

Wiretapping and Record of Telecommunication Traffic

Abstract

Wiretapping and record of telecommunication traffic is a legal institute included in Part IV. of Czech Criminal Procedure Code. It is a legal instrument that significantly affects not only the private sphere of the person who it is used against, but also the private sphere of persons communicating with this person.

The author of this thesis deals with the use of the institute of wiretapping and recording of telecommunications traffic and a related institute of provision of data of telecommunication traffic from the perspective of current legislation in Sections 88 and 88a of Czech Criminal Procedure Code and from the point of view of privacy protection in the case-law of Czech Constitutional Court and European Court of Human Rights in seven chapters. The first chapter describes the historical development of the legal regulation of the institute of wiretapping and recording of telecommunication traffic and provision of data of telecommunication traffic from the beginning of their regulation to the present. The second chapter focuses on the current legislation. In particular, it discusses the conditions for the admissibility of the use of interception and recording of telecommunications traffic, addressing issues related to modern methods of communication, to which is added a look at the legal framework for obtaining data from data carriers. The third chapter addresses the conflict with the right to privacy protected by both the Charter of Fundamental Rights and Freedoms and the European Convention on Human Rights, and mentions the relevant case-law of Czech Constitutional Court and the European Court of Human Rights. The fourth chapter then addresses spatial wiretapping which is not explicitly regulated in the current legal framework, while the analogous application of the regulation on operational investigative instruments is problematic from the point of view of privacy protection. The fifth chapter seeks to answer the question of when it is permissible to wiretap on persons protected by confidentiality, specifically it deals with attorneys-at-law and judges. The sixth chapter deals with the issue of cross-border wiretapping. The seventh chapter deals with a special procedure for reviewing the legality of the wiretapping order and for provision of data of realized performed telecommunication traffic, in which the persons concerned may demand the illegality of this order after the final conclusion of the proceedings.

Key Words: Wiretapping and Record of Telecommunication Traffic, Privacy Protection, Confidentiality of Attorney