

Résumé

Protection of the right to private life in the case-law of the “European” courts (case study: directive on the retention of data regarding electronic communication).

This thesis presents the development of protection of the fundamental rights, especially the right on respect for private life, in the international conventions that are respected by EU member states, concretely the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. On the example of the European directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services, the thesis observes how the conflict is being resolved between the need of the society as a whole on strengthening of security measures in order to prevent and combat serious crimes including international terrorism on the one side and the right of the individual to respect his private life on the other side.

The European court for human rights (ECtHR) and the national constitutional courts as well developed a rich case-law on the right to respect for private life which enabled to secure a high level of protection of this right with no need to change the provisions of the codes despite of rapid development of technology and means of communication. There appeared a conflict in jurisdiction between ECtHR and the Court of justice of the EU, but the courts converged in their decisions, so they respect the case-law of each other mutually.

But the rapid technological development facilitates committing serious crimes including international terrorism. The measures taken by the states and international organizations in reaction are often in contradiction with the granted fundamental rights. This is also the case of the directive 2006/24/EC.

The thesis describes the recent ruling of the constitutional courts of the EU-member states on the national implementations of directive 2006/24/EC. The thesis observes the process of finding the balance between the interest of the society and the right of the individual in the case-law of the European courts.

Since already two constitutional courts of EU-member states have derogated the national transposition of the directive, there are voices appearing also on the EU level calling for reconsideration of the directive.

At the close of the thesis there are some questions raised that should be taken into account if eventually the directive would be reconsidered.