

**Presidency of the Republic**  
**Office of the Chief of Staff**  
**Legal Affairs Subsection**

LAW No. 9296, OF JULY 24, 1996,

regulates Item XII, final part, of Article 5 of the Federal Constitution.

(Refer to Law No. 13869, of 2019) (In Effect)

(Refer to Law No. 13964, of 2019) (in Effect)

I, the **PRESIDENT OF THE REPUBLIC**, hereby make known that the National Congress decrees and I sanction the following Law:

Article 1. Wiretapping, of any nature, used as evidence in criminal investigations and in the evidentiary stage of criminal proceedings, shall be ordered by the judge in charge of the principal action, under seal.

Sole Paragraph. The provisions of this law apply to the interception of communication through computers and telematics.

Article 2. Interception of telephone communications shall not be allowed when any of the following occur:

I - there is no reasonable evidence of the perpetrator or participation in the criminal offense;

II - evidence can be obtained through any other available means;

III - the fact under investigation is a criminal offense punishable with the maximum penalty of detention.

Sole Paragraph. In any event, the situation under investigation shall be clearly described, including indication and identification of the person under investigation, except for stated impossibility, duly justified.

Article 3. Interception of telephone communications may be ordered by the judge, *sua sponte*, or at the request of:

I - the police authority, during criminal investigation;

II - the Prosecution Service's representative, during criminal investigation and the evidentiary stage of the proceedings.

Article 4. Request for interception of telephonic communication shall contain a statement that its is necessary for the criminal offense to be established, indicating the means to be employed.

Paragraph 1. Exceptionally, the judge may allow a verbal request, provided that it meets the prerequisites for authorizing interception, in which case the verbal request should be later written.

Paragraph 2. The judge, within twenty-four hours, shall decide on the request.

Article 5. The decision shall be reasoned, under penalty of nullity, and shall indicate the form of enforcement of the measure, which may not exceed the period of fifteen days, renewable for an equal period, once that type of evidence is proven to be indispensable.

Article 6. Once the request is granted, the police authority shall conduct the procedures for interception, notifying the Prosecution Service, which may follow the measure.

Paragraph 1. In the event of a measure enabling the recording of the intercepted communication, its transcription shall be ordered.

Paragraph 2. Once the measure is enforced, the police authority shall forward the results of the interception to the judge, accompanied by substantiated records, which may contain the summary of the operations performed.

Paragraph 3. After receiving those elements, the judge shall order the provisions of Article 8, once the Prosecution Service is notified.

Article 7. For the procedures of interception referred to in this Law, the police authority may request expertise services and professionals from the public service.

Article 8. The interception of telephone communications, of any nature, shall occur in separate records, attached to the records of the police investigation or the criminal proceedings, preserving the confidentiality of the measure, recordings and respective transcriptions.

Sole Paragraph. The separate records shall only be carried out immediately before the authority's report when the matter relates to police investigation (Code of Criminal Procedure Article 10, Paragraph 1), or when the action is sent to the judge for a decision under the terms of articles 407, 502 or 538 of the Code of Criminal Procedure.

Article 8-A. The judge may authorize, in case of investigation or evidentiary stage, by request of the police authority or the Prosecution Service, recording of electromagnetic, optical or sound signals, when: (Included by Law No. 13964, of 2019)

I – evidence cannot be produced by other available and effective means; and (Included by Law No. 13964, of 2019)

II – there are reasonable evidentiary elements regarding the perpetrator and the participation in criminal offenses whose maximum penalties surpass 4 (four) years or which are related to joinder of actions. (Included by Law No. 13964, of 2019)

Paragraph 1. The request shall describe the location and the manner by which the device will be installed to record the signals in a very detailed manner. (Included by Law No. 13964, of 2019)

Paragraph 2. (VETOED). (Included by Law No. 13964, of 2019)

Paragraph 3. The recording of signals shall not exceed 15 (fifteen) days, which may be extended by judicial order for the same period, if the means to produce evidence is proven to be indispensable and whenever the criminal activity is permanent, regular or continuous. (Included by Law No. 13964, of 2019)

Paragraph 4. (VETOED). (Included by Law No. 13964, of 2019)

Paragraph 5. The rules provided in the specific legislation for telephone and telematics wiretapping shall be additionally applied to the recording of signals. (Included by Law No. 13964, of 2019)

Article 9. The recording not applicable to the evidence shall be destroyed by judicial decision, during the investigation, the evidentiary stage or after that, at the request of the Public Service or the interested party.

Sole Paragraph. Destruction shall be attended by the Prosecution Service, with the presence of the defendant, and the presence of a legal counsel is optional.

Article 10. Interception of telephone, informatics or telematics communications and recording of signals is a crime as well as disclosing a case under seal by court order without judicial authorization or for purposes not authorized by law. (Included by Law No. 13869, of 2019)

Penalty: imprisonment from 2 (two) to 4 (four) years and a fine. (Included by Law No. 13869, of 2019)

Sole Paragraph. The same penalty shall incur the judicial authority who orders enforcement of the conduct provided for in the head provision of this article with purposes not authorized by law. (Included by Law No. 13869, of 2019)

Article 10-A. To record electromagnetic, optical or sound signals, to investigate or produce evidence in the evidentiary stage without judicial authorization, when it is required: (Included by Law No. 13869, of 2019)

Penalty: imprisonment from 2 (two) to 4 (four) years and a fine. (Included by Law No. 13869, of 2019)

Paragraph 1. Recording is not a crime if done by one of the interlocutors. (Included by Law No. 13869, of 2019)

Paragraph 2. The penalty shall be doubled to the public servant who does not comply with the duty of confidentiality of the investigations involving the recording or reveals the content of the recording while under judicial confidentiality. (Included by Law No. 13869, of 2019)

Article 11. This law enters into force on the date of its publication.

Article 12. All provisions to the contrary shall be revoked.

Brasília, July 24, 1996; the 175<sup>th</sup> Anniversary of the Independence and the 108<sup>th</sup> Anniversary of the Republic.

FERNANDO HENRIQUE CARDOSO

*Nelson A. Jobim*

This text does not replace the one published in the Official Gazette of July 25, 1996.