

Summary Proceedings, Default Judgments and Restitution: Structural Bias and the Limits of Ex Officio Review

Abstract

This article examines summary proceedings in Finnish civil procedure with a focus on default judgments and restitution. It argues that summary proceedings are structurally biased in favour of claimants, not because of doctrinal deficiencies but due to systemic features: defendant passivity, claimant control over evidence, and the limited scope of ex officio review. The court's assessment is confined to what appears from the documents, resulting in an epistemically constrained process. Consequently, default judgments are determined primarily by procedural behaviour rather than substantive merit. The article further demonstrates that ex officio review cannot compensate for these structural asymmetries, and that restitution, while essential, introduces temporal instability into the system. The findings suggest that the tension between efficiency and legal protection is inherent and cannot be resolved through incremental reform. A shift in perspective—from procedural optimisation to structural reconsideration—is required.

1. Introduction

Summary proceedings form a substantial part of contemporary civil justice systems. In Finland, they account for hundreds of thousands of cases annually, most involving small debt claims brought by professional collection agencies against individual consumers.

Despite their procedural efficiency, these proceedings have attracted increasing criticism. Courts, policymakers and scholars alike have expressed concern about the imbalance between efficiency and legal protection. This article seeks to explain this imbalance by analysing the structural features of the system rather than its doctrinal details.

The central claim is that summary proceedings are not merely simplified procedures but structurally asymmetric processes, in which the outcome is largely determined by the defendant's procedural conduct rather than the substantive merits of the claim.

2. Historical Cycles: Investigation and Procedural Models

The development of summary proceedings can be understood through two long-term cycles: the scope of judicial investigation and the procedural model.

Historically, Finnish law oscillated between extensive judicial inquiry and reliance on procedural default. The 1734 Code imposed a full evidentiary burden on the claimant regardless of the defendant's presence. This model proved impractical. The reform of 1972 replaced substantive inquiry with procedural default, while retaining a limited form of ex officio control over manifestly unfounded claims.

The 1993 reform transformed the procedural format from oral to written proceedings. While seemingly technical, this shift had profound consequences. It increased reliance on written

submissions and reduced opportunities for judicial interaction, thereby amplifying existing asymmetries.

At the same time, earlier parallel mechanisms, such as the payment order procedure, were abolished. These had previously functioned as effective filters between contested and uncontested claims. Their removal placed additional pressure on summary proceedings without providing an adequate substitute.

3. Default Judgments and Procedural Passivity

Default judgment is the defining feature of summary proceedings. In practice, outcomes are rarely based on substantive evaluation. Instead, they depend on whether the defendant responds.

This introduces a fundamental transformation:

- the process no longer evaluates competing claims,
- but rather tests procedural compliance.

The legal system thus shifts from adjudication to conditional validation: if the defendant fails to act, the claim is accepted.

This mechanism reflects a long-standing legal principle favouring active parties. However, in the context of modern mass litigation, its implications are more problematic. Defendants are often unrepresented, financially constrained and unfamiliar with procedural requirements. Their passivity is therefore not necessarily a meaningful choice.

4. Information Asymmetry and Epistemic Constraints

The most significant structural feature of summary proceedings is information asymmetry.

The claimant controls:

- the initiation of proceedings,
- the formulation of the claim,
- and the documentary evidence submitted.

Judicial review is limited to what “appears from the documents”. This formulation is not merely procedural; it defines the epistemic limits of adjudication. The court does not assess the underlying reality of the claim but only the material presented.

As a result, the evidentiary basis of the judgment is effectively unilaterally constructed.

This constraint explains why the system can simultaneously:

- process large volumes of cases efficiently,
- yet allow questionable claims to succeed.

5. The Limits of Ex Officio Review

Ex officio review is intended to mitigate the risks associated with default judgments. Courts are required to reject claims that are “manifestly” or “clearly” unfounded.

In practice, however, this mechanism is structurally limited:

- the threshold for intervention is high,
- the available material is restricted,
- and the time allocated per case is minimal.

Consequently, review is confined to obvious irregularities, such as excessive interest or costs. Substantive defects rarely become visible within the available evidentiary framework.

The ineffectiveness of ex officio review is therefore not a matter of judicial reluctance but of institutional design. Without adversarial input, meaningful scrutiny is not possible.

6. Restitution as a Secondary Safeguard

Restitution provides a mechanism for reopening default judgments. It represents a shift from ex ante to ex post protection.

This mechanism has clear advantages:

- it allows substantive issues to be examined,
- and it targets cases where the need for protection is most evident.

However, it also introduces new problems:

- it depends on the defendant’s initiative,
- it may occur long after enforcement,
- and it undermines finality.

In some instances, proceedings are effectively revived years later. This temporal dimension complicates enforcement and creates uncertainty for both parties.

Restitution thus functions as a necessary but imperfect corrective.

7. Efficiency, Enforcement and Structural Tension

Summary proceedings are highly efficient. They enable rapid and cost-effective enforcement of claims, which is essential for a functioning credit economy.

However, this efficiency is achieved at a cost. The system prioritises:

- speed over scrutiny,
- and procedural simplicity over substantive evaluation.

The resulting tension is not accidental but inherent. Enhancing legal protection would require:

- more extensive judicial inquiry,
- greater evidentiary requirements,
- or increased access to legal representation.

Each of these would reduce efficiency.

8. Conclusion: The Limits of Procedural Reform

The central problem of summary proceedings is structural. It arises from the combination of:

- defendant passivity,
- claimant control over information,
- and limited judicial review.

These features cannot be fully corrected through doctrinal adjustments. Incremental reforms—such as improved forms, procedural guidance or minor changes in review standards—may alleviate some problems but do not address the underlying asymmetry.

The key question is therefore not how to improve ex officio review, but whether meaningful legal protection can be achieved within a system that relies on unilateral information and procedural default.

The answer suggested by this analysis is cautious: only to a limited extent, and only by shifting part of the protection outside or beyond the initial proceedings.