

ABSTRACT OF THE DOCTORAL DISSERTATION

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Dissertation Title: ORDERS TO PROVIDE INFORMATION IN INTELLECTUAL PROPERTY PROCEEDINGS (UNDER THE SPECIAL PROCEDURE IN THE POLISH CODE OF CIVIL PROCEDURE)

This dissertation examines the right to information under Article 8 of Directive 2004/48/EC on the enforcement of intellectual property rights and its realization in Polish civil proceedings through the procedural mechanism of an order to provide information (*wezwanie do udzielenia informacji*). The study aimed to determine whether the EU standard of protection and the national measures adopted to implement it ensure that right holders have effective access to the information necessary to pursue their claims. It also sought to identify the sources of the limitations observed: insufficient precision in the Directive, the manner of its implementation, and judicial practice.

The central thesis is that Article 8 of the Enforcement Directive established a minimum standard for the right to information but did not define the conditions for its effective realization with sufficient precision. The broad discretion afforded to Member States contributed to the persistence of divergent national models. In Poland, neither the initial transposition in 2007 nor the reform effective as of July 1, 2020, fully overcame the limitations hindering the exercise of this right, although the latter reform provided a more coherent procedural framework.

The study tested six interrelated propositions. The first concerned the limited harmonizing effect of Article 8 and its reliance on national legislatures to resolve essential issues affecting the operation of the right to information. The second addressed the significance of preexisting legal traditions for the contemporary form of this institution in the jurisdictions examined. The third posited that the Polish transposition of 2007 was fragmented and made insufficient use of prior domestic experience, whereas the 2020 reform primarily consolidated the procedural rules. The fourth concerned the need to distinguish the substantive legal basis of the right to information from the specific procedural mechanism through which it is exercised. The fifth posited that the effectiveness of an order to provide information depends on the coordination of all stages of obtaining information, from identifying the party subject to the disclosure obligation to securing proper compliance with the order. The sixth addressed the need to adapt both the mechanism for identifying infringers and the scope of disclosable information to infringements occurring in the digital environment.

The principal research method was doctrinal legal analysis, supplemented by legal historical, comparative, and empirical research, as well as functional and axiological assessment. The sources examined included legislation, legislative materials, case law, and scholarly literature. The comparative research covered German, French, and British law. The empirical component included data on the use of orders to provide information in five Polish intellectual property courts and an analysis of their decisions. The study focused on the civil enforcement of intellectual property rights. Other mechanisms for obtaining and preserving evidence were considered insofar as necessary to establish the distinct nature of the right to information.

The dissertation consists of six chapters, preceded by an introduction and followed by a presentation of the research findings and proposals for reform.

Chapter One traces the origins of the right to information, the legislative process leading to Article 8 of the Enforcement Directive, and subsequent assessments of its operation. It examines how the EU legislature balanced the need for effective intellectual property protection against the protection of privacy, personal data, confidential information, and the rights of the defense. The analysis identifies a fundamental difficulty arising from the combination of the broad reach of the right to information and

insufficiently precise conditions governing its exercise. The Directive established a common minimum level of protection but left Member States to resolve numerous issues determining the practical availability of information. The chapter also demonstrates that challenges associated with the digital environment had already been recognized during the legislative process. Subsequent difficulties therefore cannot be attributed solely to unforeseeable technological developments.

Chapter Two examines the right to information in Germany, France, and the United Kingdom. It traces the development of preexisting national mechanisms and identifies the changes brought about by the implementation of Article 8. The research demonstrates the enduring influence of national substantive and procedural legal traditions. In Germany, the preexisting body of law governing claims for information retained considerable significance, while in France the new provisions operated alongside well-developed mechanisms for obtaining evidence. In England and Wales, the existing *Norwich Pharmacal* mechanism was considered sufficient to satisfy the Directive's requirements; a different approach was adopted in Scotland. The analysis establishes that even jurisdictions with well-developed enforcement mechanisms encountered difficulties requiring further legislative intervention and judicial interpretation. These findings confirm both the limited harmonizing effect of the Directive and the significance of national traditions for the realization of the right to information.

Chapter Three analyzes the development of the right to information in Poland before the adoption of the Directive and its initial transposition in 2007. It reconstructs the earlier legal framework and the debates concerning the legal nature of the right, the conditions for requesting information, and the applicable procedure. The analysis demonstrates that the legislature was not introducing this institution into a legal system without prior experience in this area. Nevertheless, implementation through separate statutes did not produce a coherent mechanism. Broader opportunities to request information were accompanied by uncertainty concerning the application of interim relief provisions, the evidentiary standard for establishing the conditions for disclosure, the protection of the party subject to the disclosure obligation, and the enforcement of judicial decisions. The examination of constitutional review of the industrial property provisions further highlights the importance of proportionality, particularly where disclosure obligations are imposed on third parties.

Chapter Four addresses the reform effective as of July 1, 2020, and judicial practice concerning orders to provide information under the special procedure for intellectual property cases. It presents the objectives of the legislative process, the relevant provisions of the Polish Code of Civil Procedure, and the findings of research into the practice of specialized courts. The analysis establishes that incorporating the provisions into the Code clarified their place within the enforcement framework but did not resolve all preexisting problems. Judicial decisions revealed divergent approaches to, among other matters, the standard for credibly establishing infringement, the categories of cases in which an order may be issued, and the protection of confidential information. The research thus distinguishes formal consolidation of the rules from the establishment of consistent conditions for their practical application.

Chapter Five determines the legal nature of the right to information under Article 8 and the limits of national discretion in its implementation. It concludes that the right has a substantive legal basis because it establishes an entitlement to request information and a corresponding obligation to provide it. Its exercise nevertheless requires an appropriately designed procedural mechanism. The examination of procedural autonomy, informed by the case law of the Court of Justice, connects this legal characterization with the requirements applicable to national legislatures. The analysis establishes that discretion in selecting procedural mechanisms does not relieve a Member State of its obligation to ensure effective protection. Two sets of criteria for assessing implementation are derived from this conclusion: those concerning the substantive content of the right to information and those concerning the procedure for asserting and enforcing it. The chapter also discusses the distinct nature of collective management

organizations' claims for information and their relationship to orders to provide information under the Code of Civil Procedure.

Chapter Six evaluates the Polish mechanism for ordering the provision of information and presents proposals for legislative reform. The order is characterized as a specific procedural measure serving to give effect to the substantive right to information. Its placement within the special procedure for intellectual property cases is considered appropriate in principle. Limitations on its effectiveness are divided into two groups. The first comprises obstacles arising at successive stages of using the measure: the absence of information needed to identify a prospective defendant, ambiguity in the requirement to credibly establish infringement, and difficulties in obtaining a complete and reliable response. The second concerns the statutory scope of the measure, including the categories of cases covered, the parties subject to disclosure obligations, and the types of information that may be disclosed.

On this basis, the dissertation proposes establishing a judicial mechanism for identifying a prospective defendant before substantive proceedings are commenced, clarifying the evidentiary standard for establishing infringement, and strengthening the enforcement of disclosure obligations. It also identifies the need to specify additional categories of cases in which the measure could apply with appropriate modifications, consider extending disclosure obligations to a broader range of third parties actually holding the relevant information, and define the scope of disclosable information in technologically neutral terms. Broader access should be accompanied by appropriate safeguards for the party subject to the disclosure obligation, third parties, and confidential information.

The dissertation's principal conclusion is that the effectiveness of the right to information depends on ensuring that the mechanism for its realization operates throughout all stages of the process. Merely establishing an entitlement and a procedure for obtaining a court order is insufficient if the right holder cannot identify the party to whom the request should be directed, obtain the necessary information, or secure proper compliance with the disclosure obligation. The Directive's insufficient precision increased the burden on national legislatures but did not relieve them of their obligation to provide effective measures. Further reform of Polish law should therefore address gaps in the existing mechanism wherever access to information is interrupted or unduly impeded, while maintaining proportionate protection for all parties concerned.

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