Summary

A democratic rule of law state combines two legal principles: the principle of democracy and the principle of rule of law. The democratic principle requires rule of the people and therefore implicitly the protection of political rights (in particular the right to vote, freedom of speech, freedom of assembly and association) that allow an individual to actively participate in the political community. The formal conception of rule of law, which is defined by the exercise of state power based on law, requires in particular the right of access to a court and the right of due process, which guarantee genuine enforceability of the law. The material conception of rule of law requires a much wider range of rights: according to Czech jurisprudence essentially all that are included in the Charter. This does not mean that any interference with the abovementioned rights means that a state is no longer a democratic rule of law state; if it did, there would not be a single democratic rule of law state in the world. However, any interference with fundamental rights must be carried out according to statute, must be proportionate to a legitimate aim and not interfere with the unbreachable core of human rights. The unbreachable core of a fundamental rights is a limit for the proportionality test; it is the core of the right that may not be interfered with regardless of the strength of the legitimate aim.

However, it remains to be resolved as to how to best protect human rights at a constitutional level. Most of continental Europe has chosen to codify human rights into constitutional charters. Some have even granted a subsection of these rights absolute rigidity in the form of an eternity clause. In terms of legal certainty and the level of protection, I consider this approach to be superior to leaving the protection of human rights to the legislature.

In the first part, the thesis examines rights-based state legitimacy in philosophical and sociological theory, in the second it describes eternity clauses as a constitutional answer to the conflict between the rule of law state and democracy and the third part analyses foreign case law deriving human rights and limiting constitutional amendments based on implicit constitutional provisions.