is a wealth of jurisprudence and literature on the subject from the given period. It is certainly possible to find and list a number of others. Personally, however, I consider the three mentioned above to be significant, those that have completely changed either the current legislation or application practice

5 THE COSTS OF EXECUTION PROCEEDINGS

The adjustment of the costs of execution proceedings (specifically, the costs of the execution and the costs of the beneficiary) can be found in Chapter VII. of Act No. 120/2001 Coll., execution order, while the following part (i.e. in Chapter VIII.) contains the regulation of the executor's remuneration. The specific amount of costs is subsequently determined by Decree of the Ministry of Justice No. 330/2001 Coll. This also results in the breakdown of the costs of execution proceedings, to which I adapted the breakdown of this part. A specific feature of the costs of execution proceedings is the fact that, in addition to the participants in the proceedings, there is also the person of the executor, which also incurs costs that must be decided.⁹

The main topic of this chapter is the costs of the court executor, but for the complexity of the treatment of this issue, I will also briefly discuss the costs of the obligee and the beneficiary. In a separate section, I deal with the 2022

⁸ The judgement of the Constitutional Court no. stamp Pl. ÚS 8/2006, dated 1 March 2007, published in the Collection of Laws under No. 94/2007 Coll., similarly, e.g. III. ÚS 52/08, dated 5 February 2009, I. ÚS 684/07, dated 17 February 2009, or I. ÚS 998/09, dated 30 June 2009.

⁹ SVOBODA, Karel, Miroslav HROMADA, Jiří LEVÝ, David VLÁČIL, Šárka TLÁŠKOVÁ and Tomáš PIRK. Costs. Prague: C. H. Beck, 2017. ISBN 978-80-7400-650-0, p. 224.

amendment to the Execution Regulations, which brought significant changes to the area of execution costs.

5.1 Costs of the obligee

The execution order does not specify the obligee's costs in more detail, probably for the reason that in the proper course of the execution, the beneficiary is entitled to reimbursement of costs (therefore, he does not incur any costs at all). However, if the execution is stopped, the person responsible for the stoppage shall cover its costs and the costs of the participants. If the execution is stopped due to the lack of assets of the obligee, the beneficiary will pay the flat-rate purposefully incurred expenses of the executor - for these cases, such expenses can be agreed with the executor in advance.¹⁰

5.2 Creditor's Costs

The authorized party has the right to compensation for the costs incurred for the execution of his own claim in accordance with the provisions of § 87 paragraph 2 of the Executor Code, while these costs also include the costs of legal representation or claims for reimbursement of out-of-pocket expenses of the unrepresented participant (determined as a flat rate)¹¹. The entitled person's right to reimbursement of purposefully incurred costs takes the form of an enforceable claim - these costs are a kind of procedural reflection of the relationship that exists between individual participants. According to the judgement of the Constitutional Court, no. stamp I. ÚS 3819/13 of March 25, 2014, the concept of expediency must be understood as insurance against the payment of costs that are not directly related to the procedure or excessively high costs¹².

In contrast to the costs of the obligee, the costs of the beneficiary are explicitly mentioned in the Execution Code, but do not specify them in more detail - when determining the expenses that fall among the costs of the beneficiary, it is necessary to use the provisions of Section 137, paragraphs 1 and 3 of the

¹⁰ § 89 of Act No. 120/2001 Coll., on executors and execution activities (execution regulations)

¹¹ § 87 paragraph 2 of Act No. 120/2001 Coll., on executors and execution activities (execution regulations)

¹² The judgement of the Constitutional Court no. stamp I. ÚS 3819/13 of March 25, 2014

Code of Civil Procedure. These are mainly the costs of evidence, remuneration for representation by a lawyer, expenses of the beneficiary himself, etc.¹³ In the case of a fee for representation by a lawyer, the person who has been ordered to reimburse these costs is obliged to pay them to the lawyer. These costs are covered by the obligee, which is a consequence of the presumption of the obligee's fault.¹⁴ Similarly to the procedure carried out by each of the participants in accordance with the provisions of § 140 of the Code of Civil Procedure in conjunction with the provisions of § 254 paragraph 1 of the Code of Civil Procedure and § 52 of the Execution Code, the costs incurred by him personally or by his representative shall be paid.

In the beneficiary's costs, it is necessary to distinguish between the costs incurred in the scope of discovery proceedings, which are already precisely defined in the execution proposal, and the costs that will still be incurred in the framework of execution proceedings, while the treasure for their recovery is the authorization to carry out execution.¹⁵

5.3 Executor's costs

Execution activity is carried out for a fee¹⁶, which is a consequence of the fact that the executor acts as an entity to whom the state has entrusted the exercise of its powers, and which has a material interest in the outcome of execution proceedings¹⁷.

- executor's fee

¹³ § 137 paragraphs 1 and 3 of Act No. 99/1963 Coll., Code of Civil Procedure

¹⁴ KASÍKOVÁ, Martina et al. Execution order: comment. 5th edition. Prague: C. H. Beck, 2022. ISBN 978-80-7400-855-9, p. 56.

¹⁵ WOLFOVÁ, Jitka and Martin ŠTIKA. Court execution. Prague: Wolters Kluwer, 2016. ISBN 978-80-7552-427-0, p. 135.

¹⁶ § 3 paragraph 1 of Act No. 120/2001 Coll., on executors and execution activities (execution regulations)

¹⁷ see § 87 paragraph 1 of Act No. 120/2001 Coll., on court executors and execution activities (execution regulations) and also Decree of the Ministry of Justice No. 330/2001 Coll., on the remuneration and compensation of the court executor, on the remuneration and compensation of cash expenses of the company administrator and the conditions of liability insurance for damages caused by the executor

- reimbursement of lump-sum determined or expediently spent out-of-pocket expenses
- compensation for the loss of time
- compensation for delivery of documents
- in the case of execution by sale of the business, also remuneration and reimbursement of costs of the administrator of the business

The executor is a VAT payer, so the cost of execution is also VAT. I would like to add that the executor is not authorized to increase or decrease the costs listed above. According to § 1, paragraph 3 of the executor's tariff, the executor's remuneration also includes compensation for ordinary administrative and other work in connection with the executor's activity and other activities of the executor - this is mainly about drawing up executor's records, providing legal assistance, property management, conducting auctions, etc.¹⁸

The jurisprudence of the Constitutional Court has concluded several times that the executor may not be entitled to reimbursement of execution costs under all circumstances - for example, in its judgment in case no. stamp III. ÚS 1226/08 of October 9, 2008, the Constitutional Court stated that although the executor is entitled to a remuneration from a successfully executed execution, at the same time, the executor bears the risk that the debtor's property will not cover the claims of the beneficiary and the costs of the execution, and such risk cannot be transferred to the beneficiary. According to the Constitutional Court, this risk is sufficiently compensated by the executor's de facto monopoly position within the execution procedure.¹⁹

6 SPECIFICATION OF COSTS INCURRED IN EXECUTION

The specification of the costs arising in the context of execution is provided by the decree on the remuneration and compensation of the executor. In the following sections, I will focus primarily on the most debated of these –

¹⁸ WOLFOVÁ, Jitka and Martin ŠTIKA. Court execution. Prague: Wolters Kluwer, 2016. ISBN 978-80-7552-427-0, p. 133.

¹⁹ The judgement of the Constitutional Court no. stamp III. ÚS 1226/08 of October 9, 2008

executor's remuneration and reimbursement of executor's out-of-pocket expenses.

6.1 Executor's remuneration

The executor's fee is one of the most discussed components of foreclosure costs in public discourse. As I have already stated, the executor performs execution activities for a fee, the amount and method of determination of which is governed by the execution tariff. The executor's remuneration belongs to the executor only for that activity which is carried out personally by the executor (or his employee) - it is not possible for the executor to demand the payment of employees' wages as compensation for expenses already incurred, since such costs would be incurred by him even if he did not enforce the execution.²⁰

The execution tariff regulates the remuneration for the performance of execution activities in Chapter I, where it divides this remuneration into:

- remuneration for execution imposing the payment of a monetary amount,
- remuneration for execution imposing an obligation other than the payment of a monetary sum.

The remuneration for non-monetary performance is further divided into:

- remuneration for execution by clearing,
- remuneration for execution by taking away the thing,
- remuneration for execution by dividing the joint property,
- remuneration for execution by performing works and performances.

As stipulated by the Constitutional Court in its award no. stamp ÚS II. 336/05 of August 31, 2005, the executor's remuneration cannot be confused with reimbursement of out-of-pocket expenses, while the executor must distinguish in the order for the payment of execution costs whether the given costs relate to remuneration or if they are part of lump-sum determined or purposefully

²⁰ WOLFOVÁ, Jitka and Martin ŠTIKA. Court execution. Prague: Wolters Kluwer, 2016. ISBN 978-80-7552-427-0, p. 134.

spent out-of-pocket expenses. Compensation for the executor's time and for the time of his employees is also included in the executor's remuneration.²¹

In the case of monetary payment, the provisions of Section 5, paragraph 1 of the executor's tariff shall be used to calculate the executor's remuneration, while the basis for this calculation is the amount of the recovered payment (collected claim including accessories without the costs of execution and the costs of the beneficiary²²). The regulation of monetary performance has developed relatively dynamically in recent years - the execution tariff in the version effective between April 30, 2004 and July 31, 2006 characterized the enforced performance as any performance that the obligee paid after he was served with the resolution on the execution order. Subsequently, this regulation was changed by means of the Amendment Act No. 291/2006 Coll., in the diction of which, such performance, which was realized after the issuance of a resolution on the order of execution, began to be considered as enforced performance, while the costs of the execution were also considered part of this performance and costs of the beneficiary. However, the judgement of the Constitutional Court declared this practice unconstitutional²³, while part of the provisions of § 5, paragraph 1 of the executor's tariff was repealed. The Constitutional Court also pointed to the fact that the criticized regulation did not reflect the voluntary performance of the obligation²⁴. Subsequently, the definition of enforced performance was absent in the Czech legal system until the amendment Act No. 396/2012 Coll. came into effect, when it was incorporated into the provisions of § 46, paragraph 4 of the Execution Code.

From this transformed basis in the form of enforced performance, the executor can calculate his remuneration by deducting from the enforced performance the costs of execution and the costs of the beneficiary incurred during the execution proceedings - the remuneration for execution is then:

- up to CZK 3,000,000 base - 15%
- from the remaining amount up to CZK 40,000,000 of the base - 10%
- from the remaining amount up to CZK 50,000,000 of the basis - 5%

²¹ The judgement of the Constitutional Court no. stamp ÚS II. 336/05 of August 31, 2005

²² § 513 of Act No. 89/2012 Coll., Civil Code

²³ The judgement of the Constitutional Court no. stamp Pl. ÚS 8/06 of March 1, 2007

²⁴ The judgement of the Constitutional Court no. stamp Pl. ÚS 8/06 of March 1, 2007

- from the remaining amount up to CZK 250,000,000 of the basis - 1%

The amount above two hundred and fifty million Czech crowns is no longer included in the base. The remuneration determined in this way must be at least CZK 2,000²⁵. This amount had a value of CZK 3,000 until March 31, 2017, after which it was by Decree No. 441/2016 Coll. reduced to the current value. In addition, this value can be further reduced by half in the event that the obligee voluntarily fulfills his obligation within the time limit set by the provisions of Section 46, Paragraph 6 of the Execution Code²⁶.

An exception to the above-mentioned system is execution, when the beneficiary is granted the right to recurring benefits (e.g. monthly maintenance) - in such a case, the sum of the performance values to be recovered is the basis for determining the remuneration. In the case of performance determined for an indefinite period or for a period longer than five years, the basis is five times the value of the annual performance.²⁷

For the purposes of non-monetary performance, the executor's tariff lists the amount of remuneration for individual methods of execution - this adjustment was necessary, as in practice it often happened that the remuneration was calculated from the highest submission. The executor is entitled to a remuneration of CZK 10,000²⁸ for clearing each property, building, apartment or room. For execution by taking away the thing, the executor receives a remuneration of 15% of the value of each such thing or set of things, while the minimum remuneration is CZK 2,000²⁹. In the case of execution by dividing the joint property, if the joint property is to be sold and its proceeds divided among the co-owners, the executor's remuneration is calculated according to the system intended for monetary payments. However, if the thing is to be divided other than by sale, the remuneration is CZK 6,000 for each thing divided.³⁰ Finally, for execution by performing works and performances, the executor is

²⁵ §6 of the execution tariff

²⁶ § 46 paragraph 6 of Act No. 120/2001 Coll., on executors and execution activities (execution regulations)

²⁷ § 5 paragraph 4 of the executive tariff

²⁸ § 7 of the execution tariff

²⁹ § 8 of the execution tariff

³⁰ § 9 of the execution tariff

entitled to a remuneration of CZK 6,000 for each execution title, imposing the execution of works and performances.³¹

From the above, it is evident that the amount of the executor's remuneration is determined by the type of duty to be enforced and the amount of the debt to be enforced - however, as the Constitutional Court ruled in its award no. stamp Pl. ÚS 8/06 of March 1, 2007, the adjustment of the executor's remuneration should also reflect the complexity, responsibility and effort of the execution activity, depending on the type and method of execution³². However, the current regulation does not yet fulfill this.

The executor's remuneration can also be adjusted contractually if the beneficiary and the executor agree on this. The provisions of Section 90, paragraph 2 of the execution order state that the contractual fee is not considered a cost of execution, while the executor's right to a fee, reimbursement of out-of-pocket expenses, compensation for the delivery of documents and compensation for loss of time is not affected.³³

6.2 Reimbursement of executor's out-of-pocket expenses

The executor's right to reimbursement of out-of-pocket expenses follows from § 90, paragraph 1 of the execution order and from § 13 of the executor's tariff. We could characterize the executor's out-of-pocket expenses as lump-sum determined or purposefully spent out-of-pocket expenses that do not belong to the executor's remuneration. Typically, these are expenses that the court executor incurs as part of normal administration, or various travel expenses, expenses associated with the use of moving services and assistance services, etc. More generally, these are expenses in money that the executor purposefully spent in connection with the performed activity. However, this does not include expenses that the executor would have to pay regardless of the execution, for example energy deposits, insurance, etc.³⁴

³¹ § 10 of the execution tariff

³² The judgement of the Constitutional Court no. stamp Pl. ÚS 8/06 of March 1, 2007

³³ § 90 paragraph 2 of Act No. 120/2001 Coll., on executors and execution activities (execution regulations)

³⁴ KASÍKOVÁ, Martina et al. Execution order: comment. 5th edition. Prague: C. H. Beck, 2022. ISBN 978-80-7400-855-9, p. 793.

The executor is entitled to a lump-sum sum of CZK 3,500 for the performance of execution activities as compensation for out-of-pocket expenses.³⁵ In the event that the amount actually spent exceeds this value, the executor has the right to reimbursement of the expenses in full, but he must be happy to prove these costs³⁶. Also in this case, the position of the obligee who decides to fulfill the enforced obligation voluntarily within thirty days from the date of delivery of the call to fulfill the enforced obligation is favored - in this case, the flat-rate amount is halved³⁷. The maximum amount of reimbursement for travel expenses is CZK 1,500 for one trip to (and back to) a place that is not the seat of the executor.³⁸

6.3 Other compensation for executor's costs

By other reimbursements of the executor's costs, we mean reimbursement of costs for delivery and compensation for loss of time during execution.

The executor has the right to compensation for the execution of the execution activity in a place that is not the seat of his office and for the time spent traveling to this place and back. The executor's tariff sets the maximum limit of the amount for one trip and back, namely 500 CZK.³⁹ The compensation amounts to CZK 50⁴⁰ for every quarter of an hour started from the moment the executor or his employee leaves his office. If the executor travels to one place for a larger number of actions, he is entitled to only one compensation, which is proportionally divided into individual execution proceedings. If the amount exceeds the set limit, the beneficiary pays the excess amount.⁴¹

Reimbursement of the costs incurred for the delivery of documents may be claimed by the executor in the event that the document was delivered personally by the executor or by an authorized employee.⁴² Reimbursement of

³⁵ § 13, paragraph 1 of the execution tariff

³⁶ § 13, paragraph 2 of the execution tariff

³⁷ § 13, paragraph 3 of the execution tariff

³⁸ § 13, paragraph 6 of the execution tariff

³⁹ § 14, paragraph 1 of the execution tariff

⁴⁰ § 14, paragraph 3 of the execution tariff

⁴¹ KASÍKOVÁ, Martina et al. Execution order: comment. 5th edition. Prague: C. H. Beck, 2022. ISBN 978-80-7400-855-9, pp. 800-801.

⁴² § 15, paragraph 1 of the execution tariff

costs for delivery can be broken down into the costs of out-of-pocket expenses purposefully spent on the delivery of documents and a flat-rate amount of CZK 50 per document delivered⁴³.

6.4 Amendment of the execution order (2022)

At the beginning of 2022, the amendment to the execution order, implemented through Act No. 286/2021 Coll., came into effect, while together with this amending act, Decree No. 517/2021 Coll. was issued, which changes, among other things, the execution tariff. The intention of this amendment was to respond to the consequences of multiple foreclosures - however, the implementation of the amendment does not correspond to this goal⁴⁴.

The amendment was also related to the Code of Civil Procedure - in this context, I would like to point out the provision of § 265a, which sets the order in which the proceeds from the execution are taken into account. First, the costs of foreclosure are included, followed by the principal, interest and late payment interest. Finally, the beneficiary's costs are included. Prior to this amendment, it was the case that the accessory to the claim was set off first, followed by the principal.⁴⁵

Another significant change is the fact that the employer of the obligee, who makes deductions from the obligee's salary, can now also be entitled to reimbursement of costs in the form of a lump sum. This lump-sum amount (CZK 50) belongs to the employer for the calendar month in which deductions are made from the employee's wages, and its amount may not exceed a third of the amount deducted from wages or other income. If deductions are made for the purpose of collecting several claims at the same time, the employer is only entitled to one reimbursement of costs⁴⁶.

⁴³ § 15, paragraph of the execution tariff

⁴⁴ ŠTIKA, Martin. Změny exekučního práva od 1. 1. 2022 – stručný výklad [online]. Právní prostor, 3. 1. 2022. [Cit. 2022-08-09]. Dostupné z: <https://www.pravniprostor.cz/clanky/procesni-pravo/zmeny-exekucniho-prava-od-1-1-2022-strucny-vyklad>

⁴⁵ § 265a of Act No. 99/1963 Coll., Code of Civil Procedure

⁴⁶ ŠTIKA, Martin. Změny exekučního práva od 1. 1. 2022 – stručný výklad [online]. Právní prostor, 3. 1. 2022. [Cit. 2022-08-09]. Dostupné z:

The widely discussed consequence of the amendment is the stopping of fruitless executions and trivial executions - according to the provisions of § 55, paragraph 7 of the Execution Code, if there has been no partial fulfillment of the obligation (more than sufficient to cover the costs of the execution) within six years after the execution of the execution clause has been marked, the executor will call entitled within a thirty-day period to grant consent or disagreement with the suspension of execution. In this way, the foreclosure can only be terminated if it does not concern the real estate.⁴⁷

In the case of petty executions, if nothing has been recovered in the three years before the amendment, and the claim does not exceed the amount of CZK 1,500, the executor will ask the authorized person to deposit a deposit of CZK 500 according to the executor's tariff - if the authorized person does not pay this advance within thirty days, stopping the executor of petty execution within three months of the effective date of the amendment. In case of suspension of proceedings, compensation in the amount of 30% of the recovered claim without accessories accrues to the beneficiary. The executor is entitled to reimbursement of out-of-pocket expenses in the amount of 30% of the reimbursement of flat-rate out-of-pocket expenses according to § 13 of the executor's tariff. This compensation is paid by the state through the execution court.

7 QUESTIONS RAISED FOR FURTHER DISCUSSION

As I stated on the previous pages, as part of my dissertation, I am mainly attempting a comprehensive analysis of the costs of execution. I believe that such an analysis cannot be reduced to a mere statistical tally of ideas, number of employees, etc.

Executors are a unique legal profession. The question of their remuneration constantly shakes the public, and is often the subject of decisions and corrections by the court. Primarily executors make their own decisions on the basis of valid legislation. Their decisions can be reviewed and changed by the

<https://www.pravniprostor.cz/clanky/procesni-pravo/zmeny-exekucniho-prava-od-1-1-2022-strucny-vyklad>

⁴⁷ § 55 paragraph 7 of Act No. 120/2001 Coll.

courts, and their activities are under unprecedented (compared to other legal professions) scrutiny.

So why are the costs of foreclosure such a "big topic"? Why does the remuneration of other legal professions not generate such discussion?

Is the current situation caused by the fact that in the 20 years of the existence of executors, it was not possible to set the amount of costs in a suitable and socially acceptable manner, and to adopt a satisfactory wording of the execution tariff? Or are the executors themselves to blame for the current situation, who, although they have good legislation at their disposal, do not apply it appropriately in their decisions?

Does the current setup of execution costs correspond to the real needs of the company? In other words, does the current set-up allow executors to carry out their work for a reasonable fee?

8 CONCLUSION

The aim of this contribution was to bring readers closer to the current legal regulation of the costs of execution proceedings. As can be seen from the above lines, although it might seem at first glance that the execution costs are regulated quite clearly and unambiguously, the application practice raises a number of questions. Frequent amendments also do not bring a stable legal environment.

There can be many motivations for amendments (changes). Above all, the amendment should bring about a change for the better - if a problematic provision appears or if significant social changes occur. However, if we look at the number of changes, significant ones at that, we cannot help but feel that the changes are motivated by completely different factors. The Ministry of Justice issues a decree regulating the costs of execution. Compared to the law, it can therefore change the execution tariff relatively quickly, without a thorough analysis or systemic discussion. It is a question whether such a system adjustment is in order, and whether the execution tariff should also take the form of a law. After all, each change would then be subject to wider social discussion and approval within the legislative process, which would generally, in my opinion, better meet the needs of society. The view of the Ministry of

Justice, with all due respect, is that of an oversight body, and its perspective seems to me personally to be unnecessarily truncated in the given case.

CITATION LIST

- [1] KASÍKOVÁ, Martina a kol. *Exekuční řád: komentář*. 5. vydání. Praha: C. H. Beck, 2022. ISBN 978-80-7400-855-9.
- [2] Nález Ústavního soudu sp.zn IV. ÚS. 630/03 ze dne 2.11.2004
- [3] Nález Ústavního soudu sp. zn. ÚS II. 336/05 ze dne 31. srpna 2005
- [4] Nález Ústavního soudu sp. zn. ÚS II. 336/05 ze dne 31. srpna 2005
- [5] Nález Ústavního soudu sp. zn. Pl. ÚS 8/06 ze dne 1. března 2007
- [6] Nález Ústavního soudu sp. zn. III. ÚS 1226/08 ze dne 9. října 2008
- [7] Nález Ústavního soudu sp. zn. I. ÚS 3819/13 ze dne 25. března 2014
- [8] Nález Ústavního soudu sp.zn., I. ÚS 3302/19 ze dne 10 března 2020
- [9] SVOBODA, Karel, MIROSLAV HROMADA, JIŘÍ LEVÝ, DAVID VLÁČIL, ŠÁRKA TLÁŠKOVÁ a TOMÁŠ PIRK. *Náklady řízení*. Praha: C. H. Beck, 2017. ISBN 978-80-7400-650-0.
- [10] ŠTIKA, Martin. Změny exekučního práva od 1. 1. 2022 – stručný výklad [online]. *Právní prostor*, 3. 1. 2022. [Cit. 2022-08-09]. Dostupné z: <https://www.pravniprostor.cz/clanky/procesni-pravo/zmeny-exekucniho-prava-od-1-1-2022-strucny-vyklad>
- [11] Vyhláška Ministerstva spravedlnosti č. 330/2001 Sb., o odměně a náhradách soudního exekutora, o odměně a náhradě hotových výdajů správce podniku a o podmínkách pojištění odpovědnosti za škody způsobené exekutorem (exekutorský tarif)
- [12] WOLFOVÁ, Jitka a Martin ŠTIKA. *Soudní exekuce*. Praha: Wolters Kluwer, 2016. ISBN 978-80-7552-427-0.
- [13] Zákon č. 99/1963 Sb., občanský soudní řád
- [14] Zákon č. 120/2001 Sb., o soudních exekutorech a exekuční činnosti (exekuční řád)
- [15] Zákon č. 89/2012 Sb., občanský zákoník

AUTHOR

JUDr. Katarína Maisnerová, University of West Bohemia, Faculty of Law,
Department of Civil Law, e-mail: katarina.maisnerova@seznam.cz