

Abstract

Concurrence of membership in the governing body of a limited company and employment in the same company

The purpose of this master thesis is to provide comprehensive answer to the question of the admissibility of the concurrence of the function of a member of the statutory body of a capital trading company and employment relationship with the same company (concurrence of functions), especially with regard to the change of legislation brought by the recodification of private law effective from 2014.

With the concurrence of functions, it is necessary to distinguish between situations where the subject of the employment relationship are actions falling within the competence of the statutory body (identical concurrence) and when the subject of the employment relationship are other actions (non-identical concurrence).

The question of the concurrence of functions is a frequently discussed topic. That is mainly for the reason that many companies have established relationships with members of their statutory body in this manner.

The area of the concurrence of functions was in the past and still is insufficiently statutory regulated. Most of the rules in this area are, therefore, inferred by case-law.

The thesis is divided into six chapters. In the first part of the thesis, the basic theoretical concepts are outlined, then the performance of the function of the member of the statutory body, the employment relationship and the differences between them are described. The second part of the thesis describes the legislative development of the question of concurrence of functions and outlines the basic directions of the case law. In the third part of the thesis, the basic purposes and changes of the legislation after the recodification concerning the concurrence of functions are discussed. In the other parts of the thesis, identical concurrence, non-identical concurrence and other related issues are examined separately.

In regard to the available resources, the author concludes that identical concurrence is still inadmissible, but in the light of the latest case law, there has been a change in view of the consequences of the attempt to create an identical concurrence. It is further found that a contract performance of the office of a member of a statutory body of a company may be

subject to the Labour Code in respect to the principle of contractual autonomy. In respect to the non-identical concurrence, the author concludes that the possibility of establishing it is very problematic, especially due to unclear interpretation of the concept of business management given by the courts.