

9 Resumé

The theme of this PhD thesis is Trade Name and Trade Secret. The aim of the thesis is to describe, analyze and review legal regulation of these in the Czech legal system. Doing this it is necessary to explore not only the Commercial Code (Obchodni zakonik), where both institutes are regulated, but also the civil, procedural, administrative and criminal law. Comparison with the foreign legal regulations, mainly the French, German, English and American was made. How the law relating to those areas works in practice is illustrated on the judicature, not only present, but also the past one, for there is a loose link between the present regulation and the one of the First Republic. Because the Czech Republic is in the process of recodification of not only private, but also public law, regard was taken to the proposed legal regulation.

The thesis is composed of seven chapters, each of them dealing with different aspects of trade name and trade secret.

Chapter One is introductory and describes the historical development of the trade name and trade secret in the Czech territory, from the times of Austria-Hungary to the present day. Further, the legal principles relating to those topics are discussed. The last part of this chapter contains thoughts about the legal character of the trade name and trade secret in the present regulation and in the new proposed regulation contained in the Civil Code.

Chapter Two is looking at the international law relating to the trade name and trade secret. In relation to the trade name, the most important piece of legislation to this day is the Paris Convention for the Protection of Industrial Property from 1883, which in its Article 8 requires informal protection of trade names; nevertheless what is the definition of the trade name is for the national law to decide. On the contrary the TRIPS agreement from 1994 contains the definition of the trade secret in its Article 39. The EU law deals with the procedural aspects of intellectual property law in the Directive 2004/48/ES about the enforcement of intellectual property law.

Chapter Three describes trade name's present law regulation. The law defining the trade name is currently contained in the Commercial Code in § 8 to 12. There is the distinction between the trade name of those persons registered in the commercial registry (Obchodni rejstrik), and those who are not registered. Those registered have the trade firm (obchodni firma) and those registered not have the trade name (obchodni jmeno). What are the rules for creation of the trade firm and trade name is outlined.

The following chapter, Chapter Four, is about the trade secret. As with the trade name, trade secret is regulated in the Commercial Code, namely in § 17 to 20. What can be the trade secret, who can have it, what is the difference between the trade secret and related rights like patent law, know-how and undisclosed information (§ 271 of the Commercial Code) is included in this chapter.

Protection of trade name and trade secret is the subject of Chapter Five. This chapter is subdivided into two parts and describes both the private and public protection. Private protection, which means the proceeding is started from the initiative of the person, whose right was infringed, is contained in the Commercial Code. There is the distinction between the absolute protection against any person (*erga omnes*), which is in § 12, resp. § 20 and the relative protection under unfair competition rules (*inter partes*) contained in § 53 and 54. Consideration, how the trade secret is protected during the court proceeding closes this chapter.

Chapter Six contains the thoughts about the prepared Civil Code, which changes the system of the private law, which should be codified as much as possible in one Code. The proposal of the Civil Code, which was approved by the Government and which is in present in the House of Representatives for consideration, contains not only civil law, but also family law and partly commercial law. The regulation of the trade name and trade secret should be in the future contained in the Civil Code.

Conclusions are drawn in Chapter Seven. The thesis comes to the conclusion that the valid regulation in principle suits the practical needs of the developed economy, nevertheless points out to certain weak points and suggests possible changes. In relation to the trade name it is suggested to subsume the trade firm under trade name, which would help the systemacy and consistency of the law regulation and would be in accord with the international obligations of the Czech Republic. Further on it is proposed to liberalise the rules regulating the creation of the trade firm of the individual. Finally the thesis contains the thoughts about usefulness and suitability of one central commercial registry, instead of having seven courts to administer it. In relation to trade secret, the thesis concludes, that the definition and protection of it is correct, but emphasizes the need of preventative steps to avoid its breach. The regulation contained in the new Criminal Code, which will be in force from 1.1.2010 is generally welcomed.