

Default Judgments Allowed in Order to Increase Efficiency

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As a result of legislative amendments aimed at increasing the effectiveness of court proceedings (Proposition 1999/2000:26), the Code of Judicial Procedure now contains wider powers for courts to grant default judgments and other orders.

Background

In a community governed by law the legislator must have an effective way in which to bring disputes before a court. To safeguard the parties' rights, trials must be fast and efficient.

Throughout proceedings the courts may grant default judgments in certain circumstances, but only in cases which can be settled out of court. A default judgment is passed in favour of one party, usually without examination of the case's merits. Although most of the rules are applicable to both parties, they are usually used against non-participating defendants.

Legislation

Written preparation

During written preparation the defendant may be ordered to submit a written reply at a specified time, and informed that a default judgment may be delivered upon failure to do so. A judgment by default may then be passed, provided that the plaintiff does not object to it.

Oral preparation and main hearing

A party may be ordered to appear at an oral preparatory hearing or main hearing under threat of the grant of a default judgment. If it fails to appear, a default judgment may be entered on the request of the other party.

Plaintiff's passivity

The new rules allow the court to order the plaintiff to state whether it intends to continue its case, if it has been passive throughout the proceedings. If the plaintiff does not respond

within a specified time the court may grant a default judgment against it.

Reopening a case

Relief can be sought against a default judgment from the court that delivered it. An application for reopening must be submitted within one month of the judgment date. Under the new rules it is no longer necessary to serve the judgment with the party in question. The court must reopen the case if the application is submitted in time. A party has the right to reopen a case only once after receiving a default judgment against it.

Final determination of the case

The court may order a party to determine the final relief sought, as well as the facts and evidence relied upon, if this is required in view of how the case has been conducted. Once the time limit of the order has expired the party may not, subject to minor exceptions only, rely on any new facts or evidence.

Additionally, the courts now have the power to establish a deadline for the conclusion of preparatory proceedings. A party may not generally rely upon any new facts or evidence after this deadline, unless such reliance will not delay the proceedings.

Comment

Arguably, the amendments do not fulfil the legislator's initial aims. There are still many ways in which the parties can delay and misuse proceedings. Further, even when a default judgment has been granted, the party affected has the right to reopen the case without justifying its previous passivity or conduct.

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