

## Summary

The primary aim of this dissertation thesis is to present a comprehensive analysis of the issue of personal data protection in the Czech Republic with regard to the regulation in the EU. The secondary goal of this work is to explore the historical genesis and material sources of the issue in question. The core information sources from which the thesis draws represent laws, judicial decisions, official documents and Czech/foreign expert literature. In order to achieve the objectives of the work, the methods that are generally applicable in the field of legal science were used. Therefore the method of description (including classification), analysis and synthesis is mostly applied.

The dissertation consists of seven chapters. After a short introduction, it begins with a sociological treatise on the importance of the protection of personal data in the 21st century. Privacy is currently an important topic in the light of the rapid development of information and communication technologies which have been developing since the second half of the 20th century and burgeoned since the turn of the century. Technological innovations allow for the collection of personal data on a large scale. These privacy infringements can prove to be irreversible, hence the importance of this area of law.

The personal data protection originated from a traditional privacy protection. Privacy can be defined as the subjective idea of the autonomous individual sphere of life in which no one is allowed to interfere. Privacy was originally conceived only in its spatial dimension but gradually began to be understood in a broader scope under the influence of the European Court of Human Rights' decisions, i. e. such as the right to free creation of social relations. One aspect of such a broadly conceived „right to privacy“ is the right to protection of personal data. The issue of protection of personal data originally arised as a result of technological boom. Consequently it separated from the traditional protection of privacy as a

protection from interference caused by specific means - computer processing of personal data. The rules on personal data protection has gradually extended also to the field of manual processing of personal data, which lead to the enhancement of the protection.

Personal data is one of the components of privacy that is protected in democratic societies as a fundamental right. Privacy was historically first declared in the Universal Declaration of Human Rights (1948) and its importance was later confirmed by the European Convention on Human Rights (1950) and the International Covenant on Civil and Political Rights (1966). The first international document dealing with a specific area of personal data protection is Convention No. 108 on the Protection of Individuals with regard to Automatic Processing of Personal Data (1981) which defined the basic concepts and principles of personal data protection. The EU Charter of Fundamental Rights (2009) adopted within the European Union is the first catalog of human rights explicitly recognizing the right for the protection of personal data. Legislation on the protection of personal data adopted at the EU level is laid down in Directive 95/46/EC of the European Parliament and of the Council of 1995 on the protection of individuals with regard to processing of personal data and on the free movement of such data (hereinafter "Directive 95 / 46/ES ").

Czech law provides comprehensive protection of personal data. At the constitutional level, the right to privacy is declared in Article 10 of the Charter of Fundamental Rights and Freedoms. Protection is also provided by means of civil and criminal law. The fundamental part of the legislation is an administrative regulation. For the purpose of the implementation of the Directive 95/46/EC into national law, the Act No. 101/2000 Coll., On the Protection of Personal Data (hereinafter "Act No. 101/2000 Coll.") was adopted. Act No. 101/2000 Coll. is based on principles underlying the Directive 95/46/EC and Convention No. 108. One of the fundamental principles is that personal data must be processed fairly, honestly and in accordance with the law (the „principle of legality and legitimacy“). Another principle is that

personal data may only be collected for specified purposes (the so-called „principle of finality“; the extent of processing personal data must be proportionate to the objective pursued („the principle of proportionality“).

Act No. 101/2000 Coll. defines the basic concepts, regulates the duties of controllers and processors within the processing of personal data and the rights of the data subject. Individual rights and responsibilities are projecting general principles. One of the conditions of legitimacy of processing is the establishment of an independent supervisory authority which has the competence to supervise the observance of legal rules governing the protection of personal data. The Office for Personal Data Protection was established in the Czech Republic for this purpose which also has the power to impose administrative penalties for breaches of statutory obligations.

Act No. 101/2000 Coll. determined in accordance with Directive 95/46/EC the rules for the transfer of personal data abroad. The free movement of personal data can not be restricted if the personal data are transferred within the EU. The transfer of personal data from EU Member States to third countries is possible, provided that the target country of transmission provides adequate protection of personal data, comparable to the standards prevailing in the EU. The U.S generally gives a lower level of protection of personal data in comparison with the EU. In order to bridge the gap in the legal framework, the self-regulatory system Safe Harbor was established for the transfer of personal data from the EU to the U.S. within the private sector.

Based on the analysis of the legislation adopted the following conclusions have been reached:

- the system of personal data protection which is established within the scope of legal system of the Czech Republic is complex;

- primary goal of administrative regulation of personal data protection is basically preventive;
- the administrative regulation contains institutes typical for private law;
- the data protection principles have important interpretative and application importance due to the variability of the issue in question as a consequence of rapid technological development;
- due to the private aspect of the right to personal data protection, administrative repression should be applied proportionately;
- legal protection regime provided by Law No. 101/2000 Coll. is basically suitable and in compliance with the regulation contained in Directive 95/46/EC;
- critical evaluation of the fact that the Law No. 101/2000 Coll. allows broad exceptions in favour of the state and economic subjects - from the perspective *de lege ferenda*, it is advisable to strengthen the rights of the data subject within the frame of § 5, par. 5 of Law No. 101/2000 Coll.;
- in order to protect personal data, the best method seems to be limitation of the amount of data processed by public authorities in practice and to implement educational policy aimed at informing about the risks related to the use of information and communication technologies, especially the Internet;
- there are large differences in national legislation in EU Member States which create barriers for the trade within the EU – therefore Commission's proposed unification appears necessary.