

The issue of unconstitutionality of information disclosure claims under art. 286¹ of the industrial property law – selected aspects

SUMMARY

The information disclosure claim is a legal instrument with the use of which the authorized under the patent, the utility model protection right, the right in registration of industrial design or the trademark protection right may request the court to oblige a specified entity to disclose information that is necessary to effectively satisfy their claims in court. Because of the intangible nature of industrial property rights determining the infringer of these rights and the scale of the infringement can be significantly difficult.

Many controversies have appeared around the issue in question under the industrial property law, which resulted altogether in submitting a constitutional complaint in 2015 that is being currently processed by the Constitutional Tribunal. Enforcement of such a claim causes that the protection of the authorized entity inevitably leads to a limitation of the rights of another entity – the one obliged to provide information. Therefore, it is of vital importance to respect the principle of proportionality when limiting the civil rights and freedoms.

In this article the legitimacy of the unconstitutionality of the abovementioned legal institution has been considered, as well as its legal compliance, among others, with the right to the court and the freedom of business activity in combination with the principle of proportionality in limiting constitutional rights.

Considering doubts regarding the compliance of the information disclosure claims with the Constitution there have been also presented the issues regarding the defective implementation of the EU directive concerning the claims for information. All issues have been discussed in view of the economic relations in which entities authorized to request information, as well as these which are obliged to disclose it participate.

KEYWORDS: claim for information, constitutional complaint, infringement of industrial property rights, trade secrets