

# **Interception and Recording of the Telecommunication Operation**

**Diploma thesis, Hana Valentová, 2013**

## **Abstract**

This thesis describes legislation of two criminal procedure institutes: the interception and recording of telecommunication operation and the data identification of telecommunication traffic. These institutes are covered in the Code of Criminal Procedure. Purpose of this thesis is to analyze this legislation considering protection of human rights and suggest possible improvements of this legislation, which would prevent inappropriate interventions to human rights, particularly personal privacy.

The thesis is composed of introduction, conclusion and five chapters. Introduction explains basic issues of this topic. Primarily it concerns relation between these institutes and human rights and general requirements on such legislation given by The Charter of Fundamental Rights and Freedoms. Subsequently, it describes structure and basic aims of this thesis and secondary sources.

Chapter One explains history of development of these institutes. It consists of two subchapters. The first subchapter is concerned with the section 88 of the Code of Criminal Procedure, which governs the interception and recording of telecommunication operation. The second subchapter contains relating institute of the data identification of telecommunication traffic, which is included in the section 88a of the Code of Criminal Procedure.

Chapter Two examines relevant Czech legislation and consists of two subchapters. The first subchapter investigates the interception and recording of telecommunication operation and its legal aspects under the section 88. This subchapter is divided into nine parts. Part One focuses on basic conditions for use of this institute in criminal procedure. Part Two examines order to intercept and record telecommunication traffic and its requirements. Part Three describes responsible body, which carries out interception, duties of this body during the interception, and termination of the interception. Part Four investigates the interception and recording of telecommunication operation without order, just with consent of the user of tapped telecommunication station. Part Five relates to use of the record of telecommunication traffic as evidence in criminal procedure. Subsequently, Part Six describes storage and destruction of the record of telecommunication traffic, which is not used as evidence. Part Seven describes information duty, which has body terminating criminal procedure. This duty can be followed by review procedure, which is opened on proposal of the user of tapped

telecommunication station. This review procedure is illustrated in the Part Eight. Finally, Part Nine describes basic facts of use of the interception and recording of telecommunication operation abroad under the Code of Criminal procedure.

The second Subchapter looks at the second institute, the data identification of telecommunication traffic under the section 88a. This subchapter has four parts, each of them dealing with similar aspects as by the interception and recording of telecommunication operation. The first Part describes conditions for release of order to identify these data. Parts Two and Three deal with information duty and review procedure. Last, Part Four investigates possibility to order this institute without an order, just with consent of the user of telecommunication station.

Chapter Three provides an outline of relevant institutes under the German law. This chapter consists of three subchapters. Subchapter One deals with an institute, which is close to Czech interception. Subchapter Two illustrates three institutes, which are equal to the data identification of telecommunication traffic. Finally, subchapter Three is focused on information duty and review procedure.

Chapter Four concentrates in general on issues resulting from the relation between the interception and recording of telecommunication operation and human rights. This chapter is also concerned with the issue of leaks of the records of telecommunication traffic.

Chapter Five includes suggestions *de lege ferenda*, which should improve Czech legislation.

Finally, conclusion outlines more basic aspects of legislation. Moreover, it evaluates necessity of changes in this legislation, considering suggestions presented in the previous chapter.

On the ground of these conclusions, I would suggest just some small legislative changes by the interception and recording of telecommunication operation. But, in general, this legislation seems to be sufficient. On the other hand, when it comes to the data identification of telecommunication traffic, I would suggest more substantial improvements, since this legislation does not comply with judgments of the Czech Constitutional Court and does not guarantee adequate protection of human rights against intervention of state power bodies.