

Judgment by acknowledgment on the basis of fiction

Abstract

This diploma thesis deals with the judgment by acknowledgment. It is an institute of civil procedural law. The judgment by acknowledgment can be issued on the basis of the express content of the defendant or application of the legal fiction of the acknowledgment. This paper deals with both types of judgment of acknowledgment but the main part is devoted to the fiction of acknowledgment. The thesis is divided into six chapters.

Chapter One describes the history of the judgment by acknowledgment on Czech territory. Chapter Two deals with the issuance of a qualified call for expression and the requirements that are put on the expression of the defendant. Chapter Three analyzes legal conditions for issuing a judgment of acknowledgment based on both the express content of the defendant and the fiction of acknowledgment. In this chapter are also described the remedies that can be applied against it. Chapter Four is dedicated to the judgment of the Constitutional Court, which ruled on the constitutionality of the qualified call and the judgment of acknowledgment based on fiction. The majority of judges were in favor of preserving the contested provisions. In the justification and also in the statements of dissenting judges were confronted the constitutional principles which may be violated by the application of the fiction of acknowledgment. Chapter Five presents the proposal of the legislation *de lege ferenda*. This chapter also includes a brief overview of the current situation of the draft civil code. Chapter Six is an analysis of a specific court proceedings, this proceedings lasted for many years and a judgment of acknowledgment based on fiction was issued by the court of first instance. The appeal court then reversed this decision and returned the case to the court of first instance. The theory from previous chapters can be applied on the practice example and the shortcoming of the legislation can be pointed out.

In the light of the case-law of the Supreme Court and the Constitutional Court the judgment of acknowledgment appears to be a suitable instrument of speeding up the proceedings in specific situations. However its legal regulation is not ideal which leads to divergent decisional practice of first instance courts. Improper use of this institute may violate the right to a fair trial.

Keywords

Judgment by acknowledgment, qualified call, fiction of acknowledgment.