

Czech Republic

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CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

- 1 | Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

Under Czech criminal procedure law, injured parties can assert civil claims that arise from criminal offences mentioned in the criminal proceedings against the accused, by way of a joinder or adhesion procedure. Rather than pursuing damages in a separate civil action, the injured party files a civil claim against the offender as part of a criminal trial. Such a claim may be filed either during the initial phase of the criminal proceedings, together with the criminal complaint or at a later stage until the beginning of the oral hearing before the court.

In adhesion procedures, the injured party quantifies the damages caused by the criminal offence. At the end of the criminal proceedings, the court decides whether to award this claim and makes a decision regarding criminal liability, then sentences the accused. If the court does not award damages to the injured party or awards them only in part, the injured party can pursue the claim in civil proceedings.

In addition to this special adhesion procedure, claims can also be pursued in civil proceedings. Initiating civil proceedings does not give rise to the obstacle of *lis alibi pendens*, meaning that the same claim can be asserted in the adhesion procedure. Generally speaking, both proceedings can then proceed parallel to one another, although some limitations apply.

First, conversely to the above, asserting a civil claim through the adhesion procedure gives rise to the obstacle of *lis alibi pendens*, meaning that civil proceedings cannot then be commenced (Supreme Court of the Czech Republic of 30 October 2007, 33 Odo 1345/2005). Therefore, any injured party that decides to first pursue a claim through adhesion proceedings will not then be able to file a civil action on the same matter until the criminal court has reached its decision.

Second, if the civil court issues a decision in civil proceedings, the claim cannot then be pursued through adhesion proceedings (section 43, paragraph 3 of Act No. 141/1961 (the Code of Criminal Procedure)). This applies even to decisions that have not yet entered into legal force.

Forum

- 2 | In which court should proceedings be brought?

Proceedings should generally be brought in the defendant's general court of jurisdiction.

For natural persons, the general court is the district court local to where he or she is domiciled, or, if not domiciled, local to where the natural person is residing. For legal persons, the general court is the district court local to its registered office. This is also the case for

natural persons who are entrepreneurs in matters arising from entrepreneurial activities.

An exemption exists whereby, for proceedings concerning the right to an immovable asset, competence rests with the district court in the district where that immovable asset is located. Moreover, if the defendant has no applicable court in the Czech Republic, the claim can be pursued by the district court where the defendant has his or her property.

The Czech judicial system generally offers two appeal stages for civil proceedings, making three stages of proceedings in total. For first-instance judgments rendered by the district court, appeals can be filed with the regional court. For first-instance judgments rendered by the regional court, appeals can be filed with the higher regional court. Subsequently, for questions of law, the matter can be brought before the Supreme Court of the Czech Republic in the third and final instance.

The district courts have jurisdiction to hear proceedings in the first instance unless the law expressly provides that jurisdiction lies with the regional courts. We would expect cases concerning asset recovery to be decided by district courts in the first instance.

Limitation

- 3 | What are the time limits for starting civil court proceedings?

The relevant statute of limitations is that which applies to the underlying claim.

The statute of limitations is generally regulated by sections 609–653 of the Civil Code (Act No. 89/2012). The subjective limitation period is generally three years and begins on the day on which the right could first be exercised (ie, on the day when the entitled person became aware of the possibility to exercise the right). The objective statute of limitations is 10 years and begins on the day that the damage or harm was incurred (15 years in the case of intentionally caused damage or damage caused by bribery) or 10 years after the date on which the unjust enrichment occurred.

Actions must be brought before the competent court before the limitation period has expired.

Jurisdiction

- 4 | In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

Civil courts have jurisdiction in all civil proceedings – they hear and decide disputes and other legal matters arising from private law relations.

The court examines whether the procedural requirements for a given claim are met. It examines the subject-matter jurisdiction and the local jurisdiction of the court seised. A participant can challenge the court's jurisdiction. The subject-matter jurisdiction of a court can be challenged and examined at any point of the proceedings, whereas

its local jurisdiction can be challenged only *in limine litis*, whereby the defendant may only raise an objection in its first defence addressed to the court seised.

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

5 | What is the usual time frame for a claim to reach trial?

Usually, the time frame is between 150 and 300 days. Given the greater complexity of asset recovery cases compared to other cases, the time frame may be longer.

Admissibility of evidence

6 | What rules apply to the admissibility of evidence in civil proceedings?

The evidence used to ascertain the state of the matter can take a variety of forms, including:

- witness interviews;
- expert opinions;
- reports and statements from bodies, natural persons and legal entities;
- notarial or executors' reports; and
- other documents, examinations and interviews with participants.

However, witnesses' written statements generally have little evidentiary value as courts prefer oral statements at the hearing stage.

Evidence obtained or provided unlawfully is generally inadmissible.

Witnesses

7 | What powers are available to compel witnesses to give evidence?

Witness testimonies are mandatory upon request. Any natural person who is not a participant in the proceedings is required to appear before the court and testify as a witness. Witnesses can only refuse to testify if doing so would carry the risk of criminal prosecution for the witness or any person close to the witness.

If a natural person does not comply and fails to appear before the court without any legitimate reason, the judge may impose a fine of up to 50,000 Czech korunas (approximately €1,800).

Furthermore, the presiding judge is authorised to have the Czech police bring that person before the court, provided that the person summoned has been informed of this possibility beforehand.

Publicly available information

8 | What sources of information about assets are publicly available?

Information on real estate assets can be obtained from the land register. Shares in companies are traceable in the commercial register. Information on aircraft ownership is accessible in the aviation register.

Conversely, information is not publicly available on securities and automobiles, among other things.

Cooperation with law enforcement agencies

9 | Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

The court can request information, items and documents from law enforcement agencies and regulatory agencies. A party to civil

proceedings may call on the court to make such a request, but it is up to the court whether such a request would be useful.

Third-party disclosure

10 | How can information be obtained from third parties not suspected of wrongdoing?

As with government agencies, persons and companies must also provide the court with all information and evidence requested. However, the parties cannot use this to fill gaps in their own understanding, but only to obtain specific items of evidence in the possession of third parties.

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

Interim relief

11 | What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

Czech civil procedure law allows for pre-judgment interim measures. Petitions for interim relief can be filed where it is necessary to provisionally modify the relations between the participants or where there is a risk that a future judicial decision may become unenforceable.

Interim relief can be granted before (section 74 et seq of Act No. 99/1963 (the Civil Procedure Code)) and after the commencement of proceedings on the matter (section 102 of the Civil Procedure Code).

Interim measures can impose various obligations. For instance, the court can order a party not to dispose of certain items or rights, to lodge a sum of money with the court or to refrain from doing something.

Petitions for interim relief must describe why the relations between the participants must be provisionally modified or, if it is feared that a court decision could become unenforceable, must clearly state the interim measure that the plaintiff is petitioning for and must corroborate the claim on the merits.

Non-compliance with court orders

12 | How do courts punish failure to comply with court orders?

Any legal action taken by a person in conflict with an enforceable interim measure will be void. Furthermore, the court can punish non-compliance with a fine of up to 50,000 Czech korunas.

Any person failing to comply with an official order can be liable for the criminal offence of obstructing the enforcement of an official decision or of obstructing justice, under sections 337 and 347a of the Criminal Code (Act No. 40/2009).

Obtaining evidence from other jurisdictions

13 | How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

If the witness or evidence is in another EU member state, a procedure is available (under Council Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters) that allows the taking of evidence from one member state to another without recourse to consular and diplomatic channels.

In addition, the Czech Republic is a signatory to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970 (the Hague Evidence Convention). On this basis, the Czech authorities can obtain evidence such as judicial documents, local inspections, witness statements, taking parties to disputes, the production of documents and expert opinions from other jurisdictions. Non-signatory

parties to the Hague Evidence Convention can also engage in mutual legal assistance, but only after case-by-case evaluation.

Assisting courts in other jurisdictions

14 | What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

Just as the courts can obtain assistance from other jurisdictions, they can also aid other jurisdictions with their own proceedings.

In accordance with Council Regulation (EC) No. 1206/2001, the Czech courts can allow another EU member state to take evidence when that evidence or the witness is in the Czech Republic without the need to resort to consular and diplomatic channels.

As a signatory to the Hague Evidence Convention, the Czech authorities can also hand over evidence such as judicial documents, local inspections, witness statements, taking parties to disputes, the production of documents and expert opinions to other jurisdictions. Non-signatory parties to the Hague Evidence Convention can also engage in mutual legal assistance, but only after case-by-case evaluation.

Causes of action

15 | What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

Civil asset recovery actions can be brought before the court under various forms of action (eg, tort law, contract law, inheritance law and property law).

In particular, contract-based claims can be filed for breach of contract or a tort action can be lodged if a person unlawfully causes loss or damage to another where there is no contract between the parties. This latter particularly applies in cases of fraud. Proprietary claims are also possible, notably if the owner of an asset has been deprived of his or her ownership.

Remedies

16 | What remedies are available in a civil recovery action?

Damage is compensated by having the original state restored. If this is not reasonably possible, or where so requested by the victim, monetary damages are payable. Damage includes loss of profit of the injured party. In the event of unjust enrichment, the law provides for the restitution of the relevant amounts.

Judgment without full trial

17 | Can a victim obtain a judgment without the need for a full trial?

First, the court may decide the action in a default judgment if the defendant summoned fails to appear at the first hearing. Victims can also obtain a default judgment if:

- the defendant fails to make a written statement of defence, despite having been duly invited by the court to do so; or
- the defendant fails to appear at the preliminary hearing of the case.

Second, Czech law provides for special proceedings, such as orders for payment, electronic orders for payment (and, similarly, bill-of-exchange (cheque) orders for payment) as referred to in sections 172 to 175 of the Civil Procedure Code. These proceedings enable the court to decide the matter without an oral hearing and without the defendant's participation if they are entitled to do so as a result of facts alleged and proven by the claimant. The court always has discretion on whether it deals with a case by issuing an order for payment. If the court does not issue an order for payment, it may order a hearing.

After the court issues an order, the defendant can file a statement of opposition, which moves the proceedings to standard civil proceedings. Otherwise, the decision becomes legally enforceable.

Orders for payment are limited in that they must always be delivered to the defendant in person. They cannot be used if the whereabouts of the defendant are unknown or if the defendant does not accept their delivery. However, the courts have adopted a secondary solution in practice; once the order has been returned as non-deliverable, the court invites the defendant who did not accept its delivery to reply to the action and, if the defendant fails to comply, the court issues a decision analogous to a default judgment. The invitation to reply to the action need not be delivered in person.

Similarly, the European order for payment procedure (established by Regulation (EC) No. 1896/2006) may be utilised in EU jurisdictions.

Post-judgment relief

18 | What post-judgment relief is available to successful claimants?

If the defendant does not voluntarily comply with the terms of the enforceable judgment, the successful claimant can apply to the court or a bailiff for its enforcement. The bailiff is generally considered more effective and therefore is used more frequently than the court.

Both the court and the bailiff subsequently initiate enforcement proceedings and select some methods of enforcement.

Enforcement

19 | What methods of enforcement are available?

A decision ordering payment of a monetary amount can be enforced by methods that typically include the sale of movable and immovable assets, the creation of a bailiff's lien on immovable assets, deductions from payroll or other income, debiting of a financial receivable, or measures affecting an enterprise.

The enforcement of a decision imposing an obligation other than the payment of a monetary amount will depend on the nature of the imposed obligation. It can be performed through eviction, removing items, splitting common items, the completion of work and other acts. A seized claim can be enforced through the sale of pledged movable and immovable assets.

Funding and costs

20 | What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

The law does not prohibit litigation funding arrangements. Even though this phenomenon is rather limited in practice, civil litigation can be funded through specialised litigation financing companies. Lawyers and their clients can negotiate a success fee up to a certain extent. The cap imposed by the Czech Bar Association is 25 per cent of the awarded amount.

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

21 | Describe the legal framework in relation to interim measures in your jurisdiction.

Under Czech criminal procedure law, the investigating authorities (courts, public prosecutors and the police) can seize items that can be used as evidence, are instruments of a crime or are the proceeds of a crime. Similarly, the authorities can seize replacement values for such items.

Items can be seized in procedures including house searches, personal searches and surveillance. These actions are usually proposed by police or the prosecutor and authorised by the prosecutor or by the court.

Similarly, if material or non-material damage has been caused by a criminal offence or if the accused has obtained unjust enrichment through such a criminal offence to the detriment of the injured party, the injured party's claim can be secured through the property of the accused up to the probable amount of the material or non-material damage, or up to the probable extent of unjust enrichment. Such a seizure is decided by the court upon the proposal of the public prosecutor or the victim, or, in preliminary hearings, by the public prosecutor upon the proposal of the victim.

Proceeds of serious crime

- 22 | Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

In recent years, the prosecution has placed a strong focus on improving this once-neglected field. Therefore, investigations regarding proceeds of crime are now initiated almost automatically when serious crimes (eg, corruption, drug trafficking, etc) are detected.

Injured parties can also secure their claim by submitting their own motion in this regard.

Confiscation – legal framework

- 23 | Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

Czech law recognises two types of sanctions that lead to the confiscation of proceeds of crime. The first group of sanctions includes sentences; the sentence of forfeiture (causing the extinction of the right of ownership) of property, or forfeiture of a possessed item or its replacement value. The second group of sanctions encompasses protective measures including the seizure (temporary intervention that does not extinguish the right of ownership) of items and seizure of part of the property.

The key difference between sentences and protective measures is that, unlike the repressive nature of sentences, protective measures act preventively and can be imposed even without a conviction.

The benefit figure is calculated by the investigating authorities during the investigation, mainly through an expert opinion.

Confiscation procedure

- 24 | Describe how confiscation works in practice.

Assets are typically seized during the first phases of criminal proceedings. Seizure is performed by police following an approval procedure that involves the public prosecutor and the court. At the end of the initial phase of the criminal proceedings, the public prosecutor files the indictment and proposes a sentence imposing the forfeiture of property. Similarly, injured persons can assert their claims against the accused person arising from a criminal offence by way of a joinder or adhesion procedure. The court subsequently decides on the claims of the injured party and on the proposed sanctions.

Agencies

- 25 | What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

The police are mainly responsible for tracing and confiscating the proceeds of crime under the supervision of the competent public

prosecutor. There are no specialised agencies for tracing and confiscating the proceeds of crime in the Czech Republic, but each prosecution office has one prosecutor responsible for this task and their experience is shared within an informal network.

Victims sometimes employ the services of private detectives during informal procedures.

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

- 26 | Is confiscation of secondary proceeds possible?

Assets that are secondary proceeds of crime can also be confiscated.

Third-party ownership

- 27 | Is it possible to confiscate property acquired by a third party or close relatives?

For property acquired by a third party or close relatives, the court imposes protective measures ordering the seizure of assets belonging to the person to whom the offender transferred the item or who acquired the item in another manner, or that belong to a trust fund or similar facility.

In addition, if the third party or relative knew about the nature of the assets, this may constitute the criminal offence of laundering of proceeds of crime (or negligent laundering of the proceeds of crime, if the third party did not know about the nature of the assets but could and should have been aware of it) according to section 216 et seq of the Criminal Code. In this case, the third party may also be accused of criminal behaviour and subsequently sentenced.

Expenses

- 28 | Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

In principle, the costs of criminal proceedings are covered by the state budget. However, any persons convicted must reimburse the state, among others, for the costs associated with:

- execution of custody;
- the remuneration and cash expenses paid to the appointed defence counsel by the state;
- the costs associated with serving a prison sentence; and
- a capped amount of other expenses covered by the state (eg, expert opinions).

Value-based confiscation

- 29 | Is value-based confiscation allowed? If yes, how is the value assessment made?

Yes. If the offender destroys, damages or otherwise depreciates, misappropriates, renders unusable, removes or otherwise prevents the confiscation of an asset, the court may order the confiscation of a replacement value up to the value of the original asset (section 71(1) of the Criminal Code).

The value of the item may be set out based on an expert statement or report.

Burden of proof

- 30 | On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

In criminal proceedings, the burden of proof lies with the investigating authorities. For a decision to be reached, they must duly establish the

facts of the case of which there is no reasonable doubt. The *in dubio pro reo* principle applies and the assets cannot be confiscated if doubts remain.

Using confiscated property to settle claims

- 31 | May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

Yes. Act No. 59/2017 has been adopted in the Czech Republic, which enables injured parties to access property that has been confiscated by the state. Injured parties in adhesion or civil actions may apply to the Ministry of Justice for damages to be awarded from the funds accumulated through confiscation or through monetary fines.

Confiscation of profits

- 32 | Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

Yes.

Non-conviction based forfeiture

- 33 | Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

Yes, the court may impose certain protective measures even without a convicting judgement. Proceeds of crime that are under the ownership or at the disposal of a person who cannot be convicted of a crime can also be seized in this way.

Management of assets

- 34 | After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

The management of seized assets is regulated by Act No. 279/2003.

Assets are managed by the court, or by another entity or body authorised by the court, typically the Czech Office for Government Representation in Property Affairs, court bailiffs or an insolvency trustee. The managing authority should take all necessary actions to avoid unduly reducing or increasing the value of the secured property in the expected manner. Assets cannot be used or leased and can be sold only under special circumstances (eg, danger of destruction).

Asset management costs are covered by the state budget.

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

- 35 | Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

The Czech Republic is an EU member state and a signatory to various mutual legal assistance agreements with other jurisdictions. The domestic legislation that allows the Czech Republic to provide mutual legal assistance to, and to ask for mutual legal assistance from, other countries is Act No. 104/2013 on international judicial cooperation in criminal matters.

Based on the level of cooperation between the Czech Republic and the state from which assistance is requested, the request is either made

through diplomatic channels or between judicial authorities. In addition, the length and procedure of the execution of the request depend on various factors. For instance, the Asset Recovery Offices Network (see Council Decision 2007/845/JHA) exists in the European Union, and freezing and confiscation orders are mutually recognised and mutually treated as if they were domestic orders. By contrast, there may be countries with which no agreement on judicial cooperation exists, in which case the legal assistance procedure is longer and much more complicated.

Complying with requests for foreign legal assistance

- 36 | Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

The extent to which foreign requests for legal assistance are met depends on the level of mutual cooperation.

Treaties

- 37 | To which international conventions with provisions on asset recovery is your state a signatory?

The Czech Republic is a member of the European Union and a signatory to several international conventions, including:

- the European Convention on the Transfer of Proceedings in Criminal Matters (Strasbourg, 15 May 1972; Decree No. 551/1992);
- the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (Strasbourg, 8 November 1990; Decree No. 33/1997);
- the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Brussels, 29 May 2000; Decree No. 55/2006);
- the Convention on Civil Procedure (The Hague, 1 March 1954; Decree No. 72/1966);
- the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958; Decree No. 74/1959); and
- the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 20 April 1959; Decree No. 550/1992).

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

- 38 | Can criminal asset recovery powers be used by private prosecutors?

Czech law does not recognise private prosecutors.

UPDATE AND TRENDS

Emerging trends

- 39 | Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

No significant trends have emerged specific to asset recovery, but the related processes have been affected by the covid-19 pandemic along with other elements of civil and criminal proceedings.

There was a partial slowdown in the criminal justice process, as police officers and others had to change their working patterns to comply with the relevant health protection regulations while carrying out their duties.

Also, new methods and techniques are now being used. For example, some witness statements or entire oral hearings are now conducted by videoconference.

Coronavirus

40 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

From a litigation and procedural law perspective, the following developments are noteworthy:

- Some methods of enforcement were limited (eg, sale of movable and immovable assets and deductions from payroll).
- Courts and administrative authorities were permitted to forgive the expiry of the limitation period under certain conditions, if caused by the pandemic.
- The obligation for entrepreneurs to file insolvency petitions without undue delay after they become aware or after they should have become aware (if they had employed all due diligence) that they are insolvent was temporarily suspended.

However, all the above measures were time-limited and are no longer in force. The limitation on enforcement and release from the obligation to file an insolvency petition ended on 31 June 2021 and the possibility to forgive the limitation period expiry applied only during the state of emergency, which ended on 11 April 2021. Therefore, unless there is another covid-19 outbreak, everyone will need to comply with the standard legislation that was in place before the pandemic.

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