

## **Detention of Children on the Move and International Standards of Human Rights Protection: Content Analysis of the Case-Law of Administrative Courts**

**Abstract | Key words:** detention – child’s best interest – right to freedom – retention – prohibition of torture – irregular migration

The number of children on the move in Czech detention facilities is increasing. Detention as such is an interference with personal liberty and a potential interference with other fundamental rights and freedoms guaranteed by a diverse and wide range of international conventions.

The objective of this thesis is twofold. The first objective is to determine how various human rights standards regulate the detention of children in the migration context. Consequently, the second objective aimed to determine the structure, shape and content of domestic case-law, specifically with respect to human rights standards.

Previous research has focused only fragmentarily on child detention in the migration context, using only doctrinal methods. The attention of previous researchers has been focused on individual human rights mechanisms or on doctrinal analysis of the decisions of the Czech supreme courts. No research has analyzed human rights standards comprehensively or looked at Czech domestic case-law in its entirety.

For these reasons, we have chosen three research methods. The first method is the conventional legal analysis, which aims to clarify the setting of international mechanisms for the protection of human rights; this method is then combined with the descriptive method, which predominates, and which is used to summarize the state of knowledge. To map the setting of domestic case-law, we chose the method of systematic content analysis, which is used in empirical legal research and consists of applying codes to coded material.

We identified a double standard in the human rights settings; at the universal level, child detention is essentially prohibited, while at the regional level it is considered as a *ultima ratio* measure. A systematic content analysis then revealed some attributes of Czech case law. We consider three of them to be the most important. Firstly, most of the court proceedings initiated against decisions on detention are successful. Secondly, the courts systematically use arguments that contradict the case-law of the Czech supreme courts and the case law of the European Court of Human Rights. And lastly, only a relatively small number of children in detention reach judicial review. In our view, these attributes are problematic for the existence and functioning of the rule of law.