

Abstract in English

In her thesis entitled *Legal status of foreigners in the Czech legal order from human rights perspective – legal restrictions and their application*, the author deals with very actual and socially necessary topic of the position of foreigners in the Czech legal order. The main aim of the thesis is to point out the contradictions between constitutional guarantees of fundamental rights and freedoms and their factual situation and to analyze these contradictions. In detail, the text offers analysis of many court decisions from the Czech Republic but also of relevant case-law of the European Court of Human Rights and Human Rights Committee. The author also draws her knowledge of decision-making from her ten-year practice in migration law.

The thesis focuses mainly on the legal status of third-country nationals (TCNs), i.e. all non-EU nationals, as with the development of the EU, TCNs remain foreigners or aliens in the true sense of the word. It is true, that with the growing EU legislation on migration have TCNs have certainly gained a more solid status than international law had offered. Specially it concerns guarantees in residence proceedings and related social rights and right to reunification of the family members. However, in the last decades, EU states form their migration policies rather restrictively, and TCNs are facing different forms of restrictions and violations of fundamental rights.

The author carefully examined her main assumption (the existence of a systematic violation of the rights of some groups of TCNs) and she is also seeking for reasons of such violations.

The first chapter is basically an outline of the historical development of the legal status of foreigners (in the Euro-American area) from antiquity, thru the Middle Ages, to development of Diplomatic Protection to the creation of the concept of human rights and their

anchoring in international treaties. In more detail, the author deals with the twentieth century.

In the second chapter the author focuses on the position of foreigners in international human rights treaties as well as in the Czech Charter of Fundamental Rights and Freedoms. Later in this chapter the author deals with the clash of two principles - the respect of human rights of foreigners and the right of the state to control migration. In particular, the author questions the sovereign right of states to make an unlimited decision on the entry and residence of foreigners in their territory.

The third chapter describes current development of legal status of foreigners in the Czech Republic and the European Union after 1989. The author here points out in more detail that in context of European integration, word foreigners gained new meaning. The author also describes the changes of the national legislation related to the accession of Czech Republic to the EU.

The fourth chapter analyzes case-law of the UN Human Rights Committee and the European Court of Human Rights on discrimination on the ground of nationality and immigration status. The author seeks to find the limits for restrictions of human rights based on the ground of nationality. But she also finds that particularly the ECHR much too often emphasis the right of the state to regulate entry and make claims it to be a justification for the restrictions on human rights of migrants, especially if the rights are budgetary-demanding.

In the fifth chapter the author deals in detail with one of chosen human right - the right to liberty- and its restrictions. Firstly, the author analyzes constitutional guarantees of the right to liberty and compares these with legal regulations and how these are applied in practice in the Czech Republic. Particular focus is given to the Aliens Act and the Asylum Act, two main legal norms in field of migration. The author also discusses current trends in the context of the so-called "migration crisis" and she points out some recent examples how criminal law has been applied in cases of potential refugees and the practical implications this may have,

especially on the protection of fundamental rights.

The sixth chapter analyzes constitutional guarantees of the right to fair trial and derived principles are confronted with the legal guarantees in proceedings related to foreigners. The author first evaluates the international basis of the right to fair trial and which impact these could have on alien related proceedings. Particular focus is on the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. In subchapters the author deals with issues like procedural guarantees in expulsion proceedings, the right to legal assistance or delays in residence proceedings. The problem of Visapoint - the system of applying for a visa or residence permit abroad - is outlined in a short description.

The seventh chapter gives insight into the position of foreigners in the social and economic rights. The author first deals with the interpretation of this category of rights and points out some controversial moments of their interpretation. Finally in this chapter the author deals with the restriction of the right of foreigners to work in the Czech Republic.

At the end of the thesis the author briefly summarizes conclusions from the chapters. She also concludes that the legitimacy of numerous restrictions on the rights of foreigners is non-existent, as they lack the basic rational justification. She finally points out some principles that the Czech Republic should keep in order to balance the rights of foreigners on one hand and the right to regulate migration on the other.