

## 11) Summary

### **Civil distraintment according to Code of Execution**

The question of forced acts is old as mankind itself. The personnel distraintment known from the past is in modern countries replaced by the real distraintment which does not directly target a person of debtor but his / her property instead. In the Czech Republic, the institute of a court distrainer was first legalized in 2001 as a tribute to unsatisfactory state of exaction by the power for executions granted obligations. Today, the creditors have a choice to either enforce their rights by a "classical execution of a decision" or by "execution". The statistics of annual growth of executions clearly prove that creditors more frequently turn with their claims to the court distrainers and also, that the importance of judicial enforcement order recedes into the background. The legalization of Code of Execution renewed the trust of people in the execution procedure. These regulations guarantee to the creditors that their legitimate rights will be properly executed which was not always the case in the past.

The Code of Execution is in my opinion one of the most important laws which were enacted after 1989. Its impact is undisputable. It is rather a controversial law which, since its enactment, has many supporters and certainly even more caveators. Even Czech Helsinki Committee expressed the insufficiencies in the Code of Execution, especially the inadequate arrangements of levying the execution on somebody's property. Czech Helsinki Committee criticized primarily the adequacy principle which states the distrainer's duty to carry out the execution in such manner that the size of debtor's obligation must not be in obvious disproportion with the price of objects to be executed. This principle however was never entirely respected. The reason of this disobedience can be caused by the impossibility of estimating the effect of the warrant of distress on debtor's property. It is quite difficult for a distrainer to estimate whether the issued warrant of distress will satisfy the creditor's claim or if it will be necessary to issue another warrant of distress. Furthermore, any delay in issuing the *feri facias* can endanger a successful end of execution.

Today there is the "middle amendment" of the Code of Execution being prepared. This novel should significantly change the way the executions are levied. Only time

will show how successful this amendment will be and also, if it will be even passed by the Czech Parliament in proposed wording.

I believe that despite of numerous insufficiencies of this important law, which were to a certain extent eliminated by subsequent amendments and judicial practice, its impact consists in positive bolstering of judicial enforcement order and it also strengthens low confidence of creditors that the Czech Republic will sufficiently protect their interests and rights.