

Summary

The proportionality principle and the deprivation of liberty of a foreigner in administrative law

This thesis concerns the proportionality of the deprivation of liberty of the foreigner in Czech Republic. It only covers those types of deprivation of liberty that are specifically applied on foreigners and that are covered by the administrative law.

In the first chapter this thesis defines legal concepts of a personal freedom and a proportionality principle. The second chapter covers the level of the international law, namely the article 5 of the European Convention of Human Rights, define legal conditions that a deprivation of liberty must meet and offers a relevant judicature of the European Court of Human Rights. The third chapter covers a deprivation of liberty from a view of the Return Directive (No. 2008/115/EC), the Reception Conditions Directive (No. 2013/33/EU) and the Dublin Regulation (No. 604/2013) and offers judicature of the Court of Justice of the European Union. The fourth chapter comprehends the Czech law and covers three acts, that enable a deprivation of liberty of a foreigner – the Act on the Police of the Czech Republic No. 273/2008 Coll., the Asylum Act No. 325/1999 Coll. and the on the Residence of the Foreign Nationals in the Czech Republic No. 326/1999 Coll. This chapter also contains relevant judicature of the Constitutional Court of the Czech Republic and of the Supreme Administrative Court of the Czech Republic. Those three chapters are divided into subsections by parameters that a deprivation of liberty of a foreigner must meet.

The conclusion contains the analysis on how the proportionality criteria reflect in those parameters.

The aim of this thesis was to define (on the basis of law and judicature) the conditions that a deprivation of liberty of a foreigner must meet, to be considered legal and especially proportionate. It is the legal basis, proportionate length, lack of arbitrariness, procedural guarantees and proportionality. In each of those categories the authorities, who are entitled to decide whether to deprive foreigner's liberty or not, must consider the proportionality.