

Postdoctoral thesis “Company Directors’ Disclosure Duties”

- Summary -

The subject of the postdoctoral thesis are disclosure duties that are not addressed to the company or its management or supervisory bodies, but rather to the members of these bodies personally. Such disclosure duties can be triggered by very different circumstances: serious illness, individual (business or private) misconduct, acquisition of shares or assets of the company in a management buyout, transactions with the company’s securities (directors’ dealings), drawing up of a prospectus, etc. In the absence of a legal regulation, such obligations are usually derived from general provisions of civil and corporate law such as the duty of loyalty or *culpa in contrahendo*. The aim of this study is to explore the limits of individual disclosure duties and to determine whether all these duties can be grouped under the single category of “directors’ disclosure duty”. Among other things, the study draws on the findings of legal-theoretical and constitutional research, a comparative law approach, and the method of abduction, which is still poorly established in legal scholarship.

The thesis first examines the context in which directors’ disclosure duties are usually discussed. This context is formed by the duty of loyalty, the right to privacy, and conflict of interest. If one places these categories in relation to each other, the duty of loyalty can be understood as a basic rule for resolving conflicts of interest, with the disclosure duty as one of many conflict resolution instruments. When choosing this instrument, the duty of loyalty conflicts with the general right to privacy: the former seeks to resolve the conflict to the benefit of the company, the latter to the benefit of the director. Both must be balanced by means of the principle of proportionality. It follows from this principle that any disclosure duty imposed on a director must always have a legitimate aim; furthermore, the duty must be suitable and necessary to achieve the aim, as well as generally reasonable.

The analysis of individual disclosure duties shows that this “pattern of proportionality” is repeated over and over again. This is not only true for the disclosure duties that affect the directors’ right to privacy (e.g. the duty to disclose a serious illness or one’s own wrongdoing), but also for the disclosure duty in a management buyout. In the latter case, the disclosure of company-related information takes place on the grounds of the pre-contractual disclosure duty; however, this exists only if the information in question is essential for the contract and the disclosure of this information to the other party is necessary and reasonable. After all, what we see here is a proportionality test in the guise of civil law. This justifies the assumption that all disclosure duties have the same structure, which is determined by the principle of proportionality. The differences between individual duties can be explained by the fact that the result of the proportionality test depends on different parameters, including the severity of the encroachment on fundamental rights that is caused by the disclosure obligation. Therefore, the disclosure duty is relatively broad in the case of a management buyout, but in the case of a serious illness it is only fragmentary and especially does not extend to health data. The thesis of structural equivalence is examined and confirmed in the final part of the work, which deals with some other disclosure duties. This structural equivalence is held to be sufficient to regard the directors’ disclosure duties as a single category.