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Protection of Trade Secrets: Selected Private Law Problems[3]

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Abstract

Trade secret constitutes one of the most common forms of intellectual property protection, comprising a special category of confidential information of vital importance for achieving competitive advantage, including of economic nature, and the undisturbed operation of an enterprise.

It is the purpose of this paper is to specify the European and domestic legal conditions for the protection of trade secrets, the conditions and consequences of violating trade secrets (in the legal environment as of 28 February 2023), and to indicate the policy of protecting trade secrets.

For the purposes of achieving the presented goal, the thesis is assumed that the subject of protection, which is a trade secret, is consistent with the need to apply in practice the public law solutions adopted in this area, provided that the entrepreneur is able to use the tools available in this area. The implementation of the assumptions will also be possible by verifying the subject of protection in the analysis of selected judgments on various controversial issues and criminal acts in connection with the violation of trade secrets, as well as by verifying the legal tools provided for in the Act of April 16, 1993 on combating unfair competition.

Keywords: trade secret, protection of intellectual property, combating unfair competition, technology rights licenses, confidentiality clauses.

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Ochrona tajemnicy przedsiębiorstwa: Wybrane problemy prawa prywatnego[4]

Streszczenie

Tajemnica przedsiębiorstwa stanowi jedną z najczęściej spotykanych form ochrony własności intelektualnej, zawierającej szczególną kategorię informacji poufnych o istotnym znaczeniu dla osiągnięcia przewagi konkurencyjnej w tym ekonomicznej oraz niezakłóconej działalności przedsiębiorstwa. Celem niniejszego artykułu jest dokonanie analizy wybranych europejskich i krajowych uwarunkowań prywatnoprawnych ochrony tajemnicy przedsiębiorstwa, warunków i skutków naruszenia tajemnicy przedsiębiorstwa (wg stanu prawnego na 28 lutego 2023 r.) oraz wskazanie polityki ochrony tajemnicy przedsiębiorstwa. Na potrzeby realizacji przedstawionego celu założono tezę, że przedmiot ochrony, jakim jest tajemnica przedsiębiorstwa, wpisuje się w potrzeby stosowania w praktyce przyjętych w tym zakresie rozwiązań publicznoprawnych, o ile przedsiębiorca potrafi zastosować funkcjonujące w tym obszarze narzędzia. Realizację założeń umożliwi również weryfikacja przedmiotu ochrony w analizie wybranych wyroków w różnych kwestiach spornych oraz czynów karalnych w związku z naruszeniem tajemnicy przedsiębiorstwa oraz weryfikacja narzędzi prawnych przewidzianych w ustawie z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji.

Słowa kluczowe: tajemnica przedsiębiorstwa, ochrona własności intelektualnej, zwalczanie nieuczciwej konkurencji, licencje prawa do technologii, klauzule poufności.

[4] Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

Introduction

In recent years, the term of trade secret has grown in importance as an alternative to the protection of intellectual property to the extent not covered by industrial law, which originally, pursuant to the Paris Convention (1967),[5] provided for the basic principles of industrial property with regard to patents for inventions, utility models, industrial designs, trademarks, service marks, trade names, and designations of origin and established the general rules on how to combat unfair competition.

Trade secret was originally designated as 'Protection of Undisclosed Information' in Article 39(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) (hereinafter referred to as TRIPS).[6] According to TRIPS, natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices,[7] so long as such information: (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) has commercial value because it is confidential; (c) been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

The uneven level of protection of trade secrets in the European Union has negatively affected both the internal market and resulted in lower incentives for research and development activities.[8] Given the above, it became necessary to unify the legal provisions in this regard. This occurred on 8 June 2016 with the

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5 Paris Convention for the Protection of Industrial Property of 20 March 1883, amended in Stockholm on 14 July 1967.

6 See e.g.: Agreement on Trade-Related Aspects of Intellectual Property Rights constituting Annex 1C to the Agreement establishing the World Trade Organization of 15 April 1994 (Journal of Laws of 1996 No. 32, item 143).

7 For the purpose of this provision, 'a manner contrary to honest commercial practices' shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

8 See e.g.: A. Wojtasik, *Nowa definicja tajemnicy przedsiębiorstwa – uwagi prawnoporównawcze na tle regulacji niemieckiej*, "Transformacje Prawa Prywatnego" 2021, 2, p. 129; Ch. Guaido, *The Trade Secrets Protection in U.S. and in Europe: A Comparative Study*, "Revista La Propiedad Inmaterial" 2017, 14, https://ssrn.com/abstract=3113 580, p. 2.

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adoption of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure[9] (hereinafter referred to as Directive 2016/943). The harmonization of Community legislation on trade secrets has helped to improve the conditions for the development and use of innovative knowledge and the possibility for entrepreneurs to share it among themselves. In Article 2(1), Directive 2016/934 introduced a uniform definition of a trade secret[10] to mean information which meets all of the following requirements: (a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; (b) it has commercial value because it is secret; (c) it has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

In the Republic of Poland, there is no separate normative act of a general nature that would regulate the protection of trade secrets as a whole. The sources of Polish law on the protection of trade secrets can be divided into the following categories: (1) legal regulations defining trade secrets; (2) legal regulations for the protection of trade secrets, which do not contain a definition of trade secrets, but confer a subjective right related to the protection thereof[11]; (3) legal norms implementing the protection of trade secrets; (4) procedural sources of information protection. The matter of trade secrets is regulated by, *inter alia*: (1) Article 11 and Article 23 of the Combating Unfair Competition Act of 16 April 1993[12] (hereinafter referred to as the Combating Unfair Competition Act); (2) Article 479 of the Code of Civil Procedure of 17 November 1964[13] (hereinafter referred to as the Code of Civil Procedure); (3) § 4 of the Regulation of the Prime Minister of 30 December 2020 on the manner of preparation and transmission of information and technical requirements for electronic documents and means of electronic communication in a public procurement procedure or competition[14]; (4) Article 20 of the Act on the Transparency of Financial Relations between Public Authorities and Public Entrepreneurs and on the Financial Transparency of Certain Entrepreneurs of 22 September 2006[15];

9 OJ L 157, 15.6.2016, p. 1.

10 W. Dzierżanowski, M. Sieradzka, P. Szustakiewicz (eds.), *Leksykon zamówień publicznych*, Warszawa 2021, pp. 359–360.

11 The Commercial Partnerships and Companies Code of 15 September 2000 (Journal of Laws of 2022, item 1467), Article 428 § 2.

12 Journal of Laws of 2022, item 1233.

13 Journal of Laws of 2021, item 1805, as amended.

14 Journal of Laws of 2020, item 2452.

15 Journal of Laws of 2021, item 2205.

(5) Article 14 of the Conformity Assessment System Act of 30 August 2002[16]; (6) Article 41 of the Act on Proceedings in Public Aid Cases of 30 April 2004[17]; (7) Article 27 of the General Product Safety Act of 12 December 2003[18]; (8) Article 44 of the Postal Law Act of 23 November 2012[19]; (9) Article 35 of the Public Finance Act of 27 August 2009[20]; (10) Article 100 § 2(4) of the Labour Code of 26 June 1974 (hereinafter referred to as the Labour Code).[21] Domestic legal conditions concerning trade secrets raise numerous doubts relating to the subjective right of its owners.[22] This is because a certain area of trade secret regulation creates a subjective right, whose transgression can be deemed as a violation of the personal rights of the entrepreneur. Meanwhile, some others treat it only 'as a right to use information of a certain value, which is protected in the scope of tortious liability.'[23] If we assume that a trade secret should be protected based on a subjective right in terms of ownership of information, any violation thereof will be treated as an action that encroaches on the scope of this right. The protection of information falling within the scope of a trade secret treated as a subjective right will lead to defining the rules concerning the use of this information also in internet spaces.

Trade Secret – Regulations of European Law

Protection of information as a trade secret was regulated for the first time in Article 39 of TRIPS. The article in question afforded protection only to such types of information that have specific economic value. Thus, it referred primarily to the

16 Journal of Laws of 2023, item 215.

17 Journal of Laws of 2021, item 743.

18 Journal of Laws of 2021, item 222.

19 Journal of Laws of 2022, item 896.

20 Journal of Laws of 2022, item 1634, as amended.

21 The Labour Code of 26 June 1974 (Journal of Laws of 2022, item 1510, as amended).

22 In the Polish jurisprudence, among others, the following scholars are of the opinion that a subjective right to trade secrets exists: (1) S. Sołtysiński, *Licencje na korzystanie z cudzych rozwiązań technicznych*, Warszawa 1970, pp. 170 et seq. (the subjective right to trade secrets based on Article 415 of the Civil Code and Article 3, and then Article 11 of the Combating Unfair Competition Act; (2) E. Wojcieszko Głuszko, *Ochrona prawna know-how w prawie polskim na tle prawnoporównawczym*, Kraków 2002, p. 164; (3) A. Michalak, *Ochrona tajemnicy przedsiębiorstwa. Zagadnienia cywilnoprawne*, Kraków 2006, pp. 152 et seq. On the other hand, the view that there is no basis to recognize trade secret as a subjective right, while holding that trade secret should be protected under the rules of tort liability is expressed by: (1) B. Gawlik, *Umowa know-how – zagadnienia konstrukcyjne*, Warszawa–Kraków 1974, pp. 65 et seq.; (2) U. Promińska, [in:] eadem (ed.), *Prawo własności przemysłowej*, Warszawa 2004, p. 23; (3) L. Górnicki, *Nieuczciwa konkurencja, w szczególności poprzez wprowadzające w błąd oznaczenie towarów lub usług, i środki ochrony w prawie polskim*, Wrocław 1997, p. 26.

23 K. Chałubińska-Jentkiewicz, M. Karpiuk, *1. Informacja jako tajemnica przedsiębiorstwa*, [in:] iidem, *Prawo nowych technologii. Wybrane zagadnienia*, Warszawa 2015.

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economic aspect of information. In European primary law, treaty provisions are of primary importance. The regulations of the Treaty on the Functioning of the European Union (hereinafter referred to as TFEU)[24] concerning trade secrets comprise, in particular, the principles of ensuring fair competition. According to Article 3(b) of TFEU, the Union shall have exclusive competence in the establishing of the competition rules necessary for the functioning of the internal market. This legal provision is extremely significant from the perspective of trade secret protection as provided for in EU secondary legislation. Provisions safeguarding trade secrets are also of great importance in the scope of protecting trade secrets. This can be seen, in particular, in recall Article 339 TFEU, which states, 'The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.' When interpreting the terms contained in the Treaty on the Functioning of the European Union, it may be helpful to refer to how the recognition of a given piece of information as protected information is defined, which was developed on the basis of Article 39 of TRIPS. It should be mentioned that the sources of secondary legislation regulating the protection of trade secrets are very terminologically diverse. In practice, each of the legal acts contains various terms which refer to the identification of protected information (i.e. commercial secret, *know-how*, commercial information, economic information). However, it should be stressed that, as a rule, these diverse terms refer to one and the same concept of trade secrets. Sources of secondary European law regulating the issue of trade secret protection can be divided into: (1) legal acts containing provisions on the protection of trade secrets in a particular field[25]; (2) legal acts regulating the principles of interference with trade secrets by the authorities tasked with controlling and protecting such secrets[26]; (3) other legal acts concerning trade secrets.[27] Regulation

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24 OJ C 326, 26.10.2012, pp. 47–390.

25 See, among others: Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products – Commission statement (OJ L 194, 18.7.2001, p. 26); Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (OJ L 200, 30.7.1999, p. 1).

26 See e.g.: Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

27 See e.g.: Commission Regulation (EC) No. 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements (OJ L 123, 27.4.2004, pp. 11–369), hereinafter referred to as the 772/2004 Commission Regulation.

No. 772/2004 of April 7, 2004, which regulates the issue of group inclusion in the field of technology licensing agreements, is of particular importance in the field of protection of trade secrets. Technology transfer agreements concern, in particular, the licensing of technology rights and usually improve economic efficiency and are pro-competitive as they can reduce duplication of research and development, strengthen the incentive for the initial research and development, spur incremental innovation, facilitate diffusion and generate product market competition.[28] The matter of trade secret, considering its special and significant nature in terms of shaping the internal market, has frequently been the subject of numerous interpretations in the case law of the European Court of Justice. The most important of them include: (1) Judgment of the Court of First Instance (Fourth Chamber) of 3 December 2003, Volkswagen AG v. Commission of the European Communities;[29] (2) Judgment of the General Court (Third Chamber) of 15 July 2015, Pilkington Group Ltd v. European Commission;[30] (3) Judgment of the Court of First Instance (First Chamber) of 17 December 1991, SA Hercules Chemicals NV v. Commission of the European Communities;[31] (4) Judgment of the Court (Fifth Chamber) of 11 November 1986, British Leyland Public Limited Company v. Commission of the European;[32] (5) Judgment of the Court (Fifth Chamber) of 6 April 2000, Commission of the European Communities v. Solvay SA;[33] (6) Judgment of the Court of First Instance (First Chamber) of 10 March 1992, Imperial Chemical Industries plc v. Commission of the European Communities;[34] (7) Judgment of the Court of First Instance (Fourth Chamber, extended composition) of 15 March 2000, Cimenteries CBR and Others v. Commission of the European Communities;[35] (8) Order of the Court of 6 December 1990, J.J. Zwartveld and Others.[36]

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28 Ibidem, Recitals (reasons and motives), point (4).

29 Case T-208/01, ECLI: ECLI:EU:T:2003:326, object: Competition – Article 81.

30 Case T-462/12, ECLI: ECLI:EU:T:2015:508, object: Competition – Administrative procedure – European automotive glass market – Publication of a decision finding an infringement of Article 81 EC – Rejection of a request for confidential treatment of data allegedly covered by business secrecy – Obligation to state reasons – Confidentiality – Obligation of professional secrecy – Legitimate expectations.

31 Case T-7/89, ECLI: ECLI:EU:T:1991:75, object: Competition.

32 Case 226/84, ECLI: ECLI:EU:C:1986:421.

33 ECLI: ECLI:EU:C:2000:189, Appeal – Actions for annulment, Joined cases C-287/95 P and C-288/95 P.

34 Case T-13/89, ECLI: ECLI:EU:T:1992:35, object: competition.

35 ECLI: ECLI:EU:T:2000:77, object: competition – fine, Joined cases T-25/95, T-26/95, T-30/95, T-31/95, T-32/95, T-34/95, T-35/95, T-36/95, T-37/95, T-38/95, T-39/95, T-42/95, T-43/95, T-44/95, T-45/95, T-46/95, T- 48/95, T-50/95, T-51/95, T-52/95, T-53/95, T-54/95, T-55/95, T-56/95, T-57/ 95, T-58/95, and T-104/95.

36 Case C-2/88 Imm, ECLI: ECLI:EU:C:1990:440, object: Request for judicial cooperation: Rechter-commissaris bij de Arrondissementsrechtbank Groningen – Netherlands. Commission – National judge – Inviolability of documents.

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Domestic Legal Solutions in the Field of Trade Secret Protection

A trade secret under Article 11(2) of the Combating Unfair Competition Act is defined as technical, technological, organizational information of an enterprise or any other information of economic value which, as a whole or in a particular compilation and collection of its elements, is not generally known or readily available to persons that normally deal with the kind of information in question, provided that the person entitled to use or dispose of the information has taken, while exercising due diligence, measures to keep it confidential.[37] Therefore, the definition of a trade secret is comprised of three elements: the concept of information, the exercise of due diligence, and confidentiality. In its ruling of 3 October 2000, the Supreme Court stated that information is 'technological in nature when it concerns broadly defined manufacturing methods, chemical formulas, designs and methods of operation. Commercial information includes, in the most general terms, the totality of experience and knowledge useful in the conduct of an enterprise, not directly related with the cycle of production.' On the other hand, information (communication) 'not disclosed to the public' constitutes information that is unknown to the general public or to person who, due to the conducted activity, are interested in obtaining it. Such information becomes a 'trade secret' when the entrepreneur intends for it to remain a secret to certain circles of recipients and competitors, and this intention is perceptible to others. Without this intention, even if only implied, the information may be unknown, but it will not be a secret. Information that has not been disclosed to the public loses legal protection when another entrepreneur (competitor) can learn about it through the usual and permissible channels, e.g. when a certain piece of information is presented in professional journals or when every expert may learn, from the goods displayed to the public, what production method was used.[38] At this point, it should be noted that the list of types of information that can be considered a trade secret is not exhaustive in nature. Thus, trade secrets include all information that has a certain economic value for an enterprise, such as: (1) business strategies and plans; (2) the content of internal normative acts; (3) commercial offers; (4) remuneration policies; (5) the terms and conditions of contracts with business partners; (6) the entire knowledge and experience with regard to technology and production process for a specific product (*know-how*); (7) not publicly disclosed technical data of products, (8) information

[37] The Combating Unfair Competition Act of 16 April 1993 (Journal of Laws of 2022, item 1233), Article 11(2).

[38] Judgment of the Supreme Court of 3 October 2000, I CKN 304/00, OSNC 2001, No. 4, item 59.

related to sources of raw materials, market organisation and advertising[39]; (9) the content of internal instructions and training. Article 2 of Directive 2016/943 refers to information having commercial value, which in Polish legal regulations is replaced by 'information with economic value.' It should be emphasized that this term is much broader than the one in the Directive, as it relates to the economic value of information.[40] The basic legal provisions that regulate the matter of trade secrets are Article 11 of the Combating Unfair Competition Act, Article 101^2 of the Labour Code and article 479,[33] Article 721 of the Civil Code of 23 April 1964 (hereinafter referred to as the Civil Code).[41] It should be pointed out at this point that article 101^2 of the Labour Code is limited in that it refers only to employees,[42] while the limitation in article 721 of the Civil Code concerns the subject matter because its scope included only information obtained in the course of negotiations. The issue of trade secret protection is further regulated in Article 79 of the Industrial Property Law of 30 June 2000,[43] according to which provisions on a license agreement apply accordingly to contracts for the use of an invention notified to the Patent Office for which a patent has not yet been granted, as well as to contracts for the use of a non-notified invention constituting a trade secret, unless the parties have agreed otherwise. Furthermore, the domestic legal provisions regulate the rules of liability that might be used in certain situations to ensure that confidential information is protected. These regulations include, *inter alia*, Article 23, Article 24, Article 43 and Article 415 of the Civil Code. When analysing the matters related to the protection of trade secrets, we must not forget that in the area of public law the most important document in the Classified Information Protection Act of 5 August 2010,[44] as it provides for the obligation of state bodies to maintain confidentiality. In jurisprudence, it is assumed that the delineation between information protected as a trade secret and information that does not fall within the scope of this protection should be made based on statutory provisions and so-called best practices. It has been accepted in case law that if information does not deserve protection for reasons of public interest, it cannot be considered a trade secret.[45] The provisions of law on trade secret protection will therefore not apply to the following information: (1) current

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39 U. Promińska, W.P. Matysiak, *Umowa o udostępnienie tajemnicy przedsiębiorstwa*, [in:] W.J. Katner (ed.), *Prawo zobowiązań – umowy nienazwane. System Prawa Prywatnego*, Vol. 9, Warszawa 2015, p. 785.

40 E. Maćkowiak, *Ekonomiczna wartość dodana*, Warszawa 2009, p. 23.

41 Journal of Laws of 2022, item. 1360.

42 § 1. The provision of Article 101^1 § 1 shall apply accordingly to any post-employment non-competition agreement concluded by an employer and an employee who has access to particularly sensitive information whose disclosure could cause damage on the part of the employer.

43 Journal of Laws of 2021, item 324.

44 Journal of Laws of 2019, item 742, as amended.

45 Judgment of the Supreme Administrative Court of 11 January 2017, II GSK 3487/15, LEX No. 2227209.

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excerpts from the National Court Register; (2) information that an interested person may obtain by ordinary and permitted means[46]; (3) information disclosed by the contracting authority during the opening of tenders, i.e. the name of the entrepreneur/business name, the address/registered office of the contractor, the price of the tender, the deadline for execution of the public contract, the warranty period, the terms of payment as specified in the tender; (4) information disclosed by an entrepreneur in connection with submitting an application for industrial property rights[47]; (5) cost estimates and unit prices, on the basis of which the calculation of the price for construction works is made.

In accordance with Directive 2016/943, an entrepreneur is under the obligation to exercise necessary measures to protect trade secrets. In court decisions, this obligation is deemed fulfilled in the following circumstances: 'any measure which indicates that certain information is treated as confidential will constitute the implementation of the statutory recommendation in question. For this reason, the statutory requirement to exercise necessary measures will also be satisfied by taking certain implied actions, such as allowing only a narrow circle of employees to access the information. In order to satisfy the 'necessary measure' requirement, one needs to implement physical measures of protection (even the most modest means of technical security) (…). In specific circumstances, the very nature of the information in conjunction with the level of professional knowledge of those who came into possession of it may determine the obligation to keep secret.'[48] The judgment referred to above allows us to conclude that entrepreneurs have a great deal of freedom in the selection of measures aimed at ensuring the protection of trade secrets. For this purpose, they may, *inter alia*: (1) conclude non-disclosure agreements,[49] confidential disclosure agreements,[50] or confidential agreements[51] with persons who have access to information of economic importance; (2) include contractual penalty clauses for violation of trade secrets in agreements; (3) conclude non-compete agreements with employees with regard to periods during and after the termination of the employment relationship; (4) establish procedures for access to particularly relevant information/data.

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46 Information disclosed on the website, in prospectuses, or discoverable by experts in a given field without having to partake in any complex research.

47 Protection rights for patents, industrial designs, utility models, etc. However, they will be subject to protection pursuant to relevant industrial property rights. Their free use is therefore limited.

48 Judgment of the Voivodeship Administrative Court in Warsaw of 8 June 2017, II SA/Wa 118/17, LEX No. 2402307.

49 *Non-disclosure agreement* (NDA).

50 *Confidential disclosure agreement* (CDA).

51 *Confidential agreement* (CA).

The obligation to keep trade secrets confidential will remain in force for the period specified in Directive 2016/934 or, following the implementation in Poland, in the Combating Unfair Competition Act. The expiry of trade secret protection will thus be the result of the expiration of the period if indicated by an enterprise or of the loss of certain features of trade secret. The latter will occur in the case of: (1) the loss of economic value of the information; (2) the entrepreneur making the information public; (3) the entrepreneur ceasing to enter into agreements intended to protect the information from dissemination or to apply other measures aimed at preserving confidentiality.

Violation of a Trade Secret

Article 11 of the Combating Unfair Competition Act provides for the protection of trade secrets. According to Article 11(1) of the Combating Unfair Competition Act, violation of a trade secret includes the acquisition,[52] use or disclosure[53] of information constituting a trade secret, or obtaining such information from an unauthorized person, when it jeopardizes vital interests of an entrepreneur. Violation of a trade secret, according to Article 3(2) of the Combating Unfair Competition Act, also constitutes one of the acts of unfair competition, i.e. an act contrary to law or good practices that jeopardizes or violates the interest of another entrepreneur or customer.

Acquisition of information constituting a trade secret will not constitute an act of unfair competition if 'it occurred as a result of independent discovery or creation or observation, examination, disassembly, testing of an item that has been made publicly available or lawfully possessed by the person who acquired the information and whose right to acquire such information was not limited at the time of acquisition.'[54] The disclosure, use or acquisition of information constituting a trade secret will also not be classified as an act of unfair competition 'where it was done to protect a legitimate interest protected by law, in the exercise of freedom of expression, or in order to reveal shortcomings, failures, actions performed in violation of

[52] Obtaining of information constituting a trade secret shall constitute an act of unfair competition, in particular, when it occurs without the authorized person's consent to use or dispose of the information and results from unauthorized access, misappropriation, copying of documents, items, materials, substances, electronic files covering such information or allowing to infer about its content.

[53] The use or disclosure of information constituting a trade secret shall constitute an act of unfair competition, in particular, when it occurs without the authorized person's consent to use or dispose of the information and violates the obligation to restrict the use or disclosure thereof under the law, legal transaction, or another legal act, or when it is done by the person who obtained the information by committing an act of unfair competition.

[54] Article 11(7) of the Combating Unfair Competition Act.

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law for the protection of public interest, or where the disclosure of information constituting a trade secret to employee representatives in connection with their functions under the law was necessary for the proper performance of those functions.'[55]

Violation of a trade secret is subject to criminal and civil liability. According to Article 23(1) of the Combating Unfair Competition Act, whoever, when under the obligation to keep trade secrets, made a disclosure to another person or used information constituting a trade secret in their own business activities, if doing so caused damage to the entrepreneur, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years. Whoever, having unlawfully obtained information constituting a trade secret, disclosed such information to another person or used it in their own business activities shall be subject to the same penalty.

In the case of civil liability, which is indicated in Article 18(3–5) of the Combating Unfair Competition Act the basic issue is the act of unfair competition consisting in the violation of a trade secret. An entrepreneur whose interest has been threatened or violated may request: (1) cessation of prohibited activities; (2) remove the effects of prohibited activities; (3) submitting a single or multiple declaration of appropriate content and form; (4) compensation for the damage caused, on general terms; (5) handing over unjustly obtained benefits on general terms; (6) awarding an appropriate sum of money for a specific social purpose related to the promotion of Polish culture or the protection of national heritage – if the act of unfair competition was culpable. We should agree with the considerations of K. Romanowska and D. Drążkiewicz-Wenzel that each of the above claims may be pursued in a separate lawsuit.[56] Moreover, the court, at the request of the injured company, may oblige the defendant to make public information about the judgment or its content, in a specified manner and to the extent that it may not lead to the disclosure of a company secret. The injured entrepreneur may request payment of appropriate remuneration (Article 18(4) of the Combating Unfair Competition Act) or compensation for the damage by payment of a sum of money in the amount corresponding to the remuneration that would be due at the time of the claim for the consent of the authorized person to use information constituting a trade secret (Article 18(5) of the Combating Unfair Competition Act.

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55 Article 11(8) of the Combating Unfair Competition Act.

56 See: K. Romanowska, D. Drążkiewicz-Wenzel, *Tajemnica przedsiębiorstwa – wybrane zagadnienia*, „Monitor Prawniczy" 2014, 19, p. 56.

Object of Protection of Trade Secrets in the Analysis of Selected Judgments

When studying judgments in relation to the subject in question in cases concerning disputes and criminal offences with regard to trade secrets, we must consider the legal tools stipulated in criminal regulations, i.e. Article 23 of the Combating Unfair Competition Act, as well as the list of crimes against the protection of information, subject to sanctions as specified in, *inter alia*, Articles 267 and 268 of the Criminal Code of 6 June 1997.[57] In this paper, the authors analyse the judgment of the District Court in Olsztyn of 20 August 2014[58] as well as the judgment of the District Court for Wrocław-Śródmieście of 14 August 2013,[59] together with the appeal (i.e. the judgment of the District Court in Wrocław of 5 February 2014[60]). In the judgments referred to above, a matter of fundamental importance is whether the entrepreneur actually implemented a trade secret, in accordance with its legal definition provided for in Article 11(2) of the Combating Unfair Competition Act, and what its violation entailed.

In the judgment of the District Court in Olsztyn of 20 August 2014,[61] the entrepreneur indicated that the trade secret was information in a computer system with the contents of an E-format file containing a record of equations used to optimize compound feedingstuffs, purchased on an exclusive basis in Poland from France, with a value of PLN 1,427,920.85. The data file, which was a trade secret, included information on the parameters of various raw materials used in the production of compound feedingstuffs as well as equations for calculating the energy value of raw materials and, consequently, producing feedingstuffs with the best parameters for specific livestock at different developmental periods. The aggrieved entrepreneur (plaintiff) was able to clearly define both the value of the information constituting a trade secret (a computer system with authorized access) and the implemented methods of protection (notifying employees of the prohibition on disclosing and copying confidential information contained in the calculation file). In the proceedings before the court, the entrepreneur, after an audit had revealed irregularities, submitted a report of a suspected crime committed by one of the employees, who, after resigning from her position as a feedingstuff production technologist, commenced employment in a competing company. In the course of preparatory proceedings, the former employee was charged with committing a criminal act under

57 Journal of Laws of 2022, item 1138, as amended.
58 Ref. No. II K 404/13.
59 Ref. No. II K 87/12 (1 Ds. 2864/10).
60 Ref. No. IV Ka 1233/13.
61 Ref. No. II K 404/13.

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Article 23 § 2 of the Combating Unfair Competition Act. Considering the defendant pleaded 'not guilty', the court appointed experts to verify the evidence received from the data files on the computers used by the defendant. The experts were able to establish the identity of the data files and the fact that they were used at the position she took at a competing company. Furthermore, the court experts, in the justification of their opinions, presented feedingstuff formulas that had been modified, the time when the nutrients had been updated, and the last update of the formula. For this reason, the circumstances, in conjunction with other evidence concerning the accused employee commencing employment with a new employer, allowed the court to conclude that when leaving the previous position, the employee took a copy of the calculation file in order to use the information contained therein at the new place of work. Considering the above, the defendant was found guilty of committing a criminal offence under Article 266 § 1 of the Criminal Code[62] and punished with a fine of 300 (three hundred) daily rates, with one rate being set at PLN 100 (one hundred). It is worth noting that the amount of compensation was not determined by the court at the value suggested by the aggrieved employer. The court, pursuant to Article 46 § 2 of the Criminal Code, ordered the defendant to pay exemplary damages to the aggrieved employer in the amount of PLN 25,000, while stating that the amount suggested by the injured party by way of compensation in the amount of PLN 250,000 had not been justified – as stated in the reasons to the judgment, 'both parties submitted motions to appoint experts in order to calculate the damage, but none of them, and in particular the injured party, suggested any possible method of making such a determination.' In the next judgment, of the District Court for Wrocław-Śródmieście of 14 August 2013,[63] the aggrieved entrepreneur, at the time of filing a report of the crime, was able to specify what constitutes a trade secret of his enterprise (i.e. information in the IT system about wholesale prices, purchase prices, minimum prices, order structure) in accordance with the legal definition in force at that time in the provisions of domestic law. As in the proceedings referred to above before the Olsztyn court, the defendant was a former employee who used information constituting a trade secret in his own business activities conducted in the form of a civil partnership. The employee was accused of committing a criminal offence under Article 23(1) of the Combating Unfair Competition Act, and was subsequently found guilty of this act and fined by a panel of the court. As in the previously analysed case, in light of the circumstances

[62] § 1. Whoever, in violation of the law or obligation he has undertaken, discloses or uses information with which he has become acquainted with in connection with the function or work performed, or public, community, economic, or scientific activity pursued shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

[63] Ref. No. II K 87/12 (1 Ds. 2864/10).

surrounding the use of a trade secrets, it was necessary to collect opinions of witnesses and court-appointed experts, which confirmed that the former employee, after setting up his own business, at a specific point illegally logged into the former employer's computer system by using an account (login and password) of a co-worker, from which he was able to gain access to modules containing customer data and the orders they placed, products, store pages and sales values. The accumulated evidence in the case showed, among other things, the same IP address of the defendant's computer, through which logins to the system of the aggrieved employer occurred at specific times, and thus it was proved, *inter alia*, that the defendant had illegally obtained various information, including trade secrets. It should also be noted that in the case at hand, the accused employee was also proven to have committed a criminal act under Article 267 § 2 of the Criminal Code[64] (i.e. unlawful access to an account in the computer system of the former employer's enterprise). This Article criminalizes behaviour involving unlawful access to the entirety or a part of an IT system. The object of protection thus comprises confidentiality of information, the right to dispose of information to the exclusion of others, and the security of its transmission. The specific object of protection under Article 23 of the Combating Unfair Competition Act, on the other hand, is the interest of an entrepreneur in ensuring that no one unlawfully obtains and uses a trade secret. Both types of acts refer to the regulation contained in Article 11 of the Combating Unfair Competition Act, which concerns an act associated with the transfer, disclosure or use of someone else's information covered by a trade secret or acquisition of such information from an unauthorized person. In the case referred to above, the defendant claimed that he had no knowledge of what information constituted a trade secret. However, in sentencing the panel of court took into consideration the explanations of the plaintiff (the aggrieved entrepreneur) which stated that the confidentiality of the information was preserved by restricting access to the system both in the context of content thereof and the requirement to login. The panel adjudicating the case deemed defendant's testimony as an attempt to avoid criminal responsibility. For this reason, the court imposed an aggregate penalty under Article 23(1) of the Combating Unfair Competition Act and Article 267(2) of the Criminal Code, and charged the defendant with a fine of 250 daily rates, with one daily rate being PLN 50.

[64] § 1. Whoever, without being authorized to do so, acquires information not destined for him, by opening a sealed letter, or connecting to a wire that transmits information or by breaching electronic, magnetic or other special protection for that information shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

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Trade Secret Protection Policy

As demonstrated above, the most important task that an entrepreneur faces is to establish an appropriate policy for the protection of trade secrets. The policy in question is a set of good practices, principles and rules adopted in a given enterprise, contributing to the protection of information constituting trade secrets from unauthorized access.[65] It remains in close correlation with the information security and data protection policies adopted by the enterprise and related policies and procedures, jointly aimed at preserving information security. The primary objective of the trade secret protection policy is to guarantee the security (confidentiality, integrity, and availability) of information constituting trade secrets. This policy should take into account the following principles of trade secret protection: (1) the principle of confidentiality;[66] (2) the principle of minimising access;[67] (3) the principle of proportionality;[68] (4) the principle of accountability.[69] Protection of trade secrets should be effected within the framework of the system aimed at protecting trade secrets, such system to comprise: (1) the principles regarding the classification of information constituting a trade secret; (2) the tasks of the unit responsible for the enforcement of the trade secret protection policy; (3) the tasks of the owners of trade secrets; 4) the duties of each employee in the implementation of and compliance with the trade secret protection policy; (5) the organizational measures for the protection of trade secrets; (6) the technical measures for the protection of trade secrets; (7) the obligations imposed on specific entities inside and outside the enterprise/organization in connection with the protection of trade secrets; (8) the rules of enforcing liability with regard to a violation of obligations for the protection of trade secrets.

The security of a trade secret classified as inside information is guaranteed based on standard technical and organizational measures for the protection of information specified in the information security policy of the enterprise. On the other hand, in the case of information classified as proprietary or confidential, the owner of the trade secret should use dedicated technical and organisational measures provided for in the information security policy of the enterprise. The technical measures

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65 Cf. M. Śliwiński, M. Ćwiakowski, M. Gawroński, *Polityka ochrony tajemnicy przedsiębiorstwa*, LEX/el. (access: 12.02.2023).

66 The general obligation to keep information covered by trade secrets confidential.

67 Default restriction of access to information classified as trade secrets and granting access to trade secrets only to the extent necessary for the uninterrupted performance of employees' duties.

68 Applying a different set of technical and organisational protection measures commensurate with the risk of unauthorized disclosure to each category of information classified as trade secret.

69 Fall-back liability in case of violating obligations related to the protection of trade secrets.

for ensuring the security of trade secrets include: (1) cryptographic procedures;[70] (2) multi-factor user authentication methods in IT systems and IT resources; (3) a Data Loss Prevention (DLP) policy; 4) the Security Information and Event Management;[71] (5) endpoint protection tools; (6) antivirus software; (7) physical security measures with regard to resources which allow access to trade secrets. Meanwhile, organizational measures for protecting trade secrets include, *inter alia*: (1) classifications of information as part of trade secrets; (2) management of privileges and access rights to trade secrets;[72] (3) the division of activities and obligations within an enterprise; (4) documentation (information carrier) management and business equipment procedures which allow access to trade secrets; (5) the use of confidentiality agreements; (6) procedures for managing trade secret incidents; (7) training of employees regarding the principles of protecting trade secrets. Both technical and organizational measures for the protection of trade secrets are applied proportionately in accordance with the information security policy of the enterprise. The enterprise should put in place rules for the management of documents and business equipment to ensure secure access and to prevent unauthorized disclosure of information constituting trade secret. Employees of the enterprise are required to use documents and business equipment in accordance with the principle of confidentiality. As regards documents, the obligation referred to above will consist in, *inter alia*: (1) proper archivization as well as regular and permanent disposal of documents after their use by the employee in the manner commonly established in the enterprise; (2) the performance of all document handling activities only to the extent necessary for the performance of professional duties; (3) refraining from leaving documents that are being used in publicly accessible places.

Meanwhile, when using business equipment, the principle of confidentiality is expressed in particular by: (1) restricting unauthorized access to business equipment[73] and restricting unauthorized access to information constituting trade secret;[74] (2) using business equipment only to the extent necessary for the uninterrupted performance of professional duties; (3) collecting, using and returning business equipment in accordance with the internal procedures in force in the enterprise.

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70 Encrypting internal drives, using cryptographic tools when storing data on external drives, encrypting documents sent to third parties.

71 Using information security monitoring tools and security incident management with regard to information processing systems.

72 Managing access to premises, systems, and IT resources.

73 Blocking mobile devices.

74 Managing information placed on business equipment.

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Should information be obtained in violation of the obligations for the protection of trade secrets, the unit designated to perform tasks related to the implementation of the trade secret security policy shall determine the circumstances surrounding such violations. In the event that violations of obligations for the protection of trade secrets have been ascertained, the designated unit shall recommend to the management of the enterprise the scope of measures aimed at enforcing liability for the violations. These include: (1) holding employees liable to disciplinary action or holding employees organisationally accountable; (2) exercising the rights stemming from the obligation to preserve confidentiality or non-disclosure agreements; (3) the use of available measures for enforcing civil[75] and criminal[76] liability.

Conclusions

The analysis of the undertaken topic of protection of trade secrets in the field of selected private law problems allows to confirm the thesis that the content of the definition of trade secrets contained in Article 11(2) of the Combating Unfair Competition Act has not been directly transposed from Directive 2016/943. As a matter of fact, the domestic legal provisions further clarify the term 'information', which cannot be found in the content of the Directive. However, this clarification does not impact a different meaning to a trade secret as compared to Directive 2016/943. In this regard, a trade secret is not an end in itself, but affords protection to the entrepreneur from negative consequences for conducted activity that may result from providing certain information. Considering the above, the domestic law includes instruments for the protection of trade secrets (the right to refuse to provide certain information). They are specified, *inter alia*, in Article 5(2) of the Public Information Access Act of 6 September 2001,[77] which introduces the principle of limiting the right of access to public information for reasons associated with the privacy of an individual or a trade secret. This restriction does not pertain to information about persons performing public functions, related to the performance of these functions, including the conditions of delegation and performance of functions, and to situations where an individual or entrepreneur waives this right.[78] The relevance of the given category of information must therefore be proportionally greater than

75 Pursuant to Article 18 of the Combating Unfair Competition Act of 16 April 1993.

76 Pursuant to Article of the Combating Unfair Competition Act of 16 April 1993.

77 Journal of Laws of 2022, item 902.

78 See e.g.: Judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 3 September 2014, ref. No. II SA/Go 519/14.

the circumstances of the release of public information.[79] It should be stressed at this point that the entrepreneur will bear the burden of proving the fact[80] that this information is not generally known and readily available to those normally dealing with this type of information. We should also invoke the judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 3 September 2014,[81] which states that 'the necessary condition for recognising the existence of a trade secret is the indication of specific entrepreneur-owned information with economic value, which is to benefit from confidentiality.'

Bibliography

Literature

Chałubińska-Jentkiewicz K., Karpiuk M., *Informacja jako tajemnica przedsiębiorstwa*, [in:] K. Chałubińska-Jentkiewicz, M. Karpiuk, *Prawo nowych technologii. Wybrane zagadnienia*, Warszawa 2015.

Dzierżanowski W., Sieradzka M., Szustakiewicz P. (eds.), *Leksykon zamówień publicznych*, Warszawa, 2021.

Gawlik B., *Umowa know-how – zagadnienia konstrukcyjne*, Warszawa-Kraków 1974.

Górnicki L., *Nieuczciwa konkurencja, w szczególności poprzez wprowadzające w błąd oznaczenie towarów lub usług, i środki ochrony w prawie polskim*, Wrocław 1997.

Maćkowiak E., *Ekonomiczna wartość dodana*, Warszawa 2009.

Michalak A., *Ochrona tajemnicy przedsiębiorstwa. Zagadnienia cywilnoprawne*, Kraków 2006.

Promińska U. (ed.), *Prawo własności przemysłowej*, Warszawa 2004.

Promińska U., Matysiak W.P., *Umowa o udostępnienie tajemnicy przedsiębiorstwa*, [in:] Katner W.J. (ed.), *Prawo zobowiązań – umowy nienazwane. System Prawa Prywatnego*, Vol. 9, Warszawa 2015.

Romanowska K., Drążkiewicz-Wenzel D., *Tajemnica przedsiębiorstwa – wybrane zagadnienia*, "Monitor Prawniczy" 2014, 19.

Sołtysiński S., *Licencje na korzystanie z cudzych rozwiązań technicznych*, Warszawa 1970.

Sondej M.Z., *Trzeba wyjaśnić, jak udzielenie informacji może naruszyć tajemnicę przedsiębiorcy*, LEX/el. 2018.

Śliwiński M., Ćwiakowski M., Gawroński M., *Polityka ochrony tajemnicy przedsiębiorstwa*, LEX/el.

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79 See e.g.: M.Z. Sondej, *Trzeba wyjaśnić, jak udzielenie informacji może naruszyć tajemnicę przedsiębiorcy*, LEX/el. 2018; Judgment of the Voivodeship Administrative Court in Opole of 22 February 2018, II SA/Op 4/18, LEX No. 2454422.

80 The Civil Code of 23 April 1964 (Journal of Laws of 2022, item 1360), Article 6.

81 Judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 3 September 2014, ref. No. II SA/Go 519/14.

Legal Acts

Agreement on Trade – Related Aspects of Intellectual Property constituting Annex 1C to the Agreement establishing the World Trade Organization of 15 April 1994 (Journal of Laws of 1996, no. 32, item 143).

Commission Regulation (EC) No 772/2004 of 27 April 2004 on the application of Article 81(3) of the Treaty to categories of technology transfer agreements (OJ L 123, 27.4.2004, pp. 11–369).

Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (OJ L 200, 30.7.1999, p. 1).

Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products – Commission statement (OJ L 194, 18.7.2001, p. 26).

European Parliament, Report on the proposal of a Directive of the European Parliament and Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, COM(2013)0813––C7-0431/2013 2013/0402(COD) 2015.

Paris Convention for the Protection of Industrial Property of 20 March 1883, amended in Stockholm on 14 July 1967.

The Act on Proceedings in Public Aid Cases of 30 April 2004 (Journal of Laws of 2021, item 743).

The Act on the Transparency of Financial Relations between Public Authorities and Public Entrepreneurs and on the Financial Transparency of Certain Entrepreneurs of 22 September 2006 (Journal of Laws of 2021, item 2205).

The Civil Code of 23 April 1964 (Journal of Laws of 2022, item 1360).

The Classified Information Protection Act of 5 August 2010 (Journal of Laws of 2019, item 742).

The Code of Civil Procedure of 17 November 1964 (Journal of Laws of 2021, item 1805, as amended).

The Combating Unfair Competition Act of 16 April 1993 (Journal of Laws of 2022, item 1233).

The Commercial Partnerships and Companies Code of 15 September 2000 (Journal of Laws of 2022, item 1467).

The Conformity Assessment System Act of 30 August 2002 (Journal of Laws of 2023, item 215).

The Criminal Code of 6 June 1997 (Journal of Laws of 2022, item 1138, as amended).
The General Product Safety Act of 12 December 2003 (Journal of Laws of 2021, item 222).
The Industrial Property Law of 30 June 2000 (Journal of Laws of 2021, item 324).
The Labor Code of 26 June 1974 (Journal of Laws of 2022, item 1510, as amended).
The National Court Register Act of 20 August 1997 (Journal of Laws of 2022, item 1683).
The Postal Law Act of 23 November 2012 (Journal of Laws of 2022, item 896).
The Public Finance Act of 27 August 2009 (Journal of Laws of 2022, item 1634, as amended).
The Public Information Access Act of 6 September 2001 (Journal of Laws of 2022, item 902).
The Public Procurement Law Act of 11 September 2019 (Journal of Laws of 2022, item 1710).
The Regulation of the Prime Minister of 30 December 2020 on the manner of preparation and transmission of information and technical requirements for electronic documents and means of electronic communication in a public procurement procedure or competition (Journal of Laws of 2020, item 2452).
Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, pp. 47–390).

Court Judgments

Judgment of the District Court in Olsztyn of 20 August 2014, ref. No. II K 404/13.
Judgment of the Regional Court in Wrocław of 5 February 2014, ref. No. IV Ka 1233/13.
Judgment of the Supreme Administrative Court of 11 January 2017, II GSK 3487/15, LEX No. 2227209.
Judgment of the Supreme Court of 3 October 2000, I CKN 304/00, OSNC 2001, No. 4, item 59.
Judgment of the Supreme Court of 9 June 2000, IV CKN 1159/00, LEX No. 52472.
Judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 3 September 2014, ref. No. II SA/Go 519/14.
Judgment of the Voivodeship Administrative Court in Opole of 22 February 2018, II SA/Op 4/18, LEX No. 2454422.
Judgment of the Voivodeship Administrative Court in Warsaw of 8 June 2017, II SA/Wa 118/17, LEX No. 2402307, as amended.
Order of the Court of 6 December 1990, J.J. Zwartveld and Others, Case C-2/88 Imm., ECLI: ECLI:EU:C:1990:440.

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