

Comparison of Judgment by Default under Czech and Spanish Law

Abstract

This diploma thesis addresses Czech and Spanish legislation with respect to judgement by default and the subsequent compassion thereof.

First chapter focuses on the defendant's default under Czech law, more specifically on the concept of the defendant's default during court proceedings, conditions that must be met in order to deliver a judgement by default, impermissibility of delivering a judgement by default, excusable grounds of default as well as the remedies that can be relied upon against such judgement. Second chapter follows with a description of Spanish legislation on the defendant's default during court proceedings. It deals with the concept of the defendant's default during court proceedings, conditions under which it is possible to issue a declaration of defendant's default, consequences associated with the defendant's default during court proceedings, delivering court documents to the defendant and to application for annulment of the final decision on the matter of the defendant in default and other remedies available to the defendant under Spanish law. The final chapter of the thesis outlines important differences which the author came across whilst studying each legislation. The author attempts to draw her own critical comments on the above-mentioned issues and weighs in her mind the effectiveness of the regulation and thinks about possible *de lege ferenda* proposals.

The outcome of studying these two different legal systems is a conclusion that there are significant differences between Czech and Spanish law with respect to the defendant's default. Whereas under the Czech Civil Procedure Code the defendant's default (and the subsequent delivery of judgement for default) means only a default with respect to the very first court session held within a particular proceedings, under Spanish Civil Procedure Code the defendant can be in default not only due to the failure to attend a court session he or she was summonsed to, but also due to the failure to react when called by the court.

Major discrepancies have also been found in relation to the consequences of the defendant's default for both the defendant and the plaintiff. Taking into account that in Spain a declaration of the defendant's default is issued immediately following the failure to attend a court session or the failure to react, on the basis of which the court continues with the initiated proceedings in which the plaintiff will have to prove the legitimacy of his or her claim, with respect to Spanish legislation it is not possible to speak about judgement for default as it is known under Czech law. Instead, it shall rather be regarded as judgment on the matter of person in default since

the classical concept of judgement by default (as a standalone type of decision) does not exist under Spanish law.