

Judgment of 26th June 2006, [SK 55/05](#)
**PRONOUNCING JUDGMENT BY THE SAME JUDGE FOLLOWING
 THE DEFENDANT'S OBJECTION TO A DEFAULT JUDGMENT**

Type of proceedings: Constitutional complaint Initiator: A natural person	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Non-exclusion of the judge who issued a default judgment from consideration of a case at first instance following the filing of an objection to this judgment by the defendant [Civil Procedure Code 1964: Article 48 § 1 point 5]	Principle of equality Right to court [Constitution: Articles 32(1) and 45(1)]

Whenever the defendant remains passive within civil proceedings, failing to submit any documents or participate in the hearing, the court pronounces a default judgment, which is in principle based on the factual circumstances indicated by the claimant (cf. Articles 339 and 340 of the Civil Procedure Code). The defendant, against whom a default judgment was issued, may file an objection thereto during one week from the moment when the judgment was delivered to them. As a result of the objection, the case is considered at first instance anew by the same court which pronounced the default judgment; it is often handled by the same judge.

Both parties subsequently have the right to appeal against the judgment pronounced at first instance. Such appeal is considered by the second instance court. Pursuant to Article 48 § 1 point 5 of the Civil Procedure Code, challenged in the present case, the judge who pronounced judgment at lower instance is not admitted to adjudicate in the given case at higher instance. Such restriction, however, does not exist as regards the consideration of a case at first instance following the filing of an objection to a default judgment by the defendant.

The constitutional complaint against the absence of a statutory basis for exclusion of a judge by virtue of law (i.e. automatic disqualification), in the situation of considering an objection to a default judgment pronounced by such judge, was lodged by Stanisław Cz. The District Court pronounced a default judgment against the complainant (acting as a defendant) in a case concerning the protection of infringed possession. The complainant filed an objection thereto. The District Court, composed of the same panel, upheld the validity of the earlier default judgment. Subsequently, the Regional Court dismissed the complainant's appeal.

The complainant indicated Article 45(1) (right to court), read in conjunction with Article 32(1) (principle of equality), of the Constitution as the basis of review. The allegation regarding the non-conformity of the challenged provision with the right to equal treatment as regards the access to court was based by the complainant upon a comparison of the civil procedure with criminal procedure; the pronouncement of a default judgment within the latter constitutes the basis for excluding the judge, by virtue

of the law, from the participation in considering the objection to such judgment (cf. Article 40 § 1 point 9 of the Criminal Procedure Code).

RULING

Article 48 § 1 point 5 of the Civil Procedure Code conforms to Article 45(1) and is not inconsistent with Article 32(1) of the Constitution.

PRINCIPAL REASONS FOR THE RULING

1. By filing an objection to a default judgment pronounced within civil proceedings the defendant automatically initiates the consideration of the case wherein they participate and maintain all procedural rights vested in them. Following the filing of an objection the case is re-considered; the court pursues the hearing of evidence anew, in its entirety or part, having evidence presented by both parties at its disposal. The possibility of extending the legal action is also not excluded. This stage of proceedings is already completely adversarial in nature. All appellate measures against the issued decision are vested in parties.
2. When considering an appeal within civil proceedings, the second instance court does not review the case entirely “anew” but only assesses and controls the judicial decision of the first instance court, within the limits of the appeal. For this reason, the judge who pronounced judgment at lower instance may not participate in the consideration of the appeal, since otherwise they would simply control themselves.
3. Given the aforementioned differences between the consideration of an objection and the consideration of an appeal, the non-inclusion by the legislator, in Article 48 § 1 point 5 of the Civil Procedure Code, of the consideration of a case anew following the defendant’s objection to a default judgment as the basis for exclusion of a judge who pronounced the judgment challenged within the objection does not constitute an infringement of the defendant’s constitutional right to an impartial court (Article 45(1) of the Constitution).
4. The divergent regulation of analogous procedural institutions on the basis of two different statutory acts does not *per se* justify the allegation that the constitutional principle of equality (Article 32(1)) has been violated.
5. The complainant failed to indicate any constitutional arguments that would justify the allegation regarding infringement of the principle of equality by the legislator’s different treatment of the addressees of the regulation contained within Article 48 § 1 point 5 of the Civil Procedure Code, when compared to respective legal provisions of the Criminal Procedure Code. Concomitantly, one should not ignore the fact that procedural situations of parties to the civil proceedings and criminal proceedings are not entirely identical. Both procedures are of different nature and are based upon divergent principles. A particularly important issue is that in criminal proceedings, contrary to the civil proceedings, although the default judgment is issued in the absence of the defendant, the court becomes familiar with the complete material collected within the preparatory proceedings, including the suspect’s explanations or their refusal to testify.

The civil court, however, does not have the possibility to become acquainted with the defendant's position prior to the pronouncement of the default judgment.

Provisions of the Constitution

Art. 32. 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

Art. 45. 1. Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.

2. Exceptions to the public nature of hearings may be made for reasons of morality, State security, public order or protection of the private life of a party, or other important private interest. Judgments shall be announced publicly.