

The right to privacy in the context of data retention issues

Abstract

The thesis deals with the issue of data retention in the context of the right to privacy. The thesis aims to map the development of the legal regulation of data retention both in national legislation and in the relevant rulings of the Constitutional Court, as well as in the legislation of the European Union and in the judgments of the Court of Justice of the European Union. The purpose of the thesis is also to assess the current legal regulation, the subsequent application of the proportionality test and the presentation of various alternatives to the current system of data retention.

The thesis is divided into five chapters. The first chapter is devoted to the right to privacy in general, its various aspects, legal anchoring, development of privacy and permissible limitations. In the second chapter the current legal regulation of data retention under the national legislation is presented. The third part of the thesis chronologically guides through the development of the issue of data retention, attention is paid to decisions and legislation that have had a major impact on the issue, in particular Directive 2006/24/EC and its subsequent repeal. The fourth chapter focuses mainly on the status of the legislation after the repeal of the Directive, presents the procedure of individual selected EU Member States, the core of this part is the analysis of the Czech approach and the subsequent implementation of the proportionality test. Attention is also paid to another groundbreaking decision of the Court of Justice of the European Union, *Tele2 Sverige*. The fifth chapter is devoted to the current state of data retention legislation and its problematic aspects, regarding the real use of traffic and location data stored by operators in the context of data retention. Finally, some *de lege ferenda* data retention alternatives under consideration are presented, such as data freeze or targeted data retention.

The purpose of the thesis is to analyze the data retention system, its impact on the current form of the right to privacy and to reflect on whether it is a permissible interference with a fundamental right under the conditions of a democratic state governed by the rule of law.

Key words: the right to privacy, data retention, principle of proportionality