

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

LAW No. 9,296, OF JULY 24, 1996,

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

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

Article 1. The interception of communications of any nature, for the purpose of obtaining evidence in criminal investigations and criminal proceedings, shall be ordered by the judge with jurisdiction over the principal proceedings, under seal.

Sole Paragraph. The provisions of this law apply to the interception of communications 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. The interception of telephone communications may be ordered by the judge, *sua sponte*, or at the request of:

I – the police authority, during the criminal investigation;

II – a representative of the Prosecution Service, during the criminal investigation and the evidentiary stage of the proceedings.

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

Paragraph 1. In exceptional circumstances, the judge may admit a verbal request, provided that the requirements for authorizing the interception are met, in which case the request shall subsequently be reduced to writing.

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

Article 5. The decision shall state the reasons therefor, under penalty of nullity, and shall indicate the manner in which the measure is to be carried out, which may not exceed fifteen days and may be renewed for an equal period if the gathering of such evidence is demonstrated to be indispensable.

Article 6. Once the request has been granted, the police authority shall conduct the interception procedures, notifying the Prosecution Service thereof, which may monitor their execution.

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 be conducted in a separate set of records, which shall be attached to the records of the police investigation or criminal proceedings, with the confidentiality of the measure, the recordings, and the respective transcripts being preserved.

Sole Paragraph. The separate set of 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. 13,964, of 2019)

I – evidence cannot be produced by other available and effective means; and (Included by Law No. 13,964, 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. 13,964, 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. 13,964, of 2019)

Paragraph 2. (VETOED). (Included by Law No. 13,964, 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. 13,964, of 2019)

Paragraph 4. (VETOED). (Included by Law No. 13,964, 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. 13,964, 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. The destruction shall be carried out in the presence of a representative of the Prosecution Service and the defendant, and the presence of legal counsel shall be 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. 13,869, of 2019)

Penalty: imprisonment from 2 (two) to 4 (four) years and a fine. (Included by Law No. 13,869, 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. 13,869, 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. 13,869, of 2019)

Penalty: imprisonment from 2 (two) to 4 (four) years and a fine. (Included by Law No. 13,869, of 2019)

Paragraph 1. The recording of communications shall not constitute a crime when made by one of the parties to the communication. (Included by Law No. 13,869 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. 13,869, 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 175th Anniversary of the Independence and the 108th 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.