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The Public Security Exception in the Law of the European Union

Introduction

Undoubtedly, it is one of the fundamental tasks of the state to preserve national and internal security. In his famous definition, Max Weber defined the state as a human community that claims the monopoly of the legitimate use of violence within a given territory.[1] Therefore, the capacity and the will to guarantee security are generally considered to be a fundamental attribute of state sovereignty. New security risks pose a major challenge for all European countries. However, there is some political consensus that certain key tasks connected to securing internal security can only be effectively achieved through international and supranational cooperation using the tools offered by European Union (EU) institutions.

The aim of this paper is to outline the EU legal framework which, while respecting the sovereignty of Member States in matters of security, sets out a wide range of competences for EU institutions that directly and indirectly affect the issue of internal security. In the first part of the study we will focus on the concept of internal or national security in the Czech law. Thereafter, it will be necessary to deal with the notion of public security as laid down in EU law and to draw a line between public security and public policy. Both of these concepts are particularly relevant from the point of view of the internal market and the protection of EU fundamental rights.

In the last part of the paper, specific cases will be presented which highlight the complex interplay of national and EU legal norms in the context of internal security.

The Notion of National or Internal Security within Czech law

The notion of internal security can be found within different contexts in the framework of the Czech national legislation, from ensuring internal security in prisons to maintaining security of the national borders. Most frequently, it is used in side by side with the notion of maintenance of law and order, in the context of the competence to ensure “internal law and order and security”. Nevertheless, it would be incorrect to consider the notions of maintaining law and order and internal security to be an analogue of Anglo-American legal doublets, established notions composed of two terms of essentially identical meaning. The fact that internal security cannot be identified with maintaining law and order is widely acknowledged by jurisprudence. The first chaper of the article aims to describe how the notion of internal security of the state is defined in the Czech law.

[1] WEBER, Max. Politics as a Vocation. In: GERTH, H. H.; MILLS, Wright. (eds.) *From Max Weber: Essays in Sociology*. New York: Oxford University Press, 1946, 77-128.

The Constitution of the Czech Republic does not refer to the notion of security. However, at the constitutional level, the constitutional act No. 110/1998 Coll., on the Security of the Czech Republic, was adopted in connection with the Czech accession into the North Atlantic Treaty Organisation. It can be considered the most important Czech piece of legislation in the field of national security. The act does not define the notion of (internal) security although it uses it. Art. 2 of the act stipulates that the state of emergency can be declared when sovereignty, territorial integrity, democratic order of the Czech Republic or, to a considerable extent, law and order and internal security, lives and health of its citizens, property values or environment are endangered or when it is necessary to fulfil international commitments to common defence. Authors of a recently published commentary on the aforementioned constitutional act opine that the notion of internal security is hierarchically superior to the notion of maintaining law and order.[2]

The Dictionary of Terms in the Field of Crisis Management and State Defence Planning, created by central administrative offices of the Czech Republic and published by the Ministry of the Interior states that internal security of the state is a situation when threats endangering the state and its interests from inside are eliminated to the lowest possible level and when the state is effectively equipped for the elimination of both existing and potential threats and willing to make such elimination happen. It further defines the notion as a sum of internal security conditions and legal provisions serving to ensure democracy, economic prosperity and security of its citizens and constituting and enforcing morality standards and norms of social consciousness.[3]

Therefore, the notion of internal security is set in opposition to the notion of external security. This corresponds with the theoretical reflexion of the notion of internal security as it is perceived by domestic academic literature. For example, Libor Stejskal states that from the point of view of the security paradigm of sovereign states, internal security can be understood as a situation free of domestic threats originating from inside of the state and acting inside the state, ranging from threats to the constitutional order to criminality to natural disasters.[4]

The notions of maintaining law and order and internal security as construed in the aforesaid meaning are not new to the Czech law. The field where such interpretation is particularly important is in the process of constituting and defining competencies of state authorities responsible for maintaining security. To illustrate the tradition, we may choose e.g. the law No. 128/1970 Coll., concerning the competency of the Czechoslovak Socialist Republic in maintaining law and order and internal security, which defined the fields of action of the federal government in relation to the security of the state.

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[2] MAREŠ, Miroslav a Daniel NOVÁK. *Ústavní zákon o bezpečnosti České republiky: komentář*. Praha: Wolters Kluwer ČR, 2019, 42.

[3] Terminologický slovník z oblasti krizového řízení a plánování obrany státu, available at www.mvcr.cz/soubor/terminologicky-slovnik-mv-verze-ke-stazeni.aspx (visited April 10, 2019), s. 6.

[4] BALABÁN, Miloš; DUCHEK, Jan a Libor STEJSKAL. *Kapitoly o bezpečnosti*. Praha: Karolinum, 2007, 23.

Currently, a more specific definition of the notion can be identified in connection with the competence of the Ministry of the Interior. The Competency Act[5] stipulates that the Ministry of the Interior is the central authority for internal affairs, especially public policy and other aspects of maintaining law and order and internal security. The Czech Civil Service Act[6] follows this approach as defines "maintaining law and order and internal security of the state" as one of the branches of civil service, covering primarily the competency of the Ministry of the Interior employees.

The official textbook developed by the Ministry of the Interior for employees aspiring to take the civil service exam construes two possible meanings of the notion of internal security. The textbook states that internal security in a broader sense comprises activities of the state focusing on threats endangering the state and its interests from the inside, as contrasted to external security, or state defence, which focuses on threats endangering the state and its interests from the outside (military as well as non-military). According to the textbook in the 21st century these external and internal threats frequently blend together and overlap, the corresponding competencies of the state also must necessarily overlap in theory as well as in practice. In this sense, the notion of internal security coincides with the notion of "maintaining law and order and other issues of internal policy and security".[7] The material also defines the notion of maintaining law and order as a sum of rules (legal and customary) of behaviour of people in public, valid in a given place and time.

The authors of the Commentary on the Act Concerning Security of the Czech Republic conclude that the notion should be always interpreted in the context of the European law and European strategic security documents.[8] But is it possible to say that the practice follows the advice? To what extent the power of a Member State to define the threats to its internal security is maintained in the context of the European legal framework?

The Definition of Security in EU law

EU primary law mentions the problem of security in several places. According to Article 3 (2) of the Treaty on EU (TEU), the Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures on external border controls, asylum, immigration and the prevention and combating of crime. This objective of EU policy is further developed in Articles 67 - 89 of the Treaty on the Functioning of the EU (TFEU), which defines the powers of the Union institutions in the different areas of the area of freedom, security and justice. Within the meaning of Article 67 (3) TFEU, the concept of security needs to be understood rather narrowly, since a "high level of security" shall be ensured in particular in the context of crime prevention, racism and xenophobia. The reference to co-ordination and cooperation

[5] Act no. 2/1969 Coll., on the Establishment of Ministries and Other Central Government Authorities of the Czech Republic.
[6] Act No. 234/2014 Coll., Civil Service Act.
[7] Available at: https://www.mvcr.cz/sluzba/soubor/skripta-31-vnitrni-poradek-a-bezpecnost-statu-20181010-pdf.aspx (visited April 10 2019).
[8] MAREŠ, Miroslav a Daniel NOVÁK. *Ústavní zákon o bezpečnosti České republiky: komentář*. Praha: Wolters Kluwer CČR, 2019, 43.

between police and judicial authorities and other competent authorities confirms that Article 67 (3) follows up on the issue of security under the former third pillar of the EU, which has been formally abolished by the Lisbon Treaty.

While, for the purposes of the area of freedom, security and justice, securing (internal) security is conceived as an objective of EU policy, EU regulations on the internal market (Articles 26-66 TFEU) treats security measures as an exception to the rules. In accordance with Article 36 TFEU, individual Member States may restrict the free movement of goods, inter alia, on grounds of public policy and public security. Restrictions justified on grounds of public policy and public security are also permitted by the rules on the free movement of workers,[9] the right of establishment[10] and the freedom to provide services[11] In this context, it is up to the Member States to take specific national measures to ensure internal security. EU institutions, i.e. in particular the European Commission and the CJEU, carry out an examination whether the chosen measures chosen are proportionate in relation to the fundamental objectives of the internal market.

This concept is consistent with the provisions of Article 4 (2) TEU according to which the Union shall respect the essential functions of the Member States, in particular those relating to ensuring the territorial integrity, the maintenance of law and order and the safeguarding of national security. According to the last sentence of that paragraph, national security remains the sole responsibility of each Member State. Article 346 TFEU provides that a Member State is not obliged to supply information the disclosure of which is considered contrary to the essential interests of its security. The same provision allows Member States to take measures related to the production of or trade in arms, munitions and war material.

Besides the area of freedom, security and justice and the regulation of the internal market, the issue of security also appears in the context of the protection of EU fundamental rights. The conceptual approach to balancing security interests and human rights interests is similar to the one defining a balance between security interests and the fundamental freedoms of the internal market. Pursuant to Article 52 (1) of the EU Charter of Fundamental Rights, limitations on the exercise of fundamental human rights must genuinely meet the objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others. Although public or internal security is not explicitly mentioned in the aforementioned provision, it is not disputed that such objective is considered legitimate by EU law.

EU law deals with security as an objective of general interest that appears within different legal areas. The current regulation corresponds with the achievements of the process of European integration. As early as 1997, Steve Peers pointed out that, in EU law, disputes over national (or public) security could have three forms. In the first case Member States adopt measures limiting fundamental rights in the interests of national security. In the second case the EU adopts security measures, and in the third case Member States implement EU economic sanctions or restrictions in the areas of

[9] Article 45 (3) TFEU.
[10] Article 52 (1) TFEU.
[11] Article 62 in conjunction with Article 52 (1) TFEU.

migration and Schengen cooperation.[12] So, on the one hand the concept of common security of all Member States (and the Union as such) has been developed as a result of European integration, and, on the other hand, a rather narrow concept of national security has been conserved in order to serve the Member State when they intend to derogate from EU obligations. It can be said that Peers has very well anticipated the current state of EU law, which, in the area of freedom, security and justice, is based on a common interest in ensuring public security and, in the fields of the internal market and the protection of fundamental rights treats Member States' security measures as an exception from EU obligations.

We will now focus on cases in which the Member States apply such national or public security measures. These measures generally affect fundamental market freedoms or fundamental human rights. Since the FRC includes the free movement of persons (Article 15) and the freedom of enterprise (Article 16) as fundamental market freedoms among fundamental rights, it is not necessary to distinguish between restrictions affecting the internal market and the limitation of human rights. As a matter of fact, the EU Court of Justice (CJEU) has used a comparable dogmatic approach in both situations.

Defining Public Security and Public Policy

The case law of the CJEU has repeatedly addressed cases in which Member States have restricted the free movement of EU citizens for security reasons. A certain synthesis of the previous case-law can be considered the provision of Article 28 of the so-called Free Movement Directive,[13] which, among other, regulates the protection of EU citizens from expulsion from the host Member States. Under Article 28 (1) of the Free Movement Directive, before taking an expulsion order on grounds of public policy and public security, a Member State shall take account of a number of factors, such as the length of stay of the individual concerned in the territory, his age, state of health, family and economic situation, social and cultural integration into the host Member State and the extent of his links with the country of origin.

Article 28 (2) of the Free Movement Directive, further, provides for a higher level of protection for those Union citizens who have acquired a right of permanent residence in the host Member States. Permanently resident EU citizens and their family members can only be expelled for “serious grounds of public policy or public security”. Under Article 28 (3) of the Free Movement Directive, the highest level of protection against expulsion is conferred on those Union citizens who have resided in the host Member State for the previous ten years or are minors. In such cases, expulsion is only admissible on "imperative grounds of public security as defined by Member States."

[12] PEERS, Steve. National Security and European Law. *Yearbook of European Law*. 1996, 16(1), 363-404.

[13] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

For the purpose of this study, the exact definition of "serious grounds" and "imperative grounds" is less relevant.[14] What matters to us is the definition of grounds relating to public security and public policy. A Communication issued by the European Commission in July 2009[15] provides useful guidance as it sought to clarify issues related to the implementation and application of the Free Movement Directive. According to the European Commission, it is essential that Member States clearly define the protected interests of society and draw a clear distinction between public policy and public security. The Commission considers that the category of public security cannot be extended to measures which may be covered by the first category. While public security, including both internal and external security, is intended to preserve the integrity of the territory of a Member State and its institutions, public policy should concern the prevention of disturbances of social order.

It is true, however, that the CJEU case law does not follow an exact distinction between both categories. Dora Kostakopoulou criticized that by removing the differences between public security and public policy within the meaning of Article 28 (2) and (3) of the Free Movement Directive, the CJEU allowed Member States to include mere public policy consideration under the notion of public security. This interpretation, according to Kostakopoulou, is at the expense of EU citizens who have created strong links with the host Member State in which they committed a crime.[16]

Dimitry Kochenov and Benedikt Pirker criticized the CJEU case law even more strongly. According to them, the CJEU has acted *ultra vires* and has deviated from the fundamental principles of European integration by applying a *contra legem* interpretation. Kochenov and Pirker argued that with the expulsion of criminal Union citizens from one Member State to another, the Union does not become a safer place.[17] The two authors seem to have overlooked the fact that the relevant point of reference under Article 28 of the Free Movement Directive is certainly not the public security of the Union as such, but the public security of individual Member States.

Internal Security and State Sovereignty

EU legislation at first glance suggests that ensuring internal security has remained a sovereign right for individual Member States. It is what remains of state sovereignty in „in an ever closer union among the peoples of Europe“.[18] However, in those cases where the public security and public policy argument serves the Member States as a reason for derogating from obligations in the areas of the internal market and the protection of human rights, the key question is who shall assesses the correct application of the security argument. If internal security is to be placed under the exclusive power of the sovereign Member State, the final assessment will be carried

[14] For more details, see KOSTAKOPOULOU-DOCHERY, Dora; FERREIRA, N. Testing Liberal Norms: The Public Policy and Public Security Derogations and the Cracks in European Union Citizenship. *Columbia Journal of European Law* [online]. 2014, 20(3), s. 167-191.
[15] COM(2009) 313 final.
[16] KOSTAKOPOULOU, Dora. When EU Citizens become Foreigners. *European Law Journal* [online]. 2014, 20(4), s. 447-463.
[17] KOCHENOV, Dimitry a Benedikt Harald PIRKER. Deporting the Citizens within the European Union: A Counter-Intuitive Trend in Case C-348/09, P. I. V Oberburgermeisterin der Stadt Remscheid. *Columbia Journal of European Law* [online]. 2012, 19(2), s. 369-390.
[18] See Article 1 TEU.

out by its own judicial bodies. However, in such a context, the competent national authority would assess not only the extent of internal security but also the proportionality of the limitation which has been introduced in the interest of internal security. It seems clear that such a wide discretion on the part of the Member States could seriously jeopardize the autonomy and unity of EU law.

For this reason, the CJEU has reserved the right to decide on the legitimacy and adequacy of national security measures. It follows from the case law of the CJEU that a Member State cannot, by simple reference to internal security, be relieved from its obligations under EU law. As for the area of the internal market, case C-265/1995 can serve as an illustrative example in this respect. This case concerned the restriction of free movement of agricultural products from other Member States to France. For more than a decade, some activist groups of French farmers had been taking actions against importers and sellers of agricultural products e.g. from Belgium and Spain. According to the Commission, which ultimately took the case before the CJEU, such actions included the stopping of lorries, the destruction of their cargoes, the violence against lorry drivers, threats to department stores in France and damage of the goods. The Commission found that the measures adopted by France were insufficient.

In its judgment of December 1997, the CJEU systematically addressed the security argument. First, the CJEU recalled that Member States retain exclusive competence as regards the maintenance of public order and the safeguarding of internal security, and therefore they enjoy a margin of discretion in determining what measures are most appropriate from the point of view of the internal market. In other words, the EU institutions cannot act in place of the Member States in this respect. However, it falls to the Court of Justice of the EU to verify whether the security measures adopted by a Member State are appropriate with a view to internal market obligations. In the present case against France, the CJEU concluded that the instruments chosen by the Member State (e.g. surveillance measures) were not sufficient and criticized that the French law enforcement bodies did not respond to early warnings and did not intervene against the demonstrators even in cases where they were more numerous than the protesters.

The way how the CJEU dealt with the arguments of France is very revealing. France argued that more determined action by the competent authorities might provoke violent reactions of private subjects, resulting in more serious breaches of public order or even social conflict. This argument put forward by the French government concerns, in our opinion, the very essence of security arguments in the tension between integration and sovereignty. If the prevention of riots was the exclusive competence of the Member States, it would be up to the national authorities and, in particular, the competent courts to assess the legitimacy and proportionality of state measures. However, as the CJEU has clarified, “apprehension of internal difficulties cannot justify a failure by a Member State to apply Community law correctly”. This does not mean that a Member State such as France could not raise concerns about a breach of public order (or public security), but such an argument can only be invoked in specific cases and not as a blanket exemption from Member State obligations.

Thus, according to the basic dialectic of EU law, it is, first, up to the Member State to prove the risk of riots and security breaches on a case-by-case basis. Thereafter,

the CJEU will examine whether the Member State's arguments withstand in the light of the its commitments, taking into account both the Member State's discretion in security matters and the Union's common interests. The Opinion of the Advocate General in this context suggests that the burden of proof lies on the Member State which invokes the protection of public security as a justification for restricting the free movement of goods.

Public Security and Surveillance by Intelligence Services

After discoveries connected to the so-called Snowden's documents indicating the existence of programmes of extensive government surveillance of communication (which had been implemented as a reaction to the 9/11 attacks) were published by media in the mid-2013, the main EU political bodies expressed their concerns about the mass surveillance. The unprecedented extent of private communication surveillance raised many serious questions concerning privacy and personal data protection.

In March 2014, the European Parliament instructed the EU Fundamental Rights Agency (FRA) to elaborate an in-depth research on the fundamental rights protection in the context of the surveillance by intelligence services.[19] Based on the request, the FRA elaborated two extensive reports on the relation of human rights and security interests, the first one in November 2015[20] and another one updated in October 2017.[21] According to FRA reports, one of the main problems is the absence of uniform definition of the concept of national security within the EU and Member State´s law.

The notion is used by the secondary legislation of the European Union as well, e.g. by the Privacy and Electronic Communications Directive. In Article 15 (1) the Directive sets the conditions for a Member State to restrict certain rights provided for in the Directive. A Member State can do so on the condition that such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system.

It corresponds to the primary law. According to Article 52 (1) of the Charter of Fundamental Rights of the European Union, any "limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of

[19] European Parliament resolution of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs (2013/2188(INI)).

[20] Surveillance by intelligence services: fundamental rights safeguards and remedies in the EUVolume I: Member States' legal frameworks *(available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-surveillance-intelligence-services-voi-1_en.pdf).*

[21] Surveillance by intelligence services: fundamental rights safeguards and remedies in the EUVolume II: field perspectives and legal update *(available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-surveillance-intelligence-services-vol-2_en.pdf).*

general interest recognised by the Union or the need to protect the rights and freedoms of others". In the context of personal data protection (in compliance with the reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms in Article 52 (3), this general provision must be interpreted in such a way that the objective of general interest means, among others, national security under Article 8 (2) of the European Convention.

One of the significant results of the FRA report from November 2015 is that the interpretation of the notion of national security differs among Member States and, moreover, some Member States define the notion of national security by legislation whereas others leave the interpretation to government executive bodies.[22] This may cause problems especially regarding the interpretation of exceptions such as the one in the abovementioned Directive. On one hand, notion of national security can be considered an autonomous notion of the EU law; on the other hand the Court of Justice of the European Union repeatedly decided that the notion of national/public/internal security in the EU law is in principle to be construed in accordance with the law of Member States.[23] However, the CJEU points out that derogations in the EU law must always be interpreted strictly.[24]

This seemingly complicated interpretational construction was clearly manifested in the CJEU judgement Tele 2 Sverige.[25] The Swedish law imposed an obligation on a provider of electronic communications to retain general data on traffic in electronic communication networks for a period of 6 months. The CJEU had to assess compatibility of such a law with EU law, especially in the light of the preceding judgment Digital Rights Ireland,[26] which declared a directive imposing an obligation on Member States to introduce identical duty invalid.

Arguments on the side of the Member States concentrated on the aforementioned Article 15 (1) of the Privacy and Electronic Communications Directive. They claimed that their use of the exception is essential to maintain internal security with regard to the necessity of fight organized crime. Like in the previous case we may conclude that if the Member States were free to choose any instrument to ensure security, or if the interpretation of the security exception was fully at their discretion, the CJEU would acknowledge the exclusive authority of Member States in this area. However, in its judgement the CJEU found the Swedish law not being compatible with the EU law. The CJEU declared that such a broad exception - in the case a permanent general exception for security reasons - would become the rule, as the provision of the Directive - from which the exception is made - would be rendered largely meaningless.

The CJEU tested the proportionality of the derogation, especially with the regard to the right to private and family life and to the freedom of speech and information,

[22] Surveillance by intelligence services: fundamental rights safeguards and remedies in the EUVolume I: Member States' legal frameworks, 25.
[23] Judgment of the Court (Grand Chamber) C-300/11. ZZ v Secretary of State for the Home Department, paras 35 and 38.
[24] E.g. Judgment of the Court (Grand Chamber) C-387/05. European Commission v Italy.
[25] Judgment of the Court (Grand Chamber) Joined Cases C-203/15 and C-698/15. Tele2Sverige.
[26] Judgment of the Court (Grand Chamber) Joined Cases C-293/12 and C-594/12. Digital Rights Ireland.

as laid down in the Charter of Fundamental Rights of the European Union, and decided that even though the effectiveness of the fight against serious crime, especially against organised crime and terrorism, can to a considerable extent depend on the use of modern investigation methods, general and indiscriminate retention of data is not proportionate. Even such significant tasks related to ensuring of internal security cannot justify such a measure. The Court also stated that in the future, the exception can only be used in specific cases of serious criminal activity. By this, the Court clearly showed how limited the field for Member States´ interpretation of notions such as internal, national or public security is left by the EU law.

Conclusion

Although EU primary law respects policies of the Member States related to the safeguarding of national security as a sovereign responsibility of each Member State, in reality the competencies of Member States in this area are not, and cannot be, unlimited. Although Member States are free to define their internal or national security, the interpretation of these notions as well as practical exercise of the competencies of Member States in security questions are subject to interpretation by the CJEU. This happens when the security argument is being used by a Member State for the purpose of derogation from EU law. It is a task of the CJEU to evaluate the legitimacy of the security argument. CJEU case-law therefore presents constraints on the Member States regarding interpretation of the notion of internal security. In that sense it constitutes a device preventing Member States' arbitrariness and the potential abuse of the security argument to restrict the rights of individuals.

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R E S U M É

SCHEU, Harald Christian; PETERKA, Bohumil: VÝHRADA VEŘEJNÉ BEZPEČNOSTI V PRÁVU EVROPSKÉ UNIE

Primární právo Evropské unie ponechává oblast národní bezpečnosti v kompetenci členských států. Výkon pravomocí členských států i v takové jejich výsostné doméně však může být předmětem přezkumu Soudním dvorem EU, a to v případě, že je bezpečnostní argument použit jako důvod omezení implementace práva EU. Prostřednictvím judikatury SDEU dochází k harmonizaci vnitrostátního vnímání veřejné bezpečnosti v členských státech.

Klíčová slova: veřejná bezpečnost, vnitřní bezpečnost, výhrada, suverenita, Soudní dvůr EU.

S U M M A R Y

Although under EU Law Member States are free to define their internal or national security, the interpretation of these terms and their application are subject to interpretation by the CJEU. This happens when the security argument is being used by a Member State for the purpose of derogation from EU law. It is a task of the CJEU to evaluate the legitimacy of the security argument. CJEU case-law therefore presents constraints on Member States regarding how the notion of internal security should be interpreted.

Key words: public security, national security, derogation, sovereignty, EU Court of Justice.