

Concentration of Proceedings

Abstract

My rigorous thesis is focused on legal institute of Concentration of the Proceedings and Summary / Simplified Procedures more precisely Payment Order Procedures as well as their limits. From time immemorial, there has been a requirement for a fair court decision, i.e. the court should grant his decision when all the facts are carefully examined by a court. It is very often time consuming for court to meet this requirement and thanks to this a court gets in collision with another important requirement or principle - Speed of Proceedings relating with final solution of the case. It is therefore a question to determine the moment until when (i) new facts in the proceedings can be stated and (ii) evidence to prove them can be proposed. Current legislation of Concentration of Proceedings is strictly based on the principle of legal concentration of proceedings. Czech legislation doesn't know judicial concentration of proceedings *de lege lata*. However, our Justice itself found its way through interpretation which means that court either fails to give proper notice or simply doesn't end first hearing (pre-trial proceedings) until closing of proceedings upon final judgement. Legal concentration of proceedings should be in balance with the duty of the court to instruct participants not only about the Concentration of Proceedings but also about incomplete appeal in the appellate procedure.

Through the legal institute of Concentration of the Proceedings the legislator wanted to ensure the same attitude of court to all participants in proceedings and their equality in the proceedings. In fact the very strict and formal observance of the Concentration of the Proceedings can lead to their actual inequality in the proceedings while our legislation does not really take into account if the participant is represented by law professional (attorney-at-law) or not so there might be significant difference between knowledge not only of substantive law but also procedural law either on the side of plaintiff or defendant. It is a question if the implementation of judicial concentration of the proceedings is not more appropriate solution how to ensure the equality of participants in the proceedings since it would be given only into consideration of a judge if there are enough facts and proofs to grant a decision or not.

In the next part of my rigorous thesis I focused on particular types of payment orders and I tried to describe their differences and procedural conditions that must be observed when issuing them. Currently we have two main concepts of payment order procedures. The first one is the German conception and it is represented by European Payment Order. This conception is

based on the principle that the procedure is not integral part of civil trial proceedings and the payment order is issued only based on the allegations of the plaintiff. In the second conception, the Czech or national one, the payment order is issued after preliminary check if the allegations of the plaintiff written in his action are supported by the evidence. Our payment order procedure is integral part of civil trial proceedings and this procedure continues without any additional interaction of the plaintiff (i) if the defendant file a protest against the judicial order to pay or (ii) if the court cancel the payment order due to his incapacity to be delivered to the defendant.

I also drew attention to the difficulties of the regulation of civil payment order procedures. The Act No. 99/1963 Coll., Civil Procedure Code (as amended) only allows court to issue a payment order or not and court is not authorized to modify the action / plaint in any way except for court costs. Very often this leads in practice to the point that a court issues payment order which includes claims to which the plaintiff is not entitled under substantive law (e.g. a payment order includes a contractual penalty which was not effectively agreed because there was an accessory contract assuring the performance of a prior contract), or excessively high interest. It is therefore a question of whether the future procedural regulation of payment order proceedings will follow the so-called German conception or our legislation will be changed, for example by forbidding the issuance of payment orders with disputable amounts or stipulating in legislation that court is bind only by the claim to pay the principal and its legal accessions. Mentioning the second proposal of the legislative change I am aware that the disposition with the dispute is in the hands of the participants.

Although our present procedural legislation is still based on Act No. 99/1963 Coll., Civil Procedure Code (as amended) and not well-done Act No. 292/2013 Coll., Special Judicial Proceedings Code, I also very briefly describe the proposal of future civil procedure legislation in the end of my thesis. I have to say I was hoping the legislation work on new Civil Procedure Code will not take so long since we have new substantive law legislation (especially Act No. 89/2012 Coll., Civil Code) for nearly seven years now.

Keywords

Concentration of Proceedings, incomplete appeal, payment orders