

Summary

Trade secret (subject and protection)

Information plays significant role in international, regional and local business and keeping important business and industrial information in secrecy represents crucial point in many companies. This thesis is focused on the legal institute - trade secret according to relevant international, European and Czech law. The importance of trade secret has raising tendency and it deserves an attention of legislators in all states.

The first chapter is dedicated to legal characteristics in international and Czech law and to the definition of the trade secret in accordance with s. 17 Act. No. 513/1991 Coll., Business Code. All information which is defined as the trade secret has to meet legal conditions, e.g. they must contain objective and subjective characteristics. Trade secret represents broad concept of information and rights. Nobody may jeopardize or violate the right of the trade secret. It is fully up to entrepreneur to treat with his/her trade secret in compliance with his/her will.

The next chapter includes the legal analysis on a mutual relationship between the trade secret and alike legal institutes such as know-how, confidential information and internal information.

Although the most important provisions about the protection of trade secrets are incorporated in the Business Code, especially in the provisions regarding unfair competition, we can find many other rules in almost all branches of law. The main objective of the thesis is to analyze trade secret in relationship with fundamental human right – freedom of information. This freedom represents the important right for everyone to get information from state authorities. It is closely connected with the principles of transparency and openness of their activities. But this right is not absolute and sometimes it happens that it collides with other rights –the right of entrepreneur to protect a special kind of information as trade secret. It is considered as important exception from the information freedom and it must be interpreted restrictively in contrast with the extensive construction of the information freedom.

We can divide this right into two categories: right to general information and right to environmental information. Especially the latter one belongs to sphere of

international and European law. The thesis describes the process of assessing of the mutual relationship within administrative discretion of relevant European and national authorities and institutions. Whilst institutions and organs of European Union use obligatory consideration and balancing of public and private interests (trade secret), the Czech law demands obligatory refusal of disclosure of the information in case of occurrence of trade secret in the requested information. This is the main difference and it is now highlighted by incorrect implementation of the directive 2003/4/EC on public access to environmental information into Czech legal order.

Another problem arises from the assessing of the extent of provided information and whether there could be any reason to disclose the information even though it is protected by the trade secret. Protection of human health and environment, transparent providing with state financial resources and funds can be included among these reasons.

When we look at the trade secret concept more closely we can observe that it is complicated institute that hides many intricacies, especially in connection with freedom of information. Proper and right balancing of the interests are for protection of the trade secret very important. Because the disclosure of the trade secret is able to cause significant harm to entrepreneur, the state authorities should be careful within the process of disclosing information, otherwise they can be sued for damages.