Default Judgement – Status and Perspectives

Abstract

This thesis deals with the topic of default judgment and the status and perspectives of its legal regulation.

A default judgment is a special type of judgment that allows the court, under certain conditions, to decide a case without taking evidence on the basis that the allegations made by the plaintiff are undisputed. This makes it an instrument which allows proceedings to be expedited. The default judgment is a classic procedural law institution with a long tradition dating back to the ancient Romans. The tradition of contumacious proceedings in Czech law was disrupted by the adoption of the Code of Civil Procedure in 1950 and the default judgment returned to Czech law only after the establishment of the independent Czech Republic, but it was built on a different basis than the rules in force in the Czech Republic until the adoption of the 1950 Code. As a result, the Czech legal system treats default judgement in a narrower way than the Austrian system, which is the source of some of the problems with which the current system of default judgments has to contend. However, the legislator did not choose to extend the possibility of issuing default judgments to situations where the defendant fails to make a statement of defence or to appear at a preparatory hearing. In those cases, although they are in fact cases of default, the law assumes that the defendant accepts the claim, which has been criticised by the profession, in particular for being contrary to the principle of dispositive effect. The general characteristics of the default judgment, the development of its legal regulation, its consistency with the principles of civil procedure and the relationship between recognition and default are the subject of the first four chapters of this thesis.

The fifth chapter of the thesis deals with the conditions of issuing default judgement. In order for the court to issue a default judgment, both the conditions set out directly by law (in particular, the defendant's unexcused absence from the first hearing, who was duly served with the application and summons at least 10 days beforehand, and the plaintiff's application for a default judgment) and other conditions derived from judicial practice, collectively referred to as the appropriateness of the default judgment, must be met. The thesis examines each condition and, in particular, is critical of the current practice of not issuing a decision on a default judgment unless the court grants the motion.

The specific nature of the default judgment is also reflected in the different elements of its written form (in particular the brief statement of reasons). This is discussed in more detail in Chapter 6.

Chapter 7 then deals with the possibilities of defending against default judgments. The defence against judgments by default is based on a two-track approach, since, in addition to the standard ordinary remedy of appeal, an application may also be made to set aside the judgment if the defendant missed the first hearing for excusable reasons. However, Chapter 7 also focuses on extraordinary remedies and other defences, particularly in enforcement or execution proceedings.

Chapter 8 deals with the perspectives of legal regulation. Firstly, proposals for possible changes are presented by the author of the thesis, but also the concept of default judgment in the substantive plan of the forthcoming new Czech Code of Civil Procedure and in the planned regulation of class actions is discussed.

In the conclusion, the thesis offers a view of the decision-making of the District Court in Mělník and tries to analyse and explain some of the observed phenomena.