

# **PROTECTION OF PRIVACY AND PERSONAL DATA IN EUROPEAN UNION LAW WITH REGARDS TO DATA RETENTION**

## **ABSTRACT**

The thesis deals with the issue of data retention, i.e. the issue of storing communications metadata by telecommunications service providers for the purpose of possible later access to this data by state authorities. The thesis focuses not only on the relevant EU legislation, but also on the related case law of the Court of Justice, which plays crucial role in determining the standard of protection offered by EU law. This analysis focuses on two main legal issues – the issue of scope of the EU legislation in this area and the issue of proportionality. With regards to the first issue, the author is of the opinion that the Court of Justice interprets the scope of the relevant EU legislation overly broadly. Author criticizes the fact that the Court of Justice applied secondary law adopted on the basis of Article 95 TEC on the issue of access to the retained data by the Member States authorities, including the authorities of Member States which are active in the field of national security. Regarding the issue of proportionality, author criticizes the fact that the Court of Justice perceives the blanket retention of communications metadata to be incompatible with EU law as such, no matter how strict the safeguards against abuse the Member States lay down. This too strict of an approach of the Court of Justice is then compared with the approach of the European Court of Human Rights, which is more lenient in this respect. However, neither the approach of the European Court of Human Rights is considered ideal, mostly due to the lower requirements for safeguards against abuse. Therefore, the author presents his own requirements for data retention legislation, which in his opinion lead to finding a better balance between the rights to privacy and personal data protection on the one hand and the security interests of Member States on the other.

## **KEY WORDS**

Data retention; communications metadata; traffic and location data; privacy; personal data protection, GDPR, directive 2002/58; directive 2016/680.