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Judgment by default

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Abstract:
My work expounds on a subject of a judgment by default. Courts investigate cases for long periods of time, sometimes it takes them up to a few years. Usually one of litigants is willing to protract a process to the maximum. An issuance of the judgment by default is admissible if a defendant fails to appear at the first hearing or if he does appear, nevertheless fails to take any action. The issuance of the judgment by default makes the process completion in substance possible. In my work I have been trying to describe the issue of the judgment by default comprehensively. The last part of my work presents the pros and cons of the regulation concerned. In my opinion, it is an interesting part which casts a light of novelty on the issue of the judgment by default.

Keywords: *judgment by default, civil law, effective proceeding*

The main goal of a civil process is an accomplishment of a state of both procedural and substantive justice through a realization of a binding legal norm. One of many obstacles standing in the way of the accomplishment of this aim of the process is the defendant's passive behavior, leading to excessive lengthiness and protraction of the process, what is called an inactivity of the defendant, which includes the defendant's failure to appear at hearings. To counter this, a legislator finally decided to include the institution of the judgment by default into the Code of Civil Procedure from 1964.

It has not been an entirely new institution, unknown to the legislator of that time. It is evidenced by the fact that out of four projects of the Code of Civil Procedure of the 1950's only one did not provide for the institution of the judgment by default. Moreover, the beginnings of the institution of the judgment by default can be noticed in the Roman law, in the text of the

XII Tables[1], as well as in the last period of the development of the feudal procedure. At present a possibility of the default judgment is envisaged by French, German, Austrian procedures, as well as by an English civil procedure[2]. Hence, as we can see, the institution of the judgment by default is commonly considered as a way of countering the excessive lengthiness caused by the defendant's failure to appear or his inactivity during a trial. The institution is commonly accepted by the contemporary procedural systems. On the other hand, there are objections raised that it contradicts the principle of the objective truth[3]. However, is this principle, which is one of the most fundamental principles of the civil process, actually violated by the "will to provide protection to the infringed or endangered right of a plaintiff"[4], the will to protect the legal order and a rule of law, stemming from a constitutional principle of a democratic state ruled by law, and finally by the norms regulating the institution of the judgment by default themselves? A presentation of the legal regulations concerning the institution of the judgment by default will provide answers for the above and many other questions, which sometimes have a key relevance for the civil procedure.

A general definition and procedural requirements of the judgment by default

It is characteristic of the default judgment that in the event of the defendant's failure to appear at the appointed hearing or if the defendant does not participate in the hearing, the Court at the time of adjudication assumes the truth of the factual situations presented in the plaintiff's assertions. Enlisting in detail necessary conditions for the issuance of the judgment by default such as the defendant's failure to appear at the appointed Court session or the

[1] F. Rusek, *A Default Proceeding in a Civil Process*, Wydawnictwo Prawnicze, Warsaw 1966, p. 10.
[2] F. Rusek, *A Default Proceeding..., op. cit*., p. 11.
[3] F. Rusek, *A Default Proceeding..., op. cit*., p. 33.
[4] F. Rusek, *A Default Proceeding..., op. cit.*, p. 33.

defendant's inactivity at the process (Article 339/1 C.C.P.), lack of the defendant's motion on a conduct of a trial in his absence (Article 340 C.C.P.), lack of submission of any oral and written explanatory statements by the defendant in the lawsuit (Article 340 C.C.P.). There is a view expressed in the doctrine that a condition of the issuance of the judgment by default is the appearance of the plaintiff on the Court session or his submission of a motion on hearing the case in his absence[5]. Although it is possible to agree with this statement, nevertheless it has to be stressed that it is not a necessary condition. Article 177/1 p. 5 of the C.C.P. provides that the Court may suspend (not "shall suspend") the proceeding, if the plaintiff failed to appear at the hearing and did not demand to conduct it in his absence. Hence, the "suspension of the proceeding in the event of the failure to appear of litigants as provided by Article 177/1 p. 5 of the C.C.P. is exclusively facultative in character, is not a result of a procedural necessity" [6]. This statement corresponds with a view of M. Jasińska, who claims, that the conditions which are relevant for the rendering of the judgment by default concern exclusively the defendant[7]. Hence, a situation in which the Court investigates a case and passes a judgment by default in absence of both litigants is possible. It is also easy to notice, that a general basis for the issuance of the judgment by default is the inactivity of the defendant specified by legislation[8]. It is necessary to comment on an expression "do not participate in the hearing" expressed in Article 339/1 of the C.C.P. As it can be concluded out of the quoted Article the sole appearance of the defendant at the hearing does not guarantee the issuance of an adversarial judgment. The defendant shall participate in a trial either personally or by his legal attorney. The C.C.P. does not specify the definition of the expression "does not participate in a trial" explicitly. Nevertheless, it can

[5] Z. Resich, M. Jędrzejewska, W. Siedlecki, T. Misiuk, K. Pisecki, K. Korzan, T. Ereciński, A. Zieliński, S. Dalka, *A System of the Civil Procedural Law*, Volume II (ed.) Z. Resich, Warszawa, Wrocław, Kraków, Gdańsk, Lodz, Zakład Narodowy Imienia Ossolińskich – Wydawnictwo Polskiej Akademii Nauk 1987.

[6] W. Broniewicz, *Civil Proceeding in Outline*, Wydawnictwo Prawnicze PWN, Warsaw 1999, 7th edition, p. 237.

[7] M. Jasińska, *Judgments by Default*, „Gazeta Prawna" No. 42 (175), 15-21 July 1997, p. 49.

[8] *Ibidem.*

be inferred from Article 210/2 of the C.C.P, that it is a submission of a statement regarding claimants of the opposite litigant. From Article 221 of the C.C.P. it can be inferred that is also a defendant's involvement into an intrinsic nature of litigation. The defendant's involvement shall be "a defendant's active behavior regarding claims submitted against him by a plaintiff"[9]. Hence, each adversarial standpoint expressed by the defendant regarding the plaintiff's claims pursued, questioning those claims on the basis of demurs regarding factual and legal grounds means "to participate in the case" and shall be a negative premise for the issuance of the judgment by default[10]. "The sole statement, in which the defendant denies the claims, or by which he submits on their dismissal or in which he admits only certain facts", also means to "participate in the case"[11]. The question whether the sole motion on adjournment of the trial submitted by the defendant means the participation in the case is contentious. F. Rusek gives an affirmative answer to this question emphasizing that "even if the defendant could not specify the grounds for the motion submitted (…) only with the reservation, that the defendant files a request to be able to take a specific stand in the future", the motion shall mean a participation in the case[12]. F. Rusek expresses a similar opinion about the character of a motion on setting a time limit for an answer to the claim. A different stance is taken by a judiciary. An adjudication of 1958 indicates that a sole performance of an action only preparatory in character does not constitute the participation in the case, e.g. lodging a power of attorney, demanding adjournment, fixing a date to answer a complaint, imposing an obligation on the plaintiff to specify claims[13]. The adjudication obviously contradicts the F. Rusek's standpoint, which clearly stresses, that the aim of this sort of motions filed by the defendant is to enable him to take a stand in the case,

[9] T. Ereciński, M. Jędrzejewska, J. Jodłowski, J. Krajewski, Z. Krzemiński, K. Piasecki, J. Pietrzykowski, E. Wengerek, A. Zieliński, *Code of Civil Procedure with a Comment,* Wydawnictwo Prawnicze, Warsaw 1989, (eds.) J. Jodłowski, K. Piasecki, Vol II, p. 553.
[10] *Ibidem.*
[11] *Ibidem.*
[12] F. Rusek, *A Default Proceeding…*, *op. cit.*, p. 30.
[13] Supreme's Court Adjudication dated 5th July 1958.

and that these motions remain in close connection with the plaintiff's claims[14]. Formal objections raised by the defendant also trigger discrepancies within the doctrine. The doctrine does not present a unified viewpoint when it comes to the defendant's procedural demurs. F. Rusek claims that to raise the procedural demurs means to take part in the case[15], while K. Piasecki takes the view that neither a filed impleader nor submitted motions on Court's jurisdiction or disqualification of a judge are in nature of the participation in the case[16]. In my opinion this position is not entirely legitimate, because the defendant is allowed to take up different forms of defense, such as to deny the plaintiff's assertions, to lodge a counterclaim or to submit financial objections e.g. a plea of compensation. Why then a defendant, being entitled to raise procedural demurs, which might turn out to be the best form of his defense, would be considered inactive? Definitely, lodging a counterclaim should be considered as the participation in the case[17]. It stems from Article 204 of the C.C.P. which stipulates, that the counterclaim has to remain in connection with the plaintiff's demands or be eligible for compensation. The counterclaim may be filed during the first hearing at the latest, or in response to a statement of claim. If it is lodged at the first hearing, it obviously involves the defendant's or his legal attorney's presence at the hearing. If the counterclaim is filed in response to the statement of claim or separately, we may consider it as a sort of a "declaration" of the defendant on his position towards the plaintiff's assertions[18]. A motion of the defendant on conduction the hearing in his absence (Article 340 C.C.P.) shall be considered as a peculiar sort of the participation in the case. Its submission precludes a possibility of the issuance of the judgment by default. Thus, submission of any other motions by the defendant is unnecessary. The motion considered, does not require giving reasons for the motion, adducing of claims against the demands of the plaintiff, or the causes

[14] F. Rusek, *A default Proceeding*…, *op. cit.*, p. 30.
[15] F. Rusek, *A default Proceeding*…, *op. cit*., pp. 31-32.
[16] T. Ereciński*..., Code of Civil..., op. cit*., p. 554.
[17] T. Ereciński*..., Code of Civil..., op. cit*., p. 554.
[18] T. Ereciński*...,Code of Civil..., op. cit*., p. 554.

of the defendant's failure to appear[19]. By submission of this motion the defendant dissents from both adjudication exclusively on the plaintiff's assertions presented in the statement of claim and satisfying the plaintiff's demands without proving their legitimacy beforehand. The motion hence shall be a means of expression of the defendant's "adversarial position towards the plaintiff's claims pursued"[20]. Here, I would like to refer to the other premise of the issuance of the judgment by default i.e. when there are no oral or written explanatory statements submitted by the defendant beforehand. The submission of the explanatory statement precludes the possibility of the issuance of the judgment by default. The explanatory statement may relate to the intrinsic nature of the case or/and to the procedural demurs[21]. These explanations may be factual assertions or/and evidentiary motions or/and demurs relating to the substantive law[22]. The explanations may be included in the response to the statement of claim, if such a possibility is provided by Article 207 of the C.C.P. However, a shrewd remark of K. Piasecki has to be mentioned. K. Piasecki claims that the given explanations have to relate to a pending process. Explanations provided in a different pending litigation shall not be recognized as explanations within the meaning of Article 340 of the C.C.P. even if the litigation would be pending between the same two parties. The fact of submission of oral explanations corresponds with a viewpoint, that exclusively the defendant's failure to appear on the first designated hearing shall be a premise for the issuance of the judgment by default. Since the defendant did speak out at the first hearing and he did submit explanations, his failure to appear at the following hearings (e.g. in the event of adjournment and/or suspension) will not have any impact on the possibility of the issuance of the judgment by default. It is because the defendant did participate in the hearing and did submit explanations[23].

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[19] F. Rusek, *A Default Proceeding…, op. cit.,* p. 31.
[20] T. Ereciński…, *Code of Civil*…, *op. cit.,* p. 556.
[21] *Ibidem.*
[22] *Ibidem.*
[23] W. Siedlecki…, *Proceeding*…, *op. cit*., p. 277.

Grounds of the institution of a default judgment

In the second half of the 19th century, there emerged a theory, in which Castein described a sanction against a litigant (a defendant) for taking no action as grounds for the judgment by default[24]. According to Castein the judgment by default was a penalty and coercion securing the defendant's participation in the proceedings. At the beginning of the 20th century K. Stefko espoused a theory according to which grounds for the default judgment are to be found in the necessity to continue the course of the process[25]. At present, this concept does not find a full approval among specialists on legal proceedings. Two concepts of grounds for the default judgment come to the fore. One of them assumes a legal fiction of a defendant's acknow-ledgement of factual circumstances included in a complaint[26]. This concept assumes, that the defendant staying passive, tacitly acknowledges the factual circumstances included in the complaint and in a way accepts the plaintiff's claims. By failing to participate in the case, the defendant submits to the factual situation presented by the plaintiff as his cause of action. The other viewpoint in turn, commonly expressed in literature, recognizes as grounds for the judgment by default a presumption of veracity of defendant's assertions on factual circumstances. D. Krupa[27], T. Misiuk-Jodłowska[28], K. Piasecki[29] and F. Rusek[30] espouse this concept. To justify this view the following facts are invoked. Firstly, the legislation stipulates that the plaintiff's assertions justifying his demands, included in his claimant, are assumed as true, and not acknowledged. Textual statutory interpretation leads to a conclusion that it is not about the acknowledgment of the plaintiff's claims, not even the tacit one. Secondly, in the concept of the presumption of veracity, a cause of the

[24] F. Rusek, *A Default Proceeding*…, *op. cit.*, p. 37.
[25] *Ibidem.*
[26] F. Rusek, *A Default Proceeding*…, *op. cit*., p. 41.
[27] H. Mądrzak*..., Proceeding*…, *op. cit.*, p. 215.
[28] J. Jodłowski, Z. Resich, J. Lapierre, T. Misiuk-Jodłowska, *Civil Proceeding*, Wydawnictwa Prawnicze PWN, Warszawa 1996, 1st edition, p. 357.
[29] T. Ereciński…, *Code..., op. cit.*, p. 555.
[30] F. Rusek, *A Default Proceeding*…, *op. cit*., p. 43.

inactivity or/and, more broadly, a passivity of the defendant is not taken into consideration. However, it is the concept of the legal fiction which assumes that the defendant behaves passively because he tacitly accepts the plaintiff's claims. Hence, this concept will not find its justification in a situation when the defendant cannot participate in the process due to reasons beyond his control[31]. Finally, we notice, that a starting point for reflections on the grounds for default judgment is rather a presumption connected with the plaintiff, not with the defendant. This conclusion might be drawn from the content of Article 339/2 of the C.C.P., which includes a personal indication of the plaintiff, whose assertions are assumed as true. Ending the reflections on the grounds for the default judgment it should be stressed that the presumption of truth of the plaintiff's assertions shall not apply if the assertions give raise to justifiable doubts or if they were evoked in order to circumvent the law.

The scope of default proceedings.

A judgment by default may only be passed by a Court of the first instance at a process proceeding. The judgment may be issued in every separate proceeding, except a payment-order and writ-of-payment proceedings. In payment-order proceeding the Court renders an order for payment, about which a defendant learns at the moment of being served the order for payment. The order for payment may be challenged by the defendant by submitting the challenge, in which demurs against the order for payment and against the demands of the claimant have to be evoked. After the submission of the challenge the Court designates a hearing. In the event of the defendants failure to appear, the issuance of a judgment by default is not possible anyway, because the defendant by having submitted the challenge including the demurs has already taken part in the case. His behavior is not marked by his inactivity and shall be a negative premise for rendering the judgment by default. A similar situation occurs when it comes to the writ-of-payment proceeding, where submission of the chal-

[31] F. Rusek, *A Default Proceeding*…, *op. cit*., pp. 44-46.

lenge, providing demurs and evidence to support it, against the writ for payment issued during the proceeding, shall be required. Also in the above case this behavior of the defendant means the participation in the case. No judgment by default may be rendered in non procedural proceedings (iurisdictio voluntaria). Lack of such a possibility is discernible in Article 513 of the C.C.P. which stipulates that "The non-appearance of the participants at a hearing does not hamper the investigation of the case. The provisions of the judgment by default shall not apply". It is commonly acknowledged that there are generally no grounds to distinguish adversarial adjudications within the non procedural proceedings (iurisdictio voluntaria) since the participants do not remain in a dispute over a right[32]. No judgment by default shall be passed within proceedings before an arbitral Court. The sole nature of such proceedings preclude the possibility to close them with a judgment by default. It is difficult to imagine the inactivity of a litigant at such proceedings. Also in the enforcement proceedings a judgment by default shall not be issued. Article 766 of the C.C.P. stipulates that the Court investigates the cases at a close sitting. Moreover, within the enforcement proceedings the Court shall not adjudicate in a form of a sentence but shall issue orders. Polish procedural legislation does not provide for an order by default.

A question about a possibility of issuing a judgment by default within an appeal proceeding might emerge, especially in a situation, when the plaintiff has appealed and the defendant continues to fail to participate in the case (keeps to be inactive). Article 376 of the C.C.P. provides an unambiguous answer. Article 376 of the C.C.P. stipulates that a trial before a Court of the second instance shall be conducted, regardless of non-appearance of one or both litigants at a hearing and a judgment passed shall not be by default. Hence, the Court of the second instance shall always issue an adversarial judgment and has no possibility of the issuance of a judgment by default. Moreover, no provision of the judgment by default shall apply to the proceeding before the Court of the second instance. Such a possibility is precluded by Article 376 of the C.C.P. for the sake of its content. A motion of the litigant to investigate the appeal in his absence would be a groundless one[33].

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[32] *System*…, *op. cit*., p. 370.

[33] T. Ereciński…, *Code*…, *op. cit*., p. 626.

Evidentiary proceedings

As mentioned in the chapter on the grounds for the judgment by default, the Court shall issue the judgment by default assuming the truth of the plaintiff's assertions on the factual situations presented in the statement of claim and other pleadings served on the defendant before the trial. In this situation the Court shall not conduct the evidentiary proceedings and the proceedings in the case and the judgment shall not be adversarial in nature. In order to prevent a situation in which a judgment by default would contradict a fundamental principle of the civil procedure i.e. the objective truth, the legislator provided a type of a "safety valve" in Article 339/2 of the C.C.P. According to this Article the Court may pass a judgment by default on a presumption of veracity of the plaintiff's assertions if they do not raise justifiable doubts and/or they were not presented in order to circumvent the law. Whereas, if the Court will conceive a suspicion towards the veracity of these assertions, their coherence, logic and/or an aim of their presentation, the Court will designate a hearing and will conduct evidentiary proceedings. The Supreme Court spoke out in the same wane in an adjudication of 1958 – "In the event of any doubts towards a veracity of a plaintiff's assertions, a Court is obliged to conduct evidentiary proceedings, and in the event of a defendant's further inactivity it shall issue a judgment by default founded on findings of the evidentiary proceedings"[34]. Also another Supreme Court's adjudication determined: "Assumption of truth of plaintiff's assertions does not release a Court from its obligation of completing a due evaluation of a legitimacy of a defendant claim, founded on these assertions which stems from a standpoint of the substantive law…". The control in this subject shall pertain especially whether the legal action is not invalid in all events, pursued claim is not lapsed, whether it is a question of an abuse of a subjective right, collusion of the parties concerned and/or whether the parties act in order to circumvent the law[35].

The fact that a Court conducts evidentiary proceedings on a trial will not

[34] Supreme's Court Adjudication dated 5th July 1958., RPES 1959/3/346.

[35] Supreme's Court Adjudication dated 15th September 1967, OSNCP 1968/8-9/142.

affect the issuance of a judgment by default, which will remain its default character. Nevertheless, the legislator provided for exceptions from a general rule which stipulates that within the default proceedings the evidentiary proceedings shall not be conducted and a judgment shall be founded exclusively on the plaintiff's assertions. These are marriage proceedings, proceedings on relations between the parents and their children and proceedings in matters within the local law. In marriage proceedings Article 431 of the C.C.P. explicitly precludes a possibility of a judgment being founded exclusively on the presumption of truth of the plaintiff's assertions. Article 339/2 of the C.C.P. shall not apply while investigating cases on annulment of a marriage, recognition of the existence or non-existence of a marriage, and on divorce and separation. In these cases the conduct of the evidentiary proceeding is required. A similar situation pertains to investigation of cases on the relations between the parents and their children. By virtue of Article 458 of the C.C.P. in the cases covered by the provisions of this proceeding, Article 431 of the C.C.P. shall be accordingly applied. As mentioned before, Article 431 of the C.C.P. precludes the possibility of rendering the default judgment without conducting any evidentiary proceedings. We may find the third exception in the Law on Protecting Tenants Rights of 21 June 2001 (Journal of Laws, No. 71, item. 733), where Article 15/4 of this Act explicitly precludes a possibility of application of Article 339/2 of the C.C.P. in the case on eviction and termination of a lease agreement of residential premises. It means that, in this case a judgment by default may not be issued unless evidentiary proceedings are completed. In conclusion, I would like to stress once again that conducting the evidentiary proceeding at a trial, even mandatory ones, precludes neither the possibility nor the obligation of the Court to issue the judgment by default (of course with the fulfillment of other premises envisaged by the law).

Reserved judgment by default

A notification of the defendant on submission of a statement of claim and a date of a hearing is a necessary condition to conduct a trial and pass a judg-

ment. Similarly, in a default proceeding it is necessary for the defendant to learn about the date and place of hearing. Only in the event of non-appearance of the defendant duly informed about the hearing legitimizes rendering a judgment by default. However, what if the defendant fails to appear and the Court does not have at its disposal a proof of service of the summons. In other words, what the Court is supposed to do in a situation when at the date of the hearing it is not clear whether the defendant failed to appear on the hearing because he had not been effectively notified or because he failed to appear as he did not intend to appear and participate in the hearing. Article 341 of the C.C.P. provides the answer by stipulating that in the event of a lack of the proof of service at the day of the hearing, the Court may, within the two following weeks, pass a judgment by default at a closed session, provided that it will receive the proof of service within that time. It is a so called reserved judgment by default. We see then, that the judgment by default may be rendered only provided the Court receives the proof of service of the notification. Otherwise, the Court may only adjourn the hearing, because the lack of the proof of service will be equivalent to incorrect notification of the defendant about the hearing[36]. This is what commends Article 214 of the C.C.P., which stipulates that the Court mandatorily adjourns the hearing, if it will assert the incorrectness of the service of the notification. Returning to Article 341 of the C.C.P. it should be recognized that if the proof of service will reach the Court after the elapse of the two weeks, the possibility of rendering the judgment by default will also be precluded[37]. Similarly, no judgment by default may be issued, if within the two following weeks the proof of service will come but the Court "has not managed" to issue the judgment by default. The two weeks limitation must not be extended by the Court[38]. However "the Court has to investigate whether the notice was served duly to the requirements of the C.C.P. before rendering the judgment by default"[39]. The reserved judgment by default shall not be issued at a trial. It is not subject to announcement, and it

[36] H. Mądrzak…, *Proceeding*…, *op. cit.*, p. 216.
[37] T. Ereciński…, *Code*…, *op. cit*., p. 557.
[38] *Ibidem.*
[39] Supreme's Court Adjudication 18th March 1974. III CRN 411/73, OSNCP 1975/2/34.

is binding for the Court from the moment of signing its sentence. It is directly stipulated by Article 341 of the C.C.P. The Court issues the reserved or/and unreserved judgment by default *ex officio*. There are no grounds for submitting motions on this matter. Each judgment by default should be provided with a name "judgment by default"[40]. An adjective "reserved" does not have to be placed in the heading. However, the sole marking of the judgment does not decide about its character, but it is decided by a judgment's content or/and its issuance method. "If the judgment is issued according to the premises of Article 339 of the C.C.P. it is always the judgment by default, even if it is not to be marked so or incorrectly marked as an adversarial one"[41]. The judgment by default may be both partial and tentative. If the tentative judgment is the judgment by default, it does not hinder the final judgment from being the adversarial one, unless after issuing the judgment by default and after it becomes non-appealable, the cause of its default will be dropped out.

However, no judgment by default may be issued, if after closing the hearing by virtue of Article 224/2 of the C.C.P., the Court conducts the evidentiary proceedings during which it will receive the notice comprising the explanations of the defendant or a motion on recognizing the case in his absence. These pleadings mean the participation in the case, comprise the defendant's stand taken and make rendering the default judgment impossible.

Conclusions

When rendering a subjective evaluation of an institution of the judgment by default, it has to be stressed that it is a coherent institution, logically regulated by the legislator. Provisions of a Division IV, Subchapter III of the C.C.P. require neither amendment nor novelization. They comprise neither loopholes nor inaccuracies. It is evidenced by the fact that the last novelization of 22nd December 2004 introduced no relevant amendments with regard

[40] W. Broniewicz, *Civil Proceeding…, op. cit.*, p. 238.
[41] F. Rusek, *A Default Proceeding…*, *op. cit*., p. 60.

to these provisions. Of course, I do not take under consideration a cosmetic change of Article 339/2 of the C.C.P., to which an expression "either were presented in order to circumvent the law" was added. Article 443 (1) of the C.C.P is a kind of novelty, nevertheless it is also a cosmetic change in my opinion. Obviously, it is a positive amendment but in my opinion its lack caused no serious difficulties in adjudicating in the past. Without this provision, a litigant had to submit appellate measures indicating a lack of procedural and juridical capacity or appropriate agency appointed to its representation. At present, the fact that a Court is obliged to set aside a judgment by default issued against a person without juridical capacity considerably accelerates and facilitates the procedure. That is because an additional impulse of a person who possesses a legal or factual interest is unnecessary for setting aside the judgment and annulment of the proceeding within the scope marked by invalidity. In my point of view, the judgment by default does not infringe the principle of the objective truth either. "The principle of the objective truth finds its execution in Article 339 (2) of the C.C.P."[42]. The Court must not relay on plaintiff's assertions, if they raise justifiable doubts with regard to their compliance with a real state of affairs or if they are adduced in order to circumvent the law. Hence, the Court does not adjudicate exclusively following a rigorous provision commending to accept unconditionally the plaintiff's standpoint and assertions, but evaluates credibility of the assertions and evidences adduced by the plaintiff on the basis of comprehensive consideration of the evidentiary substance of the case.

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[42] M. Jasińska, *Judgments by Default…*, *op. cit.*, p. 49.

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