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COST AND FEE ALLOCATION IN CIVIL PROCEDURE

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REPORT FOR CZECH REPUBLIC

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Introduction

The following questionnaire is intended to cover civil procedure only, i.e., cases brought under private and commercial law. It does not intend to address criminal, constitutional, administrative proceedings, and arbitration. It consists of 25 questions organized under seven main headings.

In answering them, please distinguish, as far as appropriate, what is usual, what is unusual but permitted, and what is prohibited. If there are readily available statistics, please provide them (in an appendix or otherwise).

Please strive to be clear and concise and stay as close to the substance and sequence of the questions as possible so as to ensure the comparability of answers across a large number of countries. If a question does not make sense in the context of your legal system, briefly say so; if other issues are pertinent, please mention them.

Questionnaire

I. The Basic Rules: Who Pays?

1. What is the basic rule of cost and fee allocation - that each party bears its own or that the loser pays all? Are attorneys' fees and court costs treated differently? What is the principal justification for this rule?

In the Czech law, the award and allocation of civil procedure costs between the parties to a dispute follow the rule that the court will adjudicate reimbursement of the costs needed for an effective enforcing or defending of a right to that party that has fully succeeded in the case against the party that has not succeeded in that case.¹ The court fee as part of cash expenses of the parties and of their representatives and the attorney's or the notary's fees determined by a special legal regulation are integral parts of procedure costs and as such their reimbursement is adjudicated by the court to the party that has succeeded in the

¹ Section 142, Para 1, Act No 99/1963 Sb., Civil Procedure Code as amended.

case according to the above mentioned rule. The substantiation of the above mentioned rule is that the plaintiff that has succeeded in the case is given back the costs spent on an effective enforcing of his right. The defendant, if he has succeeded in the case, is then awarded reimbursement of the costs spent on his defense.

2. If the loser pays all, are all of the winner's costs and fees reimbursed or just a part (e.g., a reasonable amount)?

The party that has not succeeded in the case is obliged according to the decision of the court to pay the successful party reimbursement of the costs needed for meaningful application or protection of law. The costs that can be awarded must then meet the requirement of meaningfulness. If the party has only been partly successful the court proportionally divides reimbursement of the costs between the parties, or it may state that neither is entitled to reimbursement of the procedure costs. However, even if the party has only succeeded partly in the case the court may award him full reimbursement of the costs if he only failed in a minute part of the case or if the decision about the amount of payment depended on an expert's opinion or was at the court's discretion.²

3. Are there special rules for appeals? How are the additional costs and fees allocated?

When deciding about the costs of appeal the court will use the regulations valid for the procedure before the court of first instance. If the appellate court changes the decision of the court of first instance it decides about the costs of that procedure, too. If the appellate court abolishes the decision of the court of first instance returning the case to that court for another procedure or referring the case to a court with subject-matter jurisdiction reimbursement of the costs of appeal will be decided by the court of first instance in its new decision.

4. Who pays for the taking of evidence, especially the costs of (expert and other) witnesses? Are such costs a significant factor in the overall costs of litigation?

The cost of evidence, including the witness fee, is included in procedure costs, too. The witness fee consists of reimbursement of cash expenses and the loss of earnings of the witness. The interpreter's fee, the expert witness fee and the witness fee are paid by the state immediately after their emergence. Depending on the result of the procedure the state is entitled to reimbursement of the procedure costs paid by it provided the parties are not entitled to being exempt from court costs.³ Costs of this type play a major part in the amount of procedure costs, especially as far as expert witness fee is concerned.

5. How are costs and fees typically allocated if the parties settle their dispute? (and what percentage of civil suits is typically settled?)

If the civil suit is settled neither party is entitled to reimbursement of procedure costs except for the case when the settlement about reimbursement of procedure costs states otherwise. Therefore if the parties do not make an agreement about reimbursement of procedure costs in their

² Section 142, Para 3, Act No 99/1963 Sb., Civil Procedure Code as amended.

³ § 148 odst. 1 zákona č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů

settlement the court decides, when approving the settlement, that neither party is entitled to reimbursement of procedure costs. An appeal against that decision is admissible. The percentage of civil suits settled in this way cannot be given because there are no official or unofficial statistics about them available.

II. Exceptions and Modifications

1. Are there (statutory or other) exceptions to the basic rule (e.g., for specific kinds of situations, cases or parties)?

Exceptions or modifications of the basic rule are the following ones:

- If the party has only succeeded partly in the case the court will proportionally divide reimbursement of the costs, or it may decide that neither party is entitled to reimbursement of the costs.
- If the party has only succeeded partly in the case he may be awarded full reimbursement of the procedure costs if he only failed in a minute part of the case or if the decision about the amount of payment depended on an expert's opinion or was at the court's discretion.
- In a procedure started at the motion of the prosecuting attorney⁴ the court will award the defendant who has succeeded in the case reimbursement of the costs against the state.
- The defendant that has not succeeded in the case is entitled to reimbursement of the procedure costs against the plaintiff provided he did not give reason to the motion to commence the procedure.
- In divorce proceedings or proceedings about nullity of marriage or proceedings about determining whether the marriage exists or not, or proceedings about cancellation, nullity or non-existence of registered partnership, the parties are not entitled to reimbursement of the costs except when such reimbursement is justified by the circumstances of the case or the life situation of the parties.
- Neither party is entitled to reimbursement of the procedure costs according to its result if the procedure might have been started even without a motion,⁵ if it ended by settlement or if it was suspended.
- If a party caused the suspension of the procedure he is obliged to reimburse these costs.
- If the court dismisses the suit or the motion to commence proceedings the plaintiff is obliged to pay the other parties their costs.

2. Are there any mandatory pre-litigation procedures (e.g., mandatory mediation) with an impact on cost and fee allocation?

In the current regulation of civil procedure there is significant mediation in the area of family law. Judges dealing with this area of law are empowered to suspend the procedure for 3 months and to submit the parties to mediation. For the time being, the issue of costs (e.g., for therapy) has not been decided yet. These services are therefore free of charge. There is a different situation in arbitration procedure where reimbursement of the costs is awarded on the basis of an

⁴ Such a procedure is the one pursuant to Act 95/1963 Sb. About Family as amended when, after the period for denying fatherhood by one of the parents has elapsed, the Attorney General may file a motion for denying fatherhood against the father, the mother and the child if it is in the interests of the child.

agreement, or, if it does not exist, by arbitration rules of arbitration courts or, in a supporting way, by law provisions.

3. Are party agreements (in a contract) allocating costs and fees in case of litigation common? To what extent are such agreements enforceable (e.g., even against consumers)?

Agreements about allocation of costs are allowed within the parties' freedom of contract. Nevertheless, they are not frequent in civil procedures. They may rather be found in arbitration procedures.

4. Are parties allowed to represent themselves? If yes, in all cases or only in some? How common is self-representation?

In proceedings before the court of first instance and also in appellate proceedings the parties are entitled to represent themselves but they may choose a representative, most frequently an attorney. However, it is necessary to point out that the fee for representing a party may be part of the procedure costs only if the representative is an attorney or a notary to the extent of their authorization laid out in special regulations.⁶ There cases, or proceedings, though, where the parties cannot represent themselves and must be mandatorily represented by an attorney (e.g., proceedings before the Supreme or Constitutional Court). If the parties fail to do so the court will dismiss their motion to commence proceedings due to the lack of legal representation.

III. Encouragement or Discouragement of Litigation

1. Are the rules governing cost and fee allocation designed to encourage or to discourage litigation
- in general?

Legal rules concerning reimbursement of civil procedure costs are created in such a way so that they should not discourage a party with genuine intention to litigate. If any of the parties or their representatives causes emergence of costs that otherwise would not have arisen, or if such costs emerge by accident such a person is obliged to pay them. This rule discourages parties prompting them to behave in such a way so that the civil procedure could run economically.

- in particular kinds of cases?

In some cases defined by the law (e.g., if the procedure might have been commenced even without a motion, if it was suspended or settled) neither party is entitled to reimbursement of the costs according to the result. There is the rule then that all the parties pay their costs themselves. If a case is dismissed by the court, i.e. typically by reason of lodging a defective petition the imperfections of which were not removed despite the court's call, the plaintiff is obliged to pay the costs of the other parties. The beneficiary in the execution proceedings is also motivated by the provision of Section 270, Civil Procedure Code, adjudicating him

⁶ zákon č. 358/1992 Sb., o notářích a jejich činnosti (notářský řád), ve znění pozdějších předpisů

reimbursement of all the costs spent by him meaningfully on the execution of the decision. The order to execute the decision then includes these costs, too.

2. How much do parties (especially plaintiffs) typically have to pay up front, e.g., in the form of
 - court costs (into court)

Rates of court fees are laid out as a fixed rate or as a percentage of the base of the fee (Section 5, Act on Court Fees). Concrete sums and percentages are laid out in the tariff of the Act on Court Fees. The base of the percentage fee is principally the price of the subject-matter of the proceedings expressed in a sum of money. The price of the accessions of the proceedings subject-matter is the base of the fee only when the accessions are a separate subject-matter of the proceedings. The value of non-monetary performance out of which the court fee is calculated is laid out in law. For example, the court fee in a case concerning the amount up to 15,000 CZK is 600 CZK and in a case exceeding 15,000 CZK it is 4 per cent of that amount.

- attorneys fees (retainer)

Reimbursement of the costs of representation by counsel is typically adjudicated in the court decision on the basis of fixed tariffs laid out in law. However, the attorney's fee may be determined in a different way by an agreement between the attorney and the client. Attorneys often require from their clients payment in advance of the costs of their representation when they take up the case.

- costs of taking evidence

The law regulates the so-called payment in advance of costs of evidence which is determined in the course of the proceedings. The payment in advance is paid at the call of the court and at the amount determined by it. Payment in advance may also be required for the expert witness' fee and the interpreter's fee. Payment in advance, unlike the court costs, is determined by the court itself. The purpose of this institute is that costs of evidence will not have to be enforced later and the payment in advance guarantees the genuine intention of the party to litigate. Therefore the amount of payment in advance often leads the parties to a settlement. Payment in advance of costs of evidence is paid by the party which suggested the evidence and also if the court ordered the evidence about facts stated by that party or if it is in his interests. The court decides about payment in advance by the judicial resolution which must state the concrete amount. Logically, the time of payment of that amount should be an essential part of the resolution, too. The court need not require payment in advance from any party and then it is the state that pays costs of evidence. Quite frequently, payment in advance is not required at all, e.g. because of the interest in quick proceedings.

Do up-front payment requirements have a deterrent effect on potential litigants?

The purpose of up-front payments for civil procedure costs is to reveal the genuine intention of the party, or the plaintiff, to litigate. Regarding the fact that for persons whose situation justifies that there is the institute of exemption from court costs, or the institute of exemption from fee for representation by counsel and from cash expenses of counsel (Section 138, Para 3) we cannot

speak of a deterrent effect of up-front payment requirements because such persons do not pay any costs.

IV. The Determination of Costs and Fees

1. What determines the amount of court costs - the type of court? The amount in controversy? Other factors?

The court fee as part of reimbursement of procedure costs is determined differently according to the type of proceedings for which the plaintiff files a motion – it may be proceedings before the court of first instance, appellate proceedings, appellate review proceedings or execution of judgment proceedings. Another criterion for determining the amount of court fee is the value in dispute. In the case of monetary performance the court fee is determined as a certain amount, or as a percentage of the amount of the monetary performance. In the case of non-monetary performance there is a fixed court fee (e.g. for each real estate). There are also fixed court fees for certain specific types of proceedings, and also determined by percentage up from a certain amount of performance, – e.g. proceedings to determine maintenance, including its increasing or abolishing, conciliation proceedings or proceedings concerning the register of companies.

2. How are lawyers' fees determined? By statute (schedule), and if so, are the rates binding or can clients and their attorneys agree to in- or decrease them? By the market? What are the main criteria?

The attorney's fee is determined by the court when it adjudicates reimbursement of costs of civil procedure according to lump sum tariffs laid out in a special legal regulation⁷. The amount of these lump fees is determined in the case of monetary performance according to the amount which is in dispute, as both a fixed amount and a percentage. In some special cases mentioned in that legal regulation the fee for representation by attorney is determined in a different way (e.g. when deciding whether the first relation or right exists it matters what type of legal relation or right it is – e.g., legal relation or right to real estate, company, etc.). In exceptional cases the court decides on the basis of a special regulation on non-contractual attorney's fee⁸, especially when the circumstances of the case justify not using lump fees. This regulation also determines the attorney's cash expenses including domestic postage, domestic telephone charges and reimbursement for loss of time. In general, the attorney's fee is specified in the contract between the attorney and his client – either the fee is expressly determined or at least the manner of its determination is established. Only when the fee is not determined by contract it is determined by provisions about non-contractual fee that determine the amount of the non-contractual fee for one act of legal service as a fixed amount or a percentage of the amount of monetary performance or a percentage of the value of the matter or of the right at the time of the

⁷ The Ministry of Justice Regulation No 484/2000 Sb. determining lump fees for representation of a client by an attorney or a notary when deciding about reimbursement of costs of civil procedure, which changes the Ministry of Justice Regulation No 177/1996 Sb. determining fees of attorneys and notaries for providing legal services (the attorneys' tariff) as amended.

⁸ The Ministry of Justice Regulation No 177/1992 Sb. determining fees of attorneys and notaries for providing legal services (the attorney's tariff) as amended.

commencement of that act of legal service. The regulation also lists acts of legal service.⁹

3. Who finally determines the concrete amount to be awarded to the party/parties?
Does the decision maker have discretion? What form does the decision take
(integral to the judgment, separate court order, etc.)?

In civil procedure, reimbursement of costs is determined by the court on the basis of provisions and tariffs laid out in legal regulations. As mentioned above, the court has discretion, if there are reasons worth special consideration, to dismiss reimbursement of costs fully or partly.¹⁰ Judging whether there are reasons worth special consideration is again up to the court. Reimbursement of procedure costs is decided, even without a motion, by the court before which the proceedings end and it has the form of a separate resolution or it is a part of the judgment in the matter. Reimbursement of the procedure costs that have arisen through the fault of the parties, their attorneys, witnesses, expert witnesses or interpreters, may be decided by the court already in the course of the proceedings – it usually happens immediately after such costs arise.¹¹

V. Special Issues: Success-Oriented Fees, Class Actions, Sale of Claims, and Litigation Insurance

1. Are success-oriented fees allowed? In particular
 - contingency fees (a percentage of the sum won)?
 - no win-no fee arrangements?
 - success premiums (higher fees in case of a victory)?
 - other fees depending on the outcome of the litigation?

If yes,

- are such fees a recent development (since when)?
- are they regulated by law (e.g., capped)?
- does the loser have to pay the enhanced (success) fee?

Are such fees allowed or common across the board or in particular cases only?

Success-Oriented Fees between client and advocate are not generally allowed.

2. Is it allowed to sell claims for purposes of litigation? (i.e., can a plaintiff subrogate his claim to an attorney, a law firm, or an entrepreneur who finances the litigation and thus assumes the litigation risk?)

There are various private firms offering to finance costs of court and arbitration disputes. On the basis of an agreement it is allowed to assign procedure costs to such a firm. After

⁹ Such an act may be, e.g. taking over and preparing representation or defense on the basis of a contract about providing legal services, písemné podání soudu nebo jinému orgánu týkající se věci samé, odvolání, dovolání, návrh na obnovu řízení atd.(§ 11 advokátního tarifu)

¹⁰ Section 150 of Act No 99/1963 Sb., Civil Court Procedure as amended.

¹¹ Section 151 of Act No 99/1963 Sb., Civil Court Procedure as amended.

assessing prospects of success in the planned litigation and after making a contract the firm takes over all procedure costs. As for assigning a claim to an attorney, or the other persons mentioned above, these relationships may be of course regulated by contract on the basis of the parties' freedom of contract. However, in practice it often happens that the court awards reimbursement of procedure costs according to legal rules and the whole sum is then transferred to the account of the attorney representing the party despite the fact that he is not entitled to some costs (typically, the court fee) – except for the fee for representation, the value added tax, the cash expenses, etc., of course.

3. Are there special rules for class actions, group litigation or other types of lawsuits (e.g., actions brought by consumer organizations)?

Joint costs of more parties are paid by the parties in proportion to their participation in the case and in the proceedings. If the proportion of participation cannot be determined the parties pay procedure costs in equal parts. There is a special regulation of reimbursement of procedure costs of the parties that are on one side and that have such joint rights and duties that the judgment must apply to all of them. In such a case the parties pay procedure costs jointly and severally. As far as consumer organizations are concerned, they do not pay costs of procedure if they choose another way of solving disagreements, i.e. not by the court (mediation). In civil court procedure there is no special rule for consumer organizations concerning reimbursement of procedure costs.

4. Can one insure against the costs (including fees) of litigation? By buying specific litigation insurance? By buying coverage in other policies (e.g., automobile liability or homeowners insurance)? Is such insurance common? How does it work in practice?

Some private insurance companies offer insurance of legal protection which often includes the costs of legal advice given by experts of the insurance companies, the attorney's fee for representation in civil proceedings, the costs of an expert witness' opinion, etc. It is also possible to insure specific cases – typically, the insurance of legal protection for automobile owners. Such insurance provides protection in case of judicial proceedings. In practice, this type of insurance is negotiated by an insurance contract and the insurance company undertakes to support the insured in enforcing his legal interests bearing the risk of costs that may arise. In case of a dispute the insured then does not deal with legal costs or costs of counsel as the insurance company takes over the risk of loss and pays out of the insurance the costs needed for enforcing his justified claims.

VI. Legal Aid

1. Is there a publicly funded legal aid system? If yes, roughly how does it work (through financial support, court appointed counsel, or otherwise)?

In addition to attorneys, state-financed civic advisory bureaus give free legal aid to litigants. At present, the Czech Bar, too, started a program of free legal aid provided by its members. As for procedure costs and exemption from their payment, there can be found several institutes in the most important civil procedure regulation, the Civil Court Procedure:

- the institute of exemption from court fees

At a party's motion the chairing judge of the bench deciding the case may award the party either a complete or a partial exemption from court costs provided that it is justified by the situation of the party and it is not a wanton or evidently unsuccessful application or protection of law (Section 138, Civil Procedure Code). The Act on Court Fees then distinguishes material, personal and individual exemptions. As the material exemption from court fees is understood the enumeration of cases that are exempt from court fees – e.g. those concerning guardianship, judicial care of minors, mutual maintenance duty of parents and children, probate proceedings in the first instance, etc. As for the court fee, there is a rule that if the plaintiff is exempt from the fee and the court meets his motion it is the defendant who pays the fee or its corresponding part but under the condition that the defendant himself is not exempt from the court fee and does not have any right to reimbursement of procedure costs against the plaintiff.

- the institute of appointing a legal representative for the party

If a legal representative is appointed for the party that is exempt from court fees the exemption includes cash expenses and the fee for representation to the extent to which the exemption was adjudicated (Section 138, Para 3, Civil Procedure Code). If an attorney is appointed for the party in that manner the cash expenses and the fee for representation are paid by the state (and also reimbursement of the value added tax if needed). The state may also provide the attorney with an appropriate payment in advance if it is justified (Section 140, Para 2). If an attorney is appointed for the party the person who is obliged to pay procedure costs has to pay the state the cash expenses of the attorney and the fee for representation. Personal exemption is the exemption of certain persons – e.g. the Czech Republic and state funds, territorial self-governing units if the dispute concerns execution of the state administration, or the plaintiff in proceedings on compensation for work injury and occupational disease. The individual cases are decided by the court on the basis of the motion submitted with the suit or anytime in the course of proceedings until these are ended by the final and conclusive decision. If the plaintiff is exempt from court fee this fee or its proportional part is paid according to the result of the proceedings by the defendant unless he is entitled to reimbursement of procedure costs against the plaintiff or unless he is exempt from court fee, too.

2. Is there privately organized help for indigent or other clients (e.g., through pro bono work)?

There are of course various private organizations providing legal aid that may be consulted by litigants. In the first place these are attorneys or notaries providing legal aid principally for payment either on the basis of a contract with the client or according to the attorneys' tariff. However, at present there also exists free legal consulting provided by attorneys registered in the Czech Bar. It is also possible to address various legal advisory bureaus. Free legal advice is provided by the so-called free civic advisory bureaus. These are non-governmental organizations providing independent, impartial and free social advice. Their target group is mainly people in a difficult situation but in practice anyone may address them because they do not check financial

circumstances of the applicants. Civic advisory bureaus provide legal aid in the form of legal advice or they help the applicants draw up petitions, etc.

3. Is legal aid generally available to all parties in need or is it rather awarded/available selectively?

Legal aid provided by free civic advisory bureaus is available to everyone as mentioned above. As for reimbursement of civil procedure costs, the court may exempt a party from court fees if it is justified by his situation (mainly social and financial factors) and it is not a wanton or evidently unsuccessful application or protection of law. Taking into account financial circumstances of the party is at the court's discretion, which enables individual consideration of all circumstances of the case. However, when deciding about exemption from court fees it is not possible to take into account only financial circumstances of the applicant but it is also necessary to consider the type of proceedings for which the exemption is applied, i.e. in particular the amount of the court fee or the amount of the expected procedure costs. The provision of Section 150, Civil Procedure Code, constitutes a corrective of reimbursement of civil procedure costs. Pursuant to that, the court need not exceptionally award partial or complete reimbursement of costs if there are some specific reasons. The decision of the court that a given case is exceptional and that there are some specific reasons must be based on examination of all circumstances of the given case. We cannot speak of arbitrariness of the court as what matters is careful consideration of all decisive factors.¹² When examining specific reasons the court takes into account financial, social, personal and other circumstances of all parties to the proceedings. It is necessary to take into account not only circumstances of the person who should pay procedure costs but it also necessary to consider how such a decision would affect the injured party's financial circumstances in particular. It is also important to take into account reasons why a claim has been asserted and even the attitude of the parties during the proceedings.

4. Are litigation costs and fees considered a serious barrier excluding certain parties from access to justice?

The willingness to bear costs of procedure, or the risk of bearing costs of procedure, is an expression of the genuine intention to litigate. Court fees as well as a fee for representing a party are calculated out of the amount for which the suit is filed. Access to justice is not denied even to the poor strata of the population owing to the introduction of the above mentioned institute of exemption from court fees, the institute of appointing a counsel or an attorney, and the institute of reimbursement of legal representation costs and cash expenses by the state, including the institute of not awarding reimbursement of procedure costs in the case of specific reasons.

5. Are litigation costs a barrier to bringing certain kinds of cases, e.g., because the amount in controversy is too low to make litigation economically feasible?

It depends of course on consideration of the petitioner if he is willing to pay the contingent costs of procedure resulting from the amount he wants to litigate for. For example, if we take the value

¹² See Bureš, J., Drápal, L., Krčmář, Z., Mazanec, M. Občanský soudní řád. Komentář. 1 díl. [Civil Procedure Code. Commentary. Volume 1] Praha : C.H. Beck, 2003, p. 555

of monetary performance amounting to 2,000 CZK for which a party wants to litigate the court fee is 600 CZK and the attorney's fee, if the party wants to be represented by him, is 6,000 CZK without VAT. In such a situation litigation appears to be economically utterly useless, moreover if there is a greater risk of failure in the litigation.

VII. Examples

1. Please state, or provide a good faith estimate of, the sum total (i.e., for both sides) of costs and fees of litigating to final judgment in the first instance a routine private or commercial (e.g., contract, tort, or property)
 - small claim, e.g., (the equivalent of) \$ 1,000

In total, the procedure costs are 13,762 CZK (the court fee amounts to 720 CZK, the cost of legal representation is 10,960 CZK, plus 2,082 CZK of VAT if the attorney is a VAT payer).

- small to medium claim, e.g., \$ 10,000

In total, the procedure costs are 53,015 CZK (the court fee amounts to 7,200 CZK, the cost of legal representation is 38,500 CZK, plus 7,315 CZK of VAT if the attorney a VAT payer).

- medium to large claim, i.e., \$ 100,000

In total, the procedure costs are 159,941 CZK (the court fee amounts to 72,000 CZK, the cost of legal representation is 73,960 CZK, plus 14,041 CZK of VAT if the attorney is VAT payer).

- large claim, e.g., \$ 1,000,000.

In total, the procedure costs are 1,017,381 CZK (the court fee amounts to 720,000 CZK, the cost of legal representation is 249,900 CZK, plus 47,481 of VAT if the attorney is a VAT payer).

1 USD=18 CZK

2. If a plaintiff lost a \$ 100,000 claim after litigation, what would his/her cost and fee liability roughly be?

The plaintiff will have to pay the defendant's costs of legal representation including of course costs of evidence (witness fee, expert's fee), or even cash expenses of legal representatives if they can be proved and if they were adjudicated by the court. As for the court fee, it is not of course reimbursed in such a case.

3. If a defendant lost a \$ 100,000 claim after litigation, what would his/her cost and fee liability roughly be?

The defendant will have to pay the plaintiff the procedure costs reimbursement of which was adjudicated to him, i.e. 159,941 CZK according to the calculation in the answer to the question No 1. The amount may be increased by costs of evidence, witness fee, expert's fee, or cash expenses of legal representatives if they can be proved.

Amendment to VII. Examples:

Regarding the loser's costs for his/her attorney – the loser bears these costs in an agreed rate or in a rate provided by law, if the agreement fails.

The rate provided by law is calculated by multiplying the coefficient of rate of one act of legal services and the number of acts of legal services. The coefficient depends on the amount of the claim. The act of legal services is f.e. acceptance and preparation of the legal representation, written documentation to the court (f.e. opinion on action), or participation at the action in court.

Rate for one act of legal service:

small claim (1,000 USD) – 1,820 CZK

small to medium claim (10,000 USD) – 2,180 CZK

medium to large claim (100,000 USD) – 15,500 CZK

large claim (1,000,000 USD) - 51,500 CZK

Also cash expenses belong to the attorney in the context of act of legal services he has expended for the fees, postage, calls etc. and the compensation for missed time he has spent at the journeys there and back outside of his/her office.

Unless otherwise agreed, the law specifies the reimbursement of cash expense for domestic postage, traffic and calls CZK 300 per an act of legal service and the reimbursement for missed time CZK 100 for every new half-hour.

Therefore, if the attorney takes the representation of the client (claim USD1,000), writes a response and is involved in a action in court, then the compensation belongs to him in the amount of CZK 3 x 1.820 unless it is otherwise agreed with the client. Also the reimbursement of cash expense CZK 300x3 belongs to him, and if for example he was traveling for 2 hours to a court hearing, then 400 CZK as compensation for missed time (CZK 100 x 4 half-hour).

VIII. Statistics:

In the Czech civil procedure the collecting of statistic data about payment and reimbursement of procedure costs is restricted by the fact that procedure costs and their reimbursement are independently decided by courts of the first and second instance and that an appeal against the decision about reimbursement of procedure costs is not admissible. From that follows that the Supreme Court, where most statistic evaluations are made, does not have such data at its disposal. For this reason no complete statistics are available.

In Conclusion:

Please comment on other issues which are not covered by the questionnaire but are a concern in your country or jurisdiction. Please provide possibly pertinent information about current developments or future perspectives, especially about the direction in which the cost and fee allocation rules are currently developing and are likely to develop in the foreseeable future.

In the Czech civil procedure there are several impediments that may make access to justice or achieving an effective aim more difficult for litigants. In general, procedure costs are among those impediments because in the current complicated court procedure and not always stable adjudicating environment they constitute risk expenses the efficiency of which a party may not

always consider properly before starting an action. At the same time these expenses are mandatory (court fees or representation by attorney in some court instances – see above) and in most cases advisable if a party desires to be successful in litigation. On the other hand there is the legal regulation of paying and reimbursing procedure costs creating a larger access to justice for most persons in addition to the general principle of paid judiciary and reimbursement of costs according to how successful the party is in the case (depending on the type of proceedings – non-contentious proceedings, depending on social and some other criteria). Even if this system is not perfect it enables a relatively balanced access to justice and to legal aid in civil procedure for a substantial number of persons.