

Abstract: Comparison of approaches to the issue of the concurrence of the performance of the function of a member of the statutory body and the employment relationship in commercial corporations in the French and Czech legal order

The possibility of concurrence of the performance of the function of a member of the statutory body and the employment relationship within one company is traditionally non regulated by Czech legal order. The solution is based on case law which, due its rigorous approach and poorly developed argumentation, does not offer neither clear answer to the question, nor the sufficient level of legal certainty. The thesis aims to analyse the approaches to the issue of the concurrence and its solution in France and the Czech Republic respectively, compare this approaches and propose possible adjustments in the approach of Czech justice to the issue, regarding the decision of the Czech Constitutional court from 13th September 2016, no. I. ÚS. 190/15.

The thesis is divided into four parts. First part defines the basic legal notions in context of the legal orders of both countries.

In the second and third part are described both approaches to the issue of concurrence of the performance of the function of a member of the statutory body and the employment relationship in France and the Czech Republic respectively and case law decisions and opinions adopted by courts of justice in both countries. Due to the reason absence of any system, for the analysis of the Czech approach is used system introduced by French case law as described in the second part.

The fourth part compares both approaches, evaluates the whole situation of possibility of concurrence of the performance of the function of a member of the statutory body and the employment relationship in both legal orders and uses the conclusions of the French case law to fill in the lack of argumentation of Czech case law.

The conclusion of the thesis analyses the causes that may lead to different solution of the issue in both legal orders. It also presents solution that may be adapted by Czech courts of justice to improve its argumentation according to the decision of the Czech Constitutional court and the principles of autonomy of the will, contractual freedom and legal certainty.

Key words:

Concurrence of functions, statutory body, employment contract, capital trading company, French law.