

Qualified Call for Statement pursuant to Section 114b of the Civil Procedure Code

Abstract

This thesis examines the institute of a qualified call for statement as a method of preparation of a hearing on the merits. An integral part of it is also the institute of a fiction of recognition of the claim, which occurs, *inter alia*, if the respondent fails to properly and in time comply with the qualified call for statement. If the aforementioned fiction is applied, the court shall decide on the matter without further delay by a judgment of recognition.

The primary purpose of the qualified call for statement is to fulfil one of the fundamental principles of civil procedure, the principle of expeditious proceeding as one of the elements of the constitutionally guaranteed right to a fair trial. We refer to the qualified call for statement specifically with regard to the enhanced requirements which the respondent's response has to meet in order to properly comply with such a call. The characteristic feature of this institute is the strengthening of the principle of formal truth over material truth, since as a result of potential inactivity on the respondent's side, the proceeding is curtailed by the non-realisation of a wide range of procedural principles and the adversarial proceeding therefore *ex lege* and *de facto* loses its adversarial character. Although the qualified call for statement is quite commonly perceived in practice as a sort of general instrument which allows the court to quickly initiate the proceeding, to give it momentum and subsequently also to quickly resolve it, the case law has moderated the possibility of the use of the aforementioned institutes by setting forth a number of preconditions which must be fulfilled without any exception.

The purpose of this thesis was to provide a thorough analysis of the prerequisites necessary for a proper issuance of the qualified call for statement, the application of the inseparable fiction of recognition and the issuance of a judgment of recognition, with regard to potential crucial consequences. All this whilst identifying and analysing in detail the very comprehensive case law which is essential for the proper understanding of the issue and the proper application of the aforementioned institutes.

The subsequent purpose of this thesis was to assess the above-mentioned institutes in terms of constitutional conformity and to address the question of whether in practice the qualified call for statement is being used unreasonably and also whether the current legislation regarding the fiction of recognition is appropriate and whether there is indeed no other more suitable method of contumacy. In this respect, I have concluded in this thesis that the current legislation unreasonably interferes with the respondent's right to a fair trial and therefore cannot withstand an assessment

of constitutional conformity. Therefore, I emphasise in this thesis the need for correction of the legislation by means of an alternative default judgment as a more suitable instrument.

Key words: Qualified Call for Statement, Fiction of Recognition, Judgement of Recognition