

Abstract

This thesis is devised as an analysis of the legal framework of the institutes of wiretapping and recording of telecommunication traffic, as well as the survey of the telecommunication traffic, which is included in the § 88 and § 88a of the act no. 141/1961 Coll., Criminal Procedure, as amended. The aim of this thesis was to analyze in detail the current and valid legal framework with respect to the protection of human rights and to point out the fact that the use of these institutes often finds itself on the threshold of considering the interference with the personal sphere of an individual to be justified/justifiable as well as the slight overstepping of such threshold by the public authorities, which I assume.

The thesis is divided into four connecting chapters, not including the introduction and the conclusion. In the first chapter, which is divided into two sub-chapters, I address primarily the legal evolution of the examined institutes, as to when was the first time these institutes were incorporated into the valid legal framework and brought to life, their subsequent development and the most important amendments throughout the years. The second sub-chapter outlines the technical development from the not so distant past to the present, where I think about the evolution of technical communications throughout time, while I think that in the present time of high-tech communications, the legislature cannot always effectively and adequately react to the rapidly changing technologies of the 3rd millennium.

The second chapter describes the conflict between the examined institutes and the rights included for one in the Charter of Fundamental Rights and Freedoms and also the rights standardized on the international level, where from my point of view it is necessary to maintain a balance to prevent damage caused to the affected persons, but on the other hand also allow the wiretapping and recording of telecommunication traffic and the survey about the telecommunication traffic to fulfill its role, because of which they have been incorporated in the legal framework for multiple years.

The third chapter seems to be the most comprehensive and is divided into two sub-chapters. The first sub-chapter addresses in eight parts the institute regulated in § 88 of the Criminal Procedure. The first part is dedicated to the conditions under which the institute can be used in the preparatory criminal proceedings. The second part describes the procedure of obtaining a wiretap order and the requirements of such order. The third part includes the

beginning, carrying out and conclusion of the wiretap, including the obligations of the authorities involved in criminal proceedings. Part four then addresses the problematic of wiretapping of communications between a defendant and his attorney. The fifth part describes, under which conditions a wiretap can be ordered with the consent of the person listened to. In the sixth part, the use of wiretaps as evidence in the criminal proceedings, also the conditions of using a wiretap, which was obtained in another state, as evidence, which are deduced on the level of the constitutional case law. Furthermore, I have relatively comprehensively addressed the framework of the informational obligation of the authorities involved in criminal proceedings and the connected examination of a wiretap order in the seventh and eighth chapters, where I applied the most critical perspective. The second subchapter addresses the analysis of a related institute of the survey of the telecommunication traffic included in the § 88a of the Criminal Procedure. The subchapter is divided into four parts, where the first part addresses the conditions of issuing an order and the requirements thereof, the second part then also analyzes the the informational obligation in regard to the affected persons, the third part then addressed the investigation of the data about telecommunication traffic with the consent of the user. The fourth part, which is the most comprehensive, consists of the analysis of two relevant findings of the Constitutional Court and their acceptance with respect to the unification of a constitutionally non-conform situation.

The last chapter, describing the valid and effective legal Framework in the neighboring Slovak Republic, is divided into three basic sub-chapters, which, similar to the Czech legal framework, describe the wiretapping and recording of telecommunication traffic in accordance with § 115 of the Slovak Criminal Procedure, the determination and notice about the data regarding the carried out telecommunication traffic in accordance with § 116 of the Slovak Criminal Procedure and the subsequent comparison thereof with the Czech law, while the Slovak legal framework finally felt like the less successful one.

In the conclusion of the thesis, my findings and a summary of the ideas are described.