

Relationship between Judgments for Recognition and Default Judgments

Abstract

The subject of this diploma thesis is the relationship between judgments for recognition and default judgments. In both cases, the judgements are special institutes typical for civil contentious proceedings, primarily aimed at speeding up the proceedings before the court. The statutory provisions seek to achieve this mainly by not requiring the court to establish the facts of the case when deciding by special judgments, as the decisions are based solely on plaintiff's factual allegations or defendant's act of disposition.

Firstly, the starting point for determining the links between the two judgments is an analysis of the judgments as separate decisions. The current legal framework recognises three types of special judgments, namely a judgment for explicit recognition, a judgment for a legal fiction of recognition and a default judgment. In particular, a judgment for explicit recognition should be distinguished from a fictitious judgment for recognition and a default judgment. Whereas the first decision is based on a dispositive act made by the defendant freely expressing his will to recognise the claim, the other two judgments are based on defendant's default, either by failing to appear at the hearing or make a statement of defence in time. Defendant's failure to act results in feigning defendant's recognition of the claim or, in the case of a default judgment, the merit of the claim being assumed to be true. Thus, although the factual basis of the judgement for recognition by fiction and the default judgment is in fact the same, the law draws a different consequence each time. In the case of the fictitious dispositive act, defendant's will is replaced by a legal construction on which the court bases its decision without further examination of the validity of the claim and the defendant having the opportunity to set aside the judgement. Such an approach can be regarded as completely non-conceptual, since the fiction of recognition operates disproportionately to defendant's detriment and, moreover, is not in conformity with the fundamental principles of civil procedure.

The thesis further offers a comparison of the legal regulation of judgments for recognition and default judgements in Germany, Austria and Slovakia. The analysis of the individual foreign regulations shows that all of the states in question regulate the situations in the Czech Republic covered by the fiction of recognition by default judgment. After a legal assessment of the claim, the courts of our neighbouring states have a discretion as to whether to render a default judgment or not. At the same time, the defaulting party always has legal

remedies available which may lead to the proceedings continuing as if there had been no default judgement. Compared to the Czech law, this approach is more sophisticated and more lenient towards the defaulting party, without the proceedings being less efficient.

Finally, after identifying the shortcomings of the existing legislation, the author provides *de lege ferenda* considerations that could improve the current legal regulation. That is, to begin with, the complete abandonment of the fiction of recognition and, *inter alia*, the extension of the situations and subjects covered by the statutory regulation of default judgment. In relation to the judgements for recognition and default judgements, the thesis also presents the main points of the new Code of Civil Procedure currently being drafted by the Ministry of Justice.

The sources of the thesis are mainly the Czech legal regulation of judgments for recognition and default judgements, the decision-making practice of the Czech courts, as well as professional commentary and textbook literature. Furthermore, the thesis is largely based on articles covering the topic of civil contentious procedure. Last but not least, the thesis draws information from foreign civil procedure codes and commentaries thereto.