

# Judgment by Default

## Abstract

Judgment by default is a special type of a judgment on the merits, which serves as a tool against intentional delays in judicial proceedings. Due to the not negligible role of this type of a judgment, the purpose of this master's thesis is to evaluate the current state of legislation with regards to the selected fundamental theoretical aspects, historical development of the legislation, selected constitutional principles and recently proposed new legislation.

The first chapter analyzes the basic theoretical foundations of default judgments. The essence of the term contumacy as well as factual presumptions, on the basis of which the courts issue default judgments, are presented therein. This chapter also explains why it is not possible to consider a default to be a procedural act of a party to proceedings and why a default judgment is only applicable in civil proceedings. Furthermore, the essential differences between judgments by default and judgments of acknowledgment are pointed out.

The second chapter describes the historical development of default judgment regulation since the Roman law times. The most attention is paid to the Civil Procedure Code of 1895 because of its significant influence on the current legislation.

In the third chapter, the constitutional conformity of the current legislation is examined. Firstly, the material conditions formed by case law for issuing a default judgment are introduced and then the compliance of the current legislation with the fundamental principles of civil proceedings is analyzed.

The fourth chapter focuses on the consultation document (in Czech "*věcný záměr*") on the new Civil Procedure Code, which was presented in 2017 as a basis for a recodification of civil procedural law, the necessity of which has been discussed for many years. This chapter

also makes use of the knowledge gained in the second chapter and draws attention to the particular similarities with the historical legislation.

Based on the results of the research of each chapter, particular *de lege ferenda* proposals are presented in the conclusion of this master's thesis. It was found, that the most important change that needs to be done is the extension of the applicability of default judgments on cases of contumacy which are now non-conceptually decided by judgments of acknowledgment. Moreover, in order to prevent the possible arbitrariness of courts, more thorough statutory elaboration of conditions, including the material conditions formed by case law, for issuing default judgments is required. Regarding the extension of the applicability of default judgments on a default of a plaintiff, the current legislation seems to be sufficient, so there is no need for such an extension.