

Surveillance of Persons and Items; Use of the Institute in Practise and its Constitutional Limits

Abstract

This diploma thesis primarily aims to analyze in detail legislation concerning the surveillance of persons and items in the Criminal Procedure Code of the Czech Republic. In order to present a comprehensive analysis, the thesis firstly defines the concept of Operative-Search Means and the basic conditions for their use. Subsequently, the author assesses particular aspects of the provision § 158d of the Criminal Procedure Code. The main focus is dedicated to the issue of interpretation of certain procedural norms, such as those concerning surveillance of communications between the defendant and their attorney, the covert surveillance in closed spaces, as well as those related to the highly debated issue of admissibility of surveillance records obtained in another criminal proceedings. With regard to all of these subtopics, the author presents the most prominent discourses of criminal procedural theory and practice. At the same time, the author presents her own suggestions as to how to deal with the issues at hand. The main thesis of the paper concerns the subsequent statement that the provision of § 158d of the Criminal Procedural Code regulating the surveillance of persons and items is in fact a collective and residual provision which criminal law practice applies to various acts interfering with the right to privacy of individuals in the absence of a more appropriate legal basis.

The thesis also deals with the use of the provision § 158d when obtaining the so-called electronic evidence. In this part, the practice of obtaining and securing the contents of e-mails, as well as other data stored on electronic devices, is discussed in more detail. Key part of the paper is dedicated to the constitutional dimension of covert surveillance of persons and items. Based on the analysis of the right to privacy *largo sensu* and relevant case law of the Constitutional Court of the Czech Republic an the European Court of Human Rights, the author evaluates the current legislation from a constitutional point of view and reflects whether this legislation is in accordance with the constitutional order of the Czech Republic. In the concluding part of the thesis, *de lege ferenda* proposals are presented aiming to eliminate (not only constitutional) deficits of the current legislation.