

Business decisions of members of elected bodies and the business judgment rule from the perspective of recent case law in the Czech Republic and Federal Republic of Germany

Abstract

The thesis focuses on business decisions of members of elected bodies with a focus on statutory bodies of limited liability companies and joint stock companies. It examines them in the perspective of the business judgment rule. The author asks the questions how members of elected bodies must make their business decisions in order to be protected against liability for damage caused by their consequences, and whether the current statutory regulation of the business judgment rule is sufficient or whether an amendment would be needed.

In order to answer these questions, the author analyzed the statutory regulation of the business judgment rule and, in particular, the case law of the Czech and German supreme courts. Germany was chosen by the author because its statutory regulation and judicial decisions of the German Federal Court of Justice served as a source of inspiration for Czech legislators and Supreme Court judges. The thesis compares these two approaches comparatively.

Members of elected bodies must base their judgement on sufficient sources of information and for the benefit of society in order to be protected in their decisions against negative consequences. The thesis concludes that these requirements are the same in the Czech Republic and Germany. However, the German Federal Court of Justice requires members of elected bodies to exhaust all available sources of information for their decision, whereas the Czech Supreme Court's established case law requires only reasonably available sources of information for making a judgment. According to the case law, the interest of the company is not only understood as the interest of the shareholders and partners, but also of a wider range of interested parties, such as employees or, according to the German Federal Court of Justice, even the public good.

Given the earlier inspiration of the legislator and the judges in German law, there is no need to amend the Companies Act. The author concludes that the Czech statutory regulation of the business judgment rule is sufficient and, together with case law, is capable of protecting members of elected bodies from liability for erroneous business decisions.

Key words

Business judgment rule, members of elected bodies, case law