REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

U-I-25/95
27.11.1997

DECISION

At a session held on 27 November 1997, in a proceeding for assessing constitutionality commenced on the initiative of Dr. Miha Brejc of Dob and Darko Zupan of Velenje, represented by Ervin Dokič, attorney in Piran, the Constitutional Court

reached the following decision:

Articles 150 to 156 of the Criminal Proceedings Act (Official Gazette RS, no. 63/94) are annulled.

The annulment shall take effect within a time limit of one year after promulgation of this decision in the Official Gazette RS.

Reasoning

A. - I

1. The proceeding in this case was commenced on 11.5.1995 with the acceptance of the initiative of Dr. Miha Brejc for an assessment of constitutionality of point 5 of the first paragraph of article 150 of the Criminal Proceedings Act (Official Gazette RS, no. 63/94 - hereinafter: ZKP). Since the impugned statutory provision is contextually linked with the second paragraph of the same article ZKP, on the basis of article 30 of the Constitutional Court Act (Official Gazette RS, no. 15/94 - hereinafter: ZUstS), the Constitutional Court also commenced a proceeding for assessing the constitutionality of this provision.

2. The National Assembly answered to the initiative as the opposing party. The Ministry of Justice and the State Prosecutor communicated their standpoints to the initiative.

3. The President of the Constitutional Court, on the basis of the second paragraph of article 35 ZUstS, announced a public hearing, to which in conformity with the first paragraph of article 36 ZUstS, the initiator and the National Assembly were invited as parties, their representatives and authorised agents and representatives of the Government, the Supreme Court and the State Prosecutor. The initiator and his attorney, and representatives of the National Assembly and Government were present at the public hearing, while the representatives of the State Prosecutor and Supreme Court did not respond to the invitation. The court heard their statements and answers to questions of the judges, while the opposing party subsequently communicated answers to specific questions in written form.

4. On 20.9.1995, the Constitutional Court accepted for hearing the initiative of Darko Zupan for the assessment of constitutionality of point 3 of the first paragraph of article 150 ZKP.

5. The National Assembly responded to the initiative as the opposing party. The State Prosecutor adopted a standpoint on the initiative.

6. At a session held on 16.1.1997 the Constitutional Court joined the initiatives because of common treatment and decision.

A. II.

7. The initiator, Dr. Miha Brejc, asserts conflict of the provision of point 5 of the first paragraph of article 150 ZKP with articles 36 and 37 of the Constitution. He believes, namely, that listening in premises with technical equipment is such a grave infringement of personal integrity and privacy that it

is not outweighed by the public interest in the name of which deviation from the inviolability of personal privacy is permitted. The inviolability of dwelling is violated in the initiator's opinion by the secret approach to a dwelling which is required in order to install and in order to remove listening devices. In connection with the statutory arrangement of the measure, the initiator draws attention above all to the low level of suspicion (reasons for suspicion), which may condition the ordering of listening, to the wide spectre of criminal offences for which the encroachment may be ordered. The initiator draws attention to the large powers of the police in carrying out the disputed measure and consequently to the possibility of abuse which is claimed to be especially great because supervision of the implementation of the measure is technically not possible. The legalisation of listening in premises is claimed to be in particular inappropriate also because in Slovenia we are only at the start of democratisation of society and because in a social environment which still retains major remnants of the past, democratic forces have not yet achieved a critical mass.

8. The initiator also refers to articles 37 and 38 of the Constitution and article 8 of the European Convention on the Protection of Human Rights (Official Gazette RS, no. 7/94 - hereinafter: EKČP), and listening in premises is also claimed to be anti-constitutional because the person who is being eavesdropped unwittingly incriminates himself, although the Constitution guarantees an accused the right to an attorney and the right not to incriminate himself. Since a person against whom listening has been approved does not know this, he also cannot appeal, so in the opinion of the initiator, his constitutional right to judicial remedy under article 25 of the Constitution is violated.

9. The initiator, Darko Zupan, claims that point 3 of the first paragraph of article 150 ZKP is unconstitutional. The measure of apparent purchase of objects is claimed to be in conflict with the principle of a state ruled by law under article 2 of the Constitution and the protection of human rights guaranteed by article 5, and the right to personal dignity. This because the measure is claimed to be defined such that it enables arbitrariness, encroachment on fundamental human rights and abuse, and especially incitement to criminal activity and thus manipulation of personality and its degradation.

10. Both initiators propose the annulment of the impugned statutory provisions.

A. III.

11. As opposing party, the National Assembly asserts in its answer the conformity of the impugned provisions ZKP with the Constitution and EKČP and therefore proposes to the Constitutional Court that it reject the initiatives.

12. In relation to measures under article 150 ZKP, in general it stresses:

- that they are necessary measures, aimed at the worst forms of criminal, the most harmful thus for the general security of people, as well as to the rights, position and security of everyone,

- that they may only be introduced exceptionally, on the fulfilment of statutory conditions (second paragraph of article 150 and first paragraph of article 152 ZKP),

- that the implementation of an individual measure may only last a short time since it can be extended at most to six months in total only on the basis of serious reasons for extension (first paragraph of article 152 ZKP),

- that all officials who cooperate in the procedure are bound to protect the data obtained as an official secret,

- that a violation of the provisions ZKP under consideration is punishable under the Penal Code,

- that a court may not rest its decision on data so obtained if the measure was carried out without an order from an investigating judge or in conflict with it (article 155), - a suspect has the right to be acquainted with the material which was obtained through the execution of the measure, either at the commencement of a criminal proceeding or prior to destruction of this material (second paragraph of

article 154 ZKP), whereby in such a case the material must be destroyed immediately the suspect has been acquainted with it.

13. The National Assembly in answer draws attention to the growth of organised crime in all European countries. States are claimed to fight against this also with the use of special measures which enable organs of discovery to trace the perpetrator of a criminal offence and that they protect and collect data required for the successful execution of criminal proceedings. In the opinion of the legislator, the same level of probability cannot be demanded for the introduction of special measures as for the introduction of an investigation, since the measures are used in the pre-trial procedure when evidence of well-founded suspicion is only being collected. In connection with the reproach of possible abuse, it finds that the statutory protections of the consistent execution of the provisions of ZKP are sufficient.

14. In relation to the impugned measure under point 5 of the first paragraph of article 150 ZKP (listening in premises with technical equipment) the National Assembly in particular states that it is based on the provisions of the third paragraph of article 15 and the second paragraph of article 37 of the Constitution and that it also meets the conditions under the second paragraph of article 8 EKČP.

15 According to the claims of the National Assembly, the provision of the third point of the first paragraph of article 150 ZKP is also within the boundaries of permissible restrictions of human rights and fundamental freedoms. It refers to the provision of the third paragraph of article 15 of the Constitution on the permissible restriction of human rights by the rights of others and stresses that the measure may only be ordered for a very narrow range of serious criminal offences which encroach on the existential security of people. Since the measure may only be used against a person for which reasons for suspicion exist that he has co-operated with one or more persons in already committed criminal offences and since it concerns the purchase of objects which in connection with the provision of the second paragraph of article 151 are classified as the purchase of already counterfeit money, weapons, ammunition or other military means or drugs "according to the definition of these signs of criminal activities" does not signify and cannot signify incitement to criminal activities unless it concerns abuse - and ZKP contains a series of protections against abuse.

In connection with this, it stresses the extensive legal protections and that only such evidence as has been obtained in a way determined in ZKP also has evidential value in a criminal proceeding.

16. The Ministry of Justice, similarly to the opposing party, takes the standpoint that special methods and means are a crucially necessary form of the fight against organised crime and thus connected with the most serious and socially most damaging criminal offences. The spread of the most serious forms of organised crime, which uses the most up-to-date techniques and other means for the realisation of its aims, is claimed to be a generally known fact, and the majority of European countries are claimed to have incorporated in their laws the same or similar solutions as contained in ZKP. In the opinion of the ministry, the constitutional basis for the provision of point 5 of the first paragraph of article 150 is given in the third paragraph of article 15 and in the second paragraph of article 37 of the Constitution, and the statutory arrangement meets constitutional conditions: thus when the first paragraph of article 150 determines that special methods and means may be ordered against a person of whom reasons exist for suspicion that he has taken part in the execution of a criminal offence cited in article 151 ZKP, the constitutional condition is met for the limitation of constitutional rights because of the introduction and course of criminal proceedings; thus when the second paragraph of the same article determines that measures may only be ordered if evidence may not be collected in other ways, or its collection would be connected with disproportionate difficulties, the constitutional condition of necessity is met.

The ministry in particular draws attention to protections prescribed in connection with the ordering and use of measures.

It stresses that measures may be ordered by the investigating judge on the reasoned proposal of the state prosecutor, and carried out by employees of internal affairs bodies, and all data are protected as official secrets; that the implementation of measures is limited temporally; that after cessation of use of the measures, all information and material must be handed to the court; that the material is destroyed under the supervision of the court if the prosecutor does not bring a charge, and in any case the

suspect may be acquainted with the material; and finally, that any abuse of the ordering or carrying out of measures is a criminal offence.

17. In the opinion of the state prosecutor, listening in premises with technical equipment is not in conflict with articles 35 and 36 of the Constitution . It does not signify a violation of personality because of the social interest in ensuring security, legality and suitable coexistence and the protection of other rights of individuals which are threatened because of the growth of specific forms of criminality. The prosecutor draws attention that the use of individual methods and means was also legal prior to the adoption of ZKP (Amending and Supplementing Act to the Internal Affairs Act of 1991), and the provisions of ZKP only introduce the possibility of obtaining evidence in the prescribed manner to use as evidence in criminal proceedings. In connection with the asserted violation of article 36 of the Constitution, the prosecutor takes the standpoint that the order of an investigating judge also contains permission for the secret setting up of listening equipment and thus also for the secret access to another person's dwelling, or this method of discovering the perpetrator of criminal offences loses all meaning. He interprets the constitutional provisions such that it allows the possibility of access, since only in a case of a search of a dwelling is claimed to be determined the right of those whose premises are being searched or their representative to be present, or that two witnesses be present. When it is not a search, secret access to a person's residence is claimed to be legal, when a court order on the use of this special method has been issued.

18. In connection with the apparent purchase of objects, the State Prosecutor stresses that it may only be used for what is a narrow circle of criminal offences, which according to the potential penalties are the most serious criminal offences that are carried out by organised criminal associations, and for this the conditions must be given from the "introductory sentence" of the first paragraph and from the second paragraph of article 150 ZKP. The prosecutor stresses that perpetrators of such criminal offences are difficult to discover with conventional means, since organisers of criminal associations in particular hide behind conspiracy and professionality. So there are all the more victims, fear of criminals and victimisation increases among citizens, and in accordance with this, the demand is established for effective repressive action of organs of criminal prosecution and organs of investigation. In assessing the measures from a moral point of view, it is necessary, in the opinion of the prosecutor, to respect that it is prescribed by law and that internal affairs bodies must implement it, such that according to the explicit provision of the fourth paragraph of article 151, criminal activities may not be incited with the apparent purchase of objects. The prosecutor is certain that the police behave in accordance with these statutory provisions. The state prosecutor also believes that the provision is not in itself in conflict with the principle of a state ruled by law and that it cannot be arbitrary or abused, since legislation exists to prevent infringement of personal dignity. It would only in the opinion of the prosecutor be suitable or necessary that ZKP arranges more precisely the implementation of individual special methods and means, as well as (their) treatment.

B.- I

19. The provision of article 150 ZKP reads in the entire text: "(1) An investigating judge may order against a person of which reasons for suspicion exist that, together with one or more persons, he has co-operated in committing a criminal offence cited in article 151 of this law:

1) supervision and recording of telephone conversations and other forms of communication with technical means; 2) secret police co-operation, secret observation and following and pictorial recording;

3) apparent purchase of objects;

4) apparent bribery;

5) listening in premises with technical equipment; 6) access to computer systems of banks or other legal persons which perform financial or other economic activities. (2) An investigating judge shall order measures under the previous paragraph on the reasoned proposal of the state prosecutor, if evidence cannot be collected in another way, or if its collection would be connected with disproportionate difficulties."

20. The cited statutory provision is placed in the context of section XV ZKP, which refers to the pre-charge procedure and in which powers are arranged held by internal affairs bodies in connection with the discovery of criminal offences and their perpetrators, and empowerments which the state prosecutor and the investigating judge have in connection with them.

21. Measures under article 150 ZKP, according to the claims of the proposers of ZKP, represent specific operative methods and means of work of internal affairs bodies which shall be used in the pre-charge procedures:

- in order successfully to discover more serious and the most serious forms of criminality,

- in order more successfully to collect evidence of this, and - with the intention of providing evidence obtained with these measures evidential value in criminal proceedings.

22. For a judgement of the constitutionality of the impugned measures, other statutory provisions (in addition to article 150 ZKP) are important. In addition to the already cited article 151, in which are enumerated, or by general clauses determined, those criminal offences for which individual measures may be ordered, articles 152, 153, 154, 155 and 156, in which are prescribed the method of ordering the measures, the manner and conditions in relation to their implementation and in relation to the use of data which are obtained with the measures.

23. Article 152 prescribes the form and content of an order of an investigating judge: the order must be written, in the order must be stated data on the person against whom the measure shall be used, the reasons for suspicion, and the method, extent and duration of the measures.

24. The duration of the measures is limited by the same statutory provision. They may be ordered for a maximum of one month, for weighty reasons they may be extended - each time for one month, for a total of a maximum of six months. The implementation of a measure must be ceased immediately the reasons for which they were ordered ceases.

25. An order of an investigating judge which shall be issued (only) on the proposal of the state prosecutor, shall be implemented by internal affairs bodies (second paragraph of article 152 ZKP). Internal affairs bodies are bound after terminating use of the measures, to send or to hand over to the investigating judge, together with a report, all recordings, messages and objects which were obtained by the use of the measure. The investigating judge is bound to investigate whether the internal affairs body behaved in compliance with his order (article 153). The investigating judge or court is the (body) which shall retain from the ceasing of implementation of the measures, documentation and recordings which the internal affairs body obtained with the implementation of the measures, and dispose of them. They shall be retained as long as the retention of the criminal records (article 154).

26. In addition to the investigating judge, the state prosecutor shall first be acquainted with the material collected (second paragraph of article 153 ZKP) and then the suspect - if the state prosecutor states that a charge will not be brought, otherwise at the commencement of criminal proceedings.

27. Data, the report and recordings collected with the implementation of the measures shall represent evidence in a criminal proceeding, unless they were introduced without the order of the investigating judge or in conflict with it. In such a case, the court may not rely on (such material) in its decision (article 155).

28. For the ordering and the implementation of the impugned measures under point 3 of article 150 ZKP (apparent purchase of objects) in addition to the already cited, further special conditions shall also apply: the measure may (for four enumerated criminal offences) only be ordered in a case "in which such objects are likely to be evidence in a criminal proceeding" (second paragraph of article 151). Especially in connection with the implementation of this measure (and the measure of apparent bribery) the provision of the fourth paragraph of article 151 is a prohibition, according to which a criminal activity may not be incited by the purchase of objects. B. - II.

29. Listening in premises with technical equipment undoubtedly infringes on the right to privacy - both the initiator and the opposing party are agreed on this. The starting point for a constitutional court judgement of the measure of listening in premises with technical equipment thus represents in first place the provision of article 35 of the Constitution (protection of the right to privacy and of personal rights, which reads: "The physical and mental integrity of each person shall be guaranteed, as shall his right to privacy and his other personal rights."

30. Human rights, as the premise and central part of the constitutional arrangement which justifies the definition of Slovenia as a democratic state ruled by law, are of such crucial significance that the Constitution, in addition to stating them exhaustively, also guarantees their direct implementation. The provisions on rights are not merely binding guidelines for the legislator, but a directly used guarantee for each individual.

Constitutional provisions with which the rights of individuals are protected are of an explicitly restrictive nature. The fundamental values of the Constitution from which we must derive is, namely, the protection of the individual from encroachment on his integrity.

31. Despite the centrality and the direct implementability of human rights and fundamental freedoms, the Constitution determined that these may be restricted in order to protect the rights of others (article 15). The Constitution thus sets a boundary to fundamental constitutional rights in relation to the rights of others and in order to protect priority statutory benefits and fundamental rights are determined against possible abuse, whereby both the rights of individuals and the protection of society as a whole could be threatened. This means that an individual must nevertheless be subordinated to such restrictions of their freedom of behaviour as determined by the Constitution or the legislator because of the protection and development of coexistence in society, within the boundaries of permissibility and on the premise that the independence of a person as an individual remains guaranteed. Such restrictions must of course be exceptional and able to be specifically regulated. The Constitution leaves determining the manner of restricting these rights to the legislator, with the proviso that it sets (the legislator) criteria for restrictions. And precisely in the criteria is concealed the danger that they could be too widely interpreted and even abused and thus rights and fundamental freedoms exageratedly and impermissibly restricted. Supervision of both the legislator and organs which look after the actualisation of legally determined restrictions of rights and freedoms is necessary.

32. Provisions which protect a person's human dignity, right to privacy, their personality and protection have a special position among human rights and fundamental freedoms (articles 34 to 38 of the Constitution) and they forbid anyone - in first place the state, but also individuals - from encroaching on the enumerated rights. In conformity with the principle that everything is here forbidden which is not explicitly allowed, under the Constitution any encroachment on the enumerated rights is forbidden, except those which are explicitly allowed. The right to privacy can be terminated for an individual only in such cases in which it collides with the statutorily demonstrated stronger interests of others.

33. In the light of the stated general findings, the Constitutional Court first judged the constitutionality of the impugned statutory provisions insofar as they encroach on the right to privacy under article 35 of the Constitution .

34. With the placing of listening devices in a dwelling and other premises there is in particular an encroachment on the constitutional right to inviolability of dwellings (article 36 of the Constitution)1.

35. The collected data are of a personal nature, therefore the subject of protection on the basis of article 38 of the Constitution 2.

36. At the same time, listening also represents an "interference of public authority" in the exercise of the right to privacy under the first paragraph of article 8 EKČP3 as a

constitutionally protected human right or fundamental freedom on the basis of the fifth paragraph of article 15 of the Constitution 4.

37. On the subject of the undefinability of the constitutional concept of privacy, the Constitutional Court understood personal privacy in its case no. Up 32/94 as "in the area of a person's dwelling more or less including his entire behaviour and dealings, feelings and relations for which is characteristic and constitutive that a person maintains himself or his closest, whereby it is in an intimate community and that he lives in it with a sense of security from the intrusion of the public or anyone undesirable".

38. According to the legal judgement of the European Court of Human Rights, privacy is often understood as the security of a person in their dwelling, as an extensive negative right of protection of an individual against the encroachment of the state or a third person in their private sphere, personality and dignity. At a conference of Nordic lawyers in Genf in 19765, the rights of individuals in the sphere of privacy were defined through encroachment on them. As an encroachment on privacy they defined "encroaching on the private and family life and events in the home, as an encroachment on physical and mental integrity or moral and spiritual freedom, an encroachment on honour and good name, revealing unfavourable circumstances from private life, following, watching, listening and causing distrust, abuse of written or oral private communications, obtaining information which signifies professional confidences". Through the concept of "privacy" is claimed to be protected that sphere of an individual's life which does not affect others and in relation to which the affected person decides himself whether or not he will withdraw from it. - By the "concept of anticipated privacy" which the Supreme Court of the USA has adopted in its decisions6, from the point of view of the protection of privacy, it is not essential where the listening devices are placed, outside or inside premises, it is crucial whether a person can in a defined space count on being assured privacy. The court weighs two elements in this: the expectation of privacy and the justification of privacy. There is an encroachment on privacy under the cited concept when a person is situated in a place in which he can justifiably expect to be alone. Thus a home is normally a place in which a person can expect privacy, but the statements which he makes to a third person are not protected because he did not express the intention that he would restrain himself. On the other hand, conversations in the open are not protected from surprise since such an expectation of privacy would not be justified from the point of view of society. What a person knowingly makes public, although in his own dwelling or office, is thus according to the expectation of privacy not the subject of protection. But what he attempts to preserve as private, although in a publicly accessible space, can be the subject of constitutional protection: it is only an infringement of privacy when a person is located in a space in which he can justifiably expect to be alone.

39. Listening in premises with technical equipment, whereby the entire events in a specific space is unselectively overheard, also in a dwelling or other private premises, of any individual who is momentary located there, of a confidential conversation and any kind of communication between those present, in a room, as well as all telephone calls and conversations which are carried from these places, in view of what has been stated is undoubtedly an encroachment which affects the private sphere of an individual. Above all, the listening to a confidential conversation affects one of the narrowest circles of general personal rights and at the same time, the right to privacy.

40. The Constitution protects those parts of privacy which relate to freedom of communication, twice: in article 35, in which the rule is set that everyone has the right to privacy and that privacy is inviolable, and especially in article 37, with which is guaranteed the privacy of post and other forms of communication. Conditions for the limitation of this right are contained in the second paragraph of article 37 of the Constitution .

41. An infringement on the freedom of communication as part of personal privacy is not in conflict with articles 35 and 37 of the Constitution if the following conditions are met: - that the infringement is specifically defined and determined by statute;

- that the infringement is permitted by court decision; - that there is a soecified limitation on the time of carrying out the infringement; and

- that the infringement is necessary for the introduction or course of a criminal proceeding or for the security of the state, taking into account in the judgement of necessity also the principle of proportionality.

42. The basic condition which the Constitution sets is that only law may limit that part of personal privacy. The Constitution explicitly imposes on the legislator that any material infringement on privacy must not only be arranged by statute but that such an arrangement must be specific and unambiguous. Any possibly arbitrary decision of a state organ must be excluded.

As the Constitutional Court has on a number of occasions stressed in its decisions, the certainty of law (lex certa) is a prerequisite of a state ruled by law (article 2 of the Constitution) and would apply as a constitutional imperative even if it was not specifically mentioned in the Constitution .

43. In decision no. U-I-18/93, the Constitutional Court in this connection in particular drew attention to the fact that the requirement for legal certainty, which is a constitutive element of any justice at all, is all the more stressed insofar as the disputed subject in any dispute is set higher. In view of the fact that listening as such and especially listening in premises with technical equipment represents an extreme encroachment on the constitutional right to privacy, it must be based on a particularly specific arrangement with clear and detailed rules. These rules guarantee to the citizen on the one hand the predictability (certainty) of measures or situations in which the infringement may be applied, and on the other, effective legal supervision and suitable and effective means against abuse of these measures.

44. It is necessary to stress in this that the Constitution itself in article 377 establishes basic guidelines and measures for the required statutory arrangement. These are the requirement for a court decision, for a limited time of duration of the infringement and necessity (unavoidability) of such an infringement for the introduction or course of criminal proceedings or for the security of the state.

45. The fact that the Constitution speaks of a court decision, only on the basis of which is the infringement of privacy allowed, means according to the already adopted standpoint of the Constitutional Court that the requirement for a decision on the encroachment on the part of the judicial (and not the executive) branch of authority. This provision, too, is based on the principle of a state ruled by law, according to which the intervention of executive authority on the rights of individuals must be subjected to effective control, which should above all be entrusted to the courts. The requirement for a court decision also includes the guarantees which ensure the right to the equal protection of rights in a proceeding before the courts (article 22 of the Constitution 8), the right to due process of law (article 23 of the Constitution 9), the right to appeal or other legal remedy (article 25 of the Constitution 10) and the right to legal guarantees under article 29 of the Constitution 11).

46. An infringement, which may only last a specific time, may be prescribed and used only for the purposes of a criminal proceeding, for its introduction or for its course, and in other cases or other proceedings only when this is required for the security of the state.

47. By the "necessity" of the infringement, the principle of proportionality is explicitly built into the Constitution, which is also recognised as a general constitutional principle, derived from the principle of a state ruled by law. This demands of the legislator that in determining the conditions for an encroachment it enables a judgement of whether the encroachment is necessary, such that the desired aim cannot be achieved by less extreme means. At the same time, it imposes on the part of the legislator the responsibility that the possibility of encroachment on the right to privacy be restricted only to cases in which such an encroachment would be in understandable proportion to the aims, thus to those benefits which are claimed to be protected by the encroachment, and with understandable anticipated effects of such protection. Only in a case that concerns rights for the protection of which the encroachment is permitted because of their importance, absolute priority, may be permitted also very powerful infringements on the first rights, but the seriousness of the infringement of them must be in proportion to the importance of protecting the other rights. In other words, any infringement which is necessary is not a priori allowed if protected rights are to be protected as a whole, when the first right also deserves the same powerful protection. In a collision of such rights, it is necessary to allow only an infringement on one which other rights will not protect absolutely, but only proportionately with the first (the rights will therefore mutually restrict each other)12.

48. As is evident from the provisions of ZKP (from points 19 to 27 of this decision), the impugned measure of listening in premises with technical equipment is not only determined but also the

procedure is regulated according to which it is ordered and executed, the responsible bodies and the consequences of its use. It is ordered by a court (investigating judge) by a written order, and the duration of the measure is temporally limited (article 152). The measure shall be ordered in connection with the discovery of (specified) criminal activities in the context of a pre-trial procedure, and as such should be crucially necessary for the carrying out of the criminal proceeding.

49. In assessing whether the measure meets the constitutional condition of necessity in the most general meaning of this word, that is, whether the measure as such in the given social and political circumstances can in general be considered justified and urgently necessary, which the initiator explicitly opposes, it is impossible to avoid the fact to which the opposing party draws attention. In the opinion of the Constitutional Court, namely, it justifiably draws attention that throughout the world and here, too, there is an increase in the most serious forms of crime, especially so-called organised criminals, who use the most up-to-date technical and other means for the realisation of their aims. This finding in principle is, namely, already on the basis of generally known facts, difficult to contradict, although it is at the same time necessary to find that in the entire criminal proceedings, at the time of debate and at the time of adoption of the impugned provisions ZKP, as well as in the proceeding before the Constitutional Court, it appears only as a general claim which does not have as a basis concrete data on conditions in society and especially in the field of criminality in Slovenia. From the available material, it is also not evident that the legislator's assessment of the necessity to strengthen the police with the use of the impugned measure would derive or be based on a programme of executing adopted crime policies, which together with an assessment of circumstances would have to represent the basis not only for the discussed but also any kind of adopting or supplementing of legislation in the field of criminal law. In the opinion of the Commission of the European Union on the Slovene request for membership13, the contrary assessment of circumstances in Slovene is entirely undisputed: concretely it states that there exists in Slovenia organised crime in the field of the weapons trade, trade in whiteware, prostitution, money laundering, car thefts and drug smuggling, and that Slovenia is the main transit country for the drugs trade.

50. The opposing party does not say what kind of means are used by criminal associations. However, it is generally known that these concern the most varied methods of use of technical means for watching, spying and communicating. It is also a fact that the state is obliged to fight against the growth of criminality which threatens the security of its citizens and, in excessive forms, even the democratic order or the state itself. In order for the state effectively to marginalise the most serious forms of criminal and thus meet its constitutional responsibility of protecting the rights and freedoms of citizens, it is necessary in the view of the Constitutional Court that it legislates measures which are of the same worth as those types and methods of operation as used by (organised) criminals. These may be above all measures which are carried out with technical means and without the knowledge of those affected. The European Court for Human Rights came to the same conclusion on the necessity of the use of special investigative methods, bearing in mind criminal-political circumstances in FRG, when it decided on the justifiability of police listening into telephone conversations14. The European Commission of the Council of Europe, which deals with the problem of criminality (CDPC - European Committee on Crime Problems), bearing in mind conditions in member states of the Council of Europe, in a report15 explicitly recommended to members that for the sake of a more effective fight against criminal organisations they use among other things also control of communications, both telecommunications as well as direct communication. Precisely such measures are concerned, insofar as they meet all the prescribed conditions, in the case being tried: according to the statements of the opposing party, the impugned measures may only be ordered if a serious criminal offence is concerned, committed in conjunction with other(s) or in an organised manner, and thus for the most serious forms of (organised) criminality.

51. In ZKP, the use of the impugned measure, as stated by the opposing party, is legally restricted. It is thus claimed to satisfy the constitutional requirement for proportionality or for the necessity of the infringement of the constitutional right to privacy. In article 150 ZKP, namely, the conditions are prescribed which must already cumulatively be met at the time of ordering the measure, as well as throughout the time that the measure is implemented. The implementation of the measure must cease immediately that any of the reasons because of which the measure was ordered cease to exist (first paragraph of article 152 ZKP).

52. In first place is the condition that for a specified person against whom the measure is ordered, there exist reasons for suspicion that he has co-operated with one or more persons in the committal of a criminal offence.

53. The existence of suspicion that a criminal offence has been committed represents a condition under ZKP for reinforcing the police in the pre-trial procedure. On the basis of article 148, the police force is bound to react, and is so justified, if reasons are given for the suspicion that a criminal offence has been committed for which the perpetrator is to be formally prosecuted. On the other hand, for the introduction of a judicial investigation and thus for a formal commencement of criminal proceedings, the existence of a well-founded suspicion is required that a criminal offence has been committed (article 167 ZKP). ZKP, however, does not contain an explicit definition of the concepts "reason for suspicion" and "well-founded suspicion", but it is clear from the statutory arrangement that the facts which indicate a criminal offence and the perpetrator are established in the procedure initially with a smaller (reasons for suspicion) and then with greater (well-founded suspicion) probability, which must by the end of the procedure be transformed into conviction, into the subjective certainty which is necessary for a court conviction. In the gradation of probability or suspicion, the legislator links the legal consequences: while there are still not reasons for suspicion, to the existence of well-founded suspicion - when sufficient specific and articulable evidence is collected, it makes obligatory the introduction of a judicial investigatory procedure. Since the consequences of a well-founded suspicion are thus different, it is clear that very different qualities of probability or suspicion exist: while the reasons for suspicion are based on a fixed understanding which is formed in practice by organs of prosecution and the courts, on a minimum of information, well-founded suspicion must already be the result which to a specific extent is verified and at the same time verifiable - documented to such an extent that it enables investigation on the part of the court which, in the framework of deciding, e.g., on the introduction of an investigation, also decides on its existence. The sound basis for suspicion, namely, is not above all the recognised and probability of the matter but is a bridge over which is carried the competence of the police to the court, and the intention of the concept lies in judicial control of the work of the police in the pre-trial procedure.

54. In the initiator's opinion, ZKP enables infringement of privacy on the basis of the lowest level of probability, which is sufficient e.g. for the police to react on the basis of article 148 ZKP. It is not possible to follow these claims of the initiator as a whole, since the reasons for suspicion under the provision of the first paragraph of article 150 already refer to a specific person as perpetrator and to a specific criminal act. However, in the judgement of the Constitutional Court, merely "reasons for suspicion" for this are insufficient. Since listening in premises concerns a measure which very intensively encroaches on the private sphere, the establishment of suspicion requires a greater degree of probability than normal. The bare suspicion or "reasons for suspicion", which in principle result from trivial knowledge, are not sufficient for such an encroachment. The probability or suspicion (and not reasons for suspicion|) must be based on specific facts, on concrete circumstances, and the level of suspicion must be such that both in quality and quantity the collected data and their verifiability to a large extent approach well-founded suspicion. In view of the provisions of the second paragraph of article 150, at the time of making the order, all the data should already be collected, except that which cannot be collected because of the nature of the criminal act, but are of crucial importance in order that the circle of indices, or evidence, is concluded into a logical entirety which, as well-founded suspicion, provides the condition for the introduction of an investigation. This does not derive from the wording of the first paragraph of article 150 ZKP, at least not indisputably, especially if it is taken into consideration that the same level of suspicion applies for all measures enumerated in the further text of the same statutory provision, including those which essentially less intensively encroach on privacy than listening in premises.

55. Also with the following condition, which ZKP determines for ordering listening in premises, it is not shown that the principle of proportionality would be respected to a sufficient degree.

56. Listening in premises, namely, under the provision of the first paragraph of article 150 in connection with the first paragraph of article 151, may be ordered for criminal acts cited in points 1, 2 and 3 of the first paragraph of article 151 ZKP.

There are, therefore, a number of criminal offences, in total 85, and with them are not only protected the value of life and health of people as the opposing party claims, but also the property of physical and legal persons. In points 1 and 3 of the first paragraph are embraced those criminal offences which the Penal Code defines as the most serious. The are embraced not (only) as fundamental criminal offences but as qualified, with consequences, such as major damage to property, the death of one or more people. Other criminal offences which do not belong among the most serious, are enumerated in point 2 of the first paragraph. According to the claims of the National Assembly because they are by their nature such that without the use of special methods it is not possible to prove them or their proof is connected with exceptional difficulties. In view of the description of individual criminal offences under point 2 of the first paragraph of article 151 ZKP, the Constitutional Court agrees with the party that they are difficult of proof, especially if they are committed with co-perpetrators or in an organised manner. However, in their selection, the difficulty of proof of acts cannot be the only guide in their choice. Together with difficulty of proof, namely, in conformity with the principle of proportionality, it is necessary also to respect the weight of social danger of the act.

57. The question is whether listening in premises is necessary for the discovery of the enumerated criminal offences. Doubt about this is raised especially because the impugned arrangement entirely equates the conditions for the use of listening in premises with the possibilities of use of classical police methods, such as, e.g., secret observation and following, in which infringement of the communication part of privacy is essentially less intensive, or is entirely non-existent. The intensity of the encroachment is even less in controlling telephone conversations and other forms of communication, but despite this, the law determines entirely the same conditions for their use.

58. The Constitutional Court also considers that it is not clear from the statutory requirement that a number of persons, or at least more than one person, co-operates in carrying out or attempting to carry out criminal offences, whether the legislator wished to define and stress with this provision the greater danger and more serious provability of criminal offences in which there are at least two suspects who are connected to each other, or whether with this requirement he wanted to embrace only forms of so-called organised criminal, as a criminality with a particularly high degree of social danger. It would be possible to conclude the latter from the answer of the National Assembly and from the clarification of the Ministry of Justice. In the second case, it would be necessary in the opinion of the Constitutional Court, to define more concretely the co-operation of a number of persons in the carrying out of criminal offences and thus provide a clear definition of organised criminal activities. In particular, the degree of danger, namely, in these cases is not only expressed in the participation of a number of persons, but also, and above all, in the organisation of a criminal group, that is a group organised with the intention of carrying out criminal activities which has produced a plan and basic organisation and envisaged methods and is secret.

59. The impossibility of a different collection of evidence or collecting evidence which is connected with disproportionate difficulties (subsidiarity) is the third condition which must be met at the time of each ordering of the measure.

60. This condition is in conflict with the requirement of the Constitution for lex certa of cases in which infringement of privacy is permitted. The legislator would have to define it such that the courts. and prior to this the state prosecutor. are given clear boundaries for a judgement of in which cases the condition is met. In particular, it should be clear what possibilities of collecting evidence, including that from the series of special measures, the organs of prosecution are bound to use prior to proposing listening in premises. In this sense, the legislator should provide a special stress on the reasoning of the proposal of the state prosecutor. In order that the condition be met, it would also have to be clear from the reasoning of the order of the investigating judge.

61. Since individual statutory conditions for ordering the measure of listening in premises are not sufficiently defined and in conformity with the requirement of proportionality, the text of article 150 ZKP which determines the conditions is in conflict with the Constitution. Article 151 ZKP is also in conflict with the Constitution in that part in which it is determined which are the criminal offences for which the courts may order the disputed measure. The legislator should suitably define the degree and type of suspicion (not reasons for suspicion) which are required for ordering listening in premises. With a clear definition in relation to the (degree) of organisation and by use of the principle of proportionality, he

would have to determine only those criminal offences which correspond to the seriousness of the infringement of privacy, and would have to define more specifically also the standards or situations in which evidence cannot be collected in another way, or its collection would be connected with disproportionate difficulties.

62. Insofar as conditions are determined together for all measures which are specified in the first paragraph of article 150, the law is undefined and unconstitutional also in relation to other measures. In order that the legislator will satisfy the principle of proportionality, the same weighing as for listening in premises must also be carried out for each of the other measures defined in the first paragraph of article 150, and thus also a suitable hierarchy erected among them. The impugned arrangement, as has already been stated, is too little differentiated in relation to conditions for the ordering and use of the measures. The measures, namely, in the judgement of the Constitutional Court ,are so different that each of them requires independent definition and exact arrangement. In particular, it is not respected that the measures are different in relation to the manner of collecting data (with technical means, through secret collaborators), that consequentially they encroach on different human rights and that the intensity of such infringement is also different.

63. "Certainty in law" as a constitutional condition for encroachment on privacy must, as has already been stated, also be guaranteed by a precise arrangement of the use of measures, which in addition to foreseeability (certainty) guarantees effective judicial control and suitable and effective means against its abuse. The initiator draws attention throughout his application and statements, to the danger of abuse as one of the key reasons because of which the impugned measure is claimed to be in conflict with the Constitution.

64. In the judgement of the impugned measure, it is necessary in this direction to take into consideration in addition to articles 150 and 151, also the provision of articles 152, 153, 154, 155 and 156 ZKP. These provisions arrange the manner of ordering measures, the content of an order, the manner and conditions for carrying out the measures and the way of using the data obtained by their implementation. The Constitutional Court explicitly stresses in this that the premise for an investigation cannot represent an ideal arrangement whereby abuse of the measures is completely impossible. In the judgement, it derived from the premise that in a democratic state ruled by law, the statutory arrangement is strictly respected and used correctly and fairly - and above all in conformity with the Constitution.

65. Insofar as the constitutional requirement for certainty is realised through precisely such a constitutional demand for concretised judicial decisions, it is necessary to find that the statutory arrangement being tried in principle meets the requirement for due process of law: the impugned measure may only be ordered by an investigating judge; although implementation of the measure is entrusted to internal affairs bodies, control of implementation is throughout in the hands of the courts; the investigating judge is the one who permits an extension of the measure; the internal affairs bodies are bound to send a report to the investigating judge after terminating implementation of the measure, and to append to it all recordings, messages and objects obtained by use of the measures; the investigating judge is bound to investigate whether the internal affairs body has behaved in conformity with his order; the investigating judge is the one who orders a transcript of recordings, who invites the state prosecutor to be acquainted with the material, and who, in the event that the state prosecutor stating that he will not commence prosecution, invites the suspect to be acquainted with the material; at the end, the material is destroyed under the supervision of the investigating judge.

66. The Constitutional Court has already defined the content of (constitutional) guarantees, which includes the requirement for a court decision, in case no. I-18/93, and also refers to it in this case. According to the cited interpretation, a court must, in order that we can speak of its impartiality, hear the standpoint of both parties prior to reaching a decision. In deciding on an infringement on privacy, the court should therefore hear the standpoint of the (person) who proposes the infringement, and the person whose privacy is infringed. The same protection of rights is guaranteed to persons whose privacy is infringed, the same extent of rights, as the opposing party, that is to say the state prosecutor, has. In this, the minimum level of rights in criminal proceedings is guaranteed under article 29 of the Constitution. The sense of the provision of article 25 of the Constitution is not only in that a person affected has available the possibility of lodging legal remedy.

The sense of the provision is above all in that the person affected may, by the lodging of appeal, defend their legal entitlements or legal interests. This is only possible if the decision of the court is reasoned in each essential point in such a concrete manner that it enables later judgement of whether the state has to a sufficient extent met all the requirements which legal provisions impose on it in relation to firmness and the burden of proof.

67. When the Constitutional Court judged the statutory arrangement in the light of the cited interpretation, it was not possible to avoid the fact that the important consequence derives from the nature and logic of secret listening that the measure is introduced and carried out without the individual being aware of it. So the Constitutional Court judges that in such cases, legal requirements for a court decision are also well-founded. Well founded are both those restrictions which refer to the right to due process of law, and those which refer to the right to legal guarantees under article 29 of the Constitution . However, because the individual does not have the possibility of taking part when it is decided on measures, and at that time to use effective legal remedy, it is of course all the more necessary that the procedure by which the competent bodies behave is arranged as precisely as possible, and in this way the protection of the constitutional rights of the individual guaranteed in advance to the greatest extent possible. At the same time, this already prevents the competent bodies in deciding on an encroachment from overstepping the boundaries of the constitutional and statutory condition of necessity or proportionality.

68. The arrangement of the measures in ZKP provides basic guidelines to organs that propose the measure, and to the court when it first decides on the measure and later when implementation of the measure is concluded it is the only (body) to dispose of the data collected. In this phase of the procedure, the affected person is also compulsorily informed about the implementation of the measure. He is thus given the opportunity to demand subsequent judicial review. If a criminal proceeding is not introduced against him, the affected person may demand judicial protection on the basis of the second paragraph of article 157 of the Constitution 16. In the course of a criminal proceeding, he may demand the exclusion of evidence obtained by the measure if the measure was implemented without the order of an investigating judge or in conflict with it (article 155 ZKP). If the court relies on evidence which was obtained in violation of constitutionally defined human rights and fundamental freedoms, or on evidence which was obtained on the basis of such disallowed evidence, an essential violation of criminal proceedings is given (point 8 of the first paragraph of article 371 ZKP). Such a violation may be introduced in the proceeding by ordinary or extraordinary legal remedy. It is possible to lodge a criminal charge against a person who has carried out the measure in an illegal manner because of the criminal offence of improper listening and sound recording (article 148 KZ). According to the provisions of ZOR, an affected person may demand the satisfaction of damages which he has suffered because of the implementation of the measure.

Finally, if no legal remedy has been successful, the affected person may lodge a constitutional appeal with the Constitutional Court if he believes that the measure has violated any of (his) human rights or fundamental freedoms.

69. However, the content of the order of the investigating judge on listening does not satisfy to a sufficient extent the right to effective legal remedy in the sense of the right under article 25 of the Constitution 17. This demands, in addition to data about the person against whom the measure is to be used, only an additional statement of the reasons for suspicion, and the manner, extent and duration of the measures. It does not require that the order reason the measure in the essential part - that is in relation to the existence of necessity of use of the measure, which represents a constitutional condition for the infringement of privacy. This must be given not only on a legislative level, but also in each concrete case. An order of a court must therefore contain the grounds from which it derives why the introduction of the measure in the concrete case is crucially necessary and what are the circumstances which prevent the court or the internal affairs body from collecting the evidence in a manner which would not encroach or would encroach in a less intensive manner on the constitutional rights of the affected person.

70. In view of other compulsory elements of the order which are prescribed in article 152 ZKP, the Constitutional Court draws attention that the court must ground them in each concrete case in terms of

content - concretely and specifically. Only thus will the court satisfy the constitutional requirement for certainty and foreseeability of measures taken by competent bodies, as well as the right of an affected person to effective legal remedy. It is thus necessary in the reasoning, among other things, to include all the conditions prescribed in the first paragraph of article 150 ZKP, that is the existence of suspicion that it concerns a specific person and a legally prescribed manner of participation in the execution of a criminal offence.

71. It is also necessary to respect that the investigating judge, when he determines in an order the manner, extent and duration of a measure, provides the internal affairs body which implements the measure, compulsory instructions for their work.

If they behave in conflict with the order, sanctions come into force both from a procedural (article 155 ZKP) point of view, and from the point of view of their criminal responsibility as official, authorised persons who implement the measure (article 148 KZ).

72. It is particularly important that the court determine with the order the boundaries of implementation of measures that are implemented by authorised organs of the executive branch of power. The Constitutional Court draws attention that in conformity with the constitutional condition of necessity and within the framework of statutory elements of the order, the implementation of the measure must be limited to the smallest possible extent. This applies both to the court which orders the measure as well as to the organs which implement the measure.

73. ZKP determines in the first paragraph of article 152 a temporal restriction to the implementation of the measures, when it prescribes the longest possible time for their

implementation. In this context, the court is bound to determine the shortest time of use of the measure which is sufficient to collect the necessary data. In addition to this, the court is bound that the implementation of the measure, also within the framework of the time limit determined by the order, is removed immediately that the reasons for which the measure was ordered cease. Since the conditions for ordering the measure are prescribed cumulatively, the implementation of the measure must already be halted when only one of them cease.

74. In compliance with the same constitutional requirement that the implementation of the measure be restricted as far as possible, the court must also determine in the measure the manner of listening in premises, where the equipment for listening may be placed. The internal affairs organs are also bound in implementing the measure to endeavour that the circle of persons who are overheard is as small as possible and that the listening is restricted to the maximum possible extent to conversations a record of which may serve the purpose of criminal prosecution.

75. The placing and removal or such technical means for listening which are placed in premises is undoubtedly linked to secret access to a dwelling or other premises. This, as the initiator properly stresses, infringes the right to inviolability of dwelling. The right to inviolability of dwelling, just as privacy of communication, is doubly protected: as a specific constitutional right in article 36 of the Constitution and in the context of the protection of personal privacy.

76. It is determined in article 36 of the Constitution:

"(1) A dwelling is inviolable.

(2) No person may enter the dwelling or any other premises of another person nor may search the same against the will of that person without a court order.

(3) Any person whose dwelling or other premises are searched has the right to be present in person or to have a representative present.

(4) Any such search may only be conducted in the presence of two witnesses.

(5) An official may enter the dwelling or other premises of another person without a court order should such entry be absolutely necessary and, subject to compliance with statutory requirements, such official may, in exceptional circumstances, conduct a search in the absence of witnesses should the same be necessary to apprehend a person who has committed a criminal offence or in order to protect persons or property."

77. In relation to a limitation on the inviolability of dwellings that article 36 of the Constitution permits, placing equipment for listening cannot have a basis in the fifth paragraph of the same article, which enables an official to enter the dwelling of another person without a court decision and without the presence of witnesses to perform a search. Under the Constitution, this can only be done if it is unavoidably necessary directly to apprehend the perpetrator of a criminal offence or to protect people or property. This does not apply in the case of the placing or removal of equipment.

78. On the basis of the second paragraph of article 36, access to a dwelling or other premises of another person is also possible in other cases, but only on the basis of a court decision. The Constitution in such a case allows access to a dwelling against the will of the householder, but it explicitly does not allow access without his knowledge. The answer to the question of whether such access is permissible must therefore be sought in other provisions of the Constitution. According to the provisions of the second paragraph of article 15, it is possible to prescribe by law the manner of realising human rights and fundamental freedoms if this is necessary because of the nature itself of individual rights and freedoms. According to the third paragraph of the same article of the Constitution, human rights and fundamental freedoms are limited only by the rights of others and in cases determined by this Constitution. In the case being tried, the secret nature of the measure of listening is such that it dictates in addition to secrecy in carrying out the measure also the secret placing and removal of equipment with which the listening is performed. The Constitutional Court therefore judges that in such a case it is well-founded that consequentially, because of the implementation of the measure of listening, also those requirements are limited by law which are postulated by content by the second paragraph of article 36 of the Constitution. This applies both to the prior informing of the affected person about access to the dwelling or other premises and to the prior issuing of a court decision. Of course, at the same time, the conditions for infringement of privacy under the second paragraph of article 37 of the Constitution must be met. The constitutional permissibility of listening is, namely, a precondition for the permissibility of secret access to a dwelling, which represents only a phase or manner of implementation of this measure. Since secret access to a dwelling represents a manner of carrying out the measure of listening in premises, for which a court decision is mandatory in the form of an order from the investigating judge, in the view of the Constitutional Court, a specific court decision for access to a dwelling at the time of placing and at the time of removal of the equipment is not necessary. Of course, it is necessary that the order issued also satisfies those requirements for certainty which are required for access to a dwelling, in particular a precise determination of the premises in which the listening devices will be placed.

79. In what way the impugned measure is claimed to encroach in an impermissible way on the right to the protection of personal data, the initiator does not say concretely, just as he does not provide arguments for the asserted conflict with article 8 EKČP. The Constitutional Court, therefore, when clear conflict was not established, did not enter into a judgement of the compliance of the impugned arrangement with the cited provisions.

B. - III

80. In connection with the claims of the first initiator, which express concern that the new democratic society is still unable to break its links with the past, which precisely in the sphere of the use of special operative methods, especially listening on the part of state organs, is claimed to mark their numerous and serious abuses for political purposes, the Constitutional Court here draws particular attention to the essential difference between the arrangement of the rights of individuals and personal rights under the previous Constitution, and the arrangement of these rights under the valid Constitution. The valid Constitution determines essentially more protections against infringement of privacy than were guaranteed under the federal and Slovene Constitution of 1974. Both previously valid constitutions guaranteed the inviolability of the integrity of human personality (article 176 of the Constitution SFRY, article 216 of the Constitution SRS). However, both constitutions give general authority to the legislator

for the limitation of constitutional rights in a case in which they are used in conflict with the Constitution (article 203 of the federal or article 249 of the Slovene Constitution). In further cited provisions, it was among other things determined that constitutional rights may not be used for undermining the constitutionally determined socialist self-management democratic arrangement, or such that public morals would be offended. The provision of article 185 of the federal and article 226 of the Slovene Constitution in particular further permitted deviation from the inviolability of confidentiality of written and other communication. The constitutions determined three protections:

1. an encroachment may only be prescribed by law;

2. any individual encroachment must be based on statutory provisions; 3. encroachment was permissible only if this was unavoidably necessary for the course of a criminal proceeding or for the security of the state. In contrast to the current Constitution, the constitutions of 1974 did not determine temporal limitations on encroachments. A court decision was not required for encroachment.

81. According to legislation valid prior to the commencement of the independence of the Republic of Slovenia, authority for issuing a decision on deviation from the inviolability of the confidentiality of written and other communications was held by the federal secretary for internal affairs (article 10 of the Internal Affairs under the Jurisdiction of Federal Administrative Organs Act - Official Gazette SFRY, no. 7/85, 24/86 and 44/90), the republican secretary for internal affairs (article 11 of the Internal Affairs Act - Official Gazette SRS, no. 28/80, 33/88, 27/89, 8/90 and 19/91) and the official who headed the organ for conducting matters of state security (article 24 of the Basic Systems of State Security Act - Official Gazette SFRY, no. 15/84 and 42/90). While authority given to the federal and republican secretaries for internal affairs was given in conformity with the federal or republican constitutions - that is to say only under the condition that it was necessary for the security of the state or if it was unavoidably necessary for the course of a criminal proceeding - the authority of the head of the federal organ for state security, that is the secret political police, was essentially wider than (that given by) the Constitution. According to the provisions of article 24 of the Basic Systems of State Security Act, an encroachment was already permissible if this was dictated by reasons of the security of SFRY.

82. The fairly general statutory provisions were only concretised by executive regulations which were secret. These secret regulations on the one hand determined measures which signified deviation from the inviolability of the confidentiality of written and other communications, and premises for their implementation; on the other hand, also the authorities of state organs for encroachment on other rights to privacy or the inviolability of an individual's integrity, personality and family life were determined (secret access and secret search of premises and vehicles).

83. Thus the Presidency SFRY, together with the Presidency of the Federal Communists of Yugoslavia adopted (unpromulgated)

Decisions on unified principles for the use of means and methods which shall be used in their work by organs which carry out state security (as dates of issue are cited 17.4.1985 and 16.11.1988).18 - Secret Instructions on the mutual co-operation of organs that perform matters of state security were adopted in August 1988 by the federal secretary for internal affairs, the federal secretary for civil defence and the federal secretary for foreign affairs.19 - According to the Rules on the work of the service of state security from 1975, the state security services of the federal, republican and district secretariats for internal affairs, as the secret political police were officially called under the communist system, collected data and reported in order to discover and prevent activities aimed at "undermining" and "destroying" the constitutionally determined arrangement and threatening the security of the state and in this connection implementing all necessary measures and activities on the basis of law and regulations issued in conformity with the law. In addition to this, it also collected other data and communications important for the security of the state (article 2). It was bound to perform its tasks in conformity with the law, regulations issued on the basis of law, rules on the work of the service and decisions and guidelines of competent representative bodies of socio-political communities and their executive bodies, respecting in this the Program and Policies of the League of Communists of Yugoslavia (first paragraph of article 3).20 According to the Rules of the state security service from 1989, the state security service could also use their own resources and methods for discovering and preventing criminal activities of wider significance for the security of the constitutionally determined

arrangement, if reasons for suspicion existed of the organised implementation of these activities or links of their perpetrators with abroad. The methods were in principle the same as the Rules from 1975.21 The Rules on the work of the state security service from 1990 - (in contrast to the rules from 1975 and 1989 which were not promulgated at all) - were promulgated in a secret federal official gazette (Official Gazette SFRY, no. 18/90 of 27.7.1990 - confidential gazette). Among other things, listening, secret control of telephone and other telecommunication means, secret control of written and other consignments, secret recording and documenting were still permitted (point 3). The purpose of these means and methods was the collection of data and communications on secret and organised activities aimed at violent change or threatening the constitutionally determined state and social arrangement and threatening the security of the state (point 2). Operative technical means for listening were used against individuals, groups, illegal organisations or foreign organisations if (1) there existed the suspicion that their activity was aimed at collecting intelligence data, carrying out terrorist acts aimed at change or threatening the social arrangement or security of the state and (2) for the purpose of discovering, documenting and preventing such activities or obtaining data of wider security significance (point 37).22

84. All the cited were grounded on the conclusion that the measure of listening as introduced by ZKP on the basis of authority under article 37 of the Constitution, cannot be compared with this kind of measure implemented under the previous undemocratic regime under the monopoly of the communist party. The Constitutional Court, namely, finds that the very existence of secret and hidden regulations with empowerments of the secret political police signified in itself a serious violation of human rights and fundamental freedoms.

B. - IV.

85. The apparent purchase of objects under point 3 of the first paragraph of article 150 ZKP, according to the claims of the proposer of ZKP, is a "method of work for discovering and investigating specific criminal offences in which such material objects appear as subjects of the criminal activity whose trade is forbidden or restricted (e.g. drugs, weapons, gold) and are also one of the elements of a criminal offence. The condition which must always be met in the use of this measure is that it does not in itself incite criminal activity, but only enables inclusion in already existing criminal activity". The proposer of the amendments and supplements to the Internal Affairs Act explained in the same way, in the reasoning to article 19a, in which "the purchase of objects" together with "secret collaboration and secret observation" is defined as a special operative method of work of the security-information service and criminalist services (point 1 of the second paragraph of article 19.a).

86. In connection with the claimed impermissability of legalising the apparent purchase of objects as a special method of taking measures in the discovery of criminal acts, on the basis of the same, already adopted starting points on the state of society, the Constitutional Court considers that the legislator in this case, too, had well-founded reasons for the impugned arrangement and that it therefore met the constitutional condition of necessity in the most general meaning of this word. The same as with listening in premises, it is possible to ascertain that the measure is an urgently necessary form of the fight of the state against increasing criminality, especially organised criminals, which in contrast with conventional criminality threatens not only the security of its citizens but also the economic and political power of the state or the democratic arrangement itself. The apparent purchase of objects represents an unusual and secret form of collecting information by the infiltration into criminal structures as an answer to precisely those abnormal appearance of forms of the most dangerous criminal, especially those about which information does not come in the normal way (with the report of those injured, by the co-operation of witnesses and informers) and which does not signify primary victimisation. The impugned measure in this sense may be ordered only for a very narrow circle of enumerated specific criminal offences, in relation to which it is necessary to agree with the opposing party and the state prosecutor that they encroach on the existential security of people, that in terms of the threatened sanction they are the most serious criminal offences, that they are carried out in the majority of cases by organised criminal associations and the perpetrators of the enumerated criminal offences are difficult to discover by traditional methods since, criminal associations and their founders, in particular, hide behind conspiracy and professionalism.

87. While the Constitutional Court took a standpoint as regards listening in premises in relation to the necessity of the measure above all in connection with infringement of the human right to privacy, the situation with the measure here being tried is completely different. The appellant asserts infringement of human dignity and violation of the principle of a state ruled by law (article 2 of the Constitution), and in the resolution on accepting the initiative, the Constitutional Court linked the measure with possible encroachment on the personal rights of an individual, above all with possible encroachment on the principle of legality under article 28 of the Constitution.

88. In view of the nature of the measure, which is conducted through secret police agents and with their co-operation in the perpetration of a criminal offence, the Constitutional Court takes the standpoint that in the measure being tried, on the constitutional level a completely different question is raised in first place than with control of communication of an individual, or in control of a suspected person with technical means. In the judgement of the Constitutional Court, namely, with the apparent purchase of objects in first place is the question of whether the legislative branch of power may give the executive branch of power the privilege that it cooperate in the perpetration of a criminal offence, and thus set it above the law. Since the essence of a state ruled by law is that the state is bound consistently to keep its own laws, and such setting of the executive branch of power above the law is of course a case of primary anti-constitutionality. In other words, if the ZKP were to allow the police to, e.g., encourage someone to commit a criminal offence, this would be constitutionally unacceptable in the light of the constitutional postulate of a state ruled by law.

89. However, ZKP in the impugned provision speaks of the apparancy of police actions. It speaks of the "apparent purchase of objects" and in the following point about "apparent corruption". The question is thus what is the content of this "apparency". It could even be essentially more than encouragement. It could apply to any form of co-operation, thus also apparent co-perpetration or apparent assistance. In the last sentence of the second paragraph of article 151 is the provision "if these objects (obtained with apparent purchase) may serve as evidence in a criminal proceeding". The motive of this participation of the police is therefore the discovery of perpetrators of criminal offences and not real participation in the perpetration of a criminal offence. Since it concerns in addition to the discovery of criminal offences those with a high degree of social danger (second paragraph of article 151) and since the discovery of such criminal activities because of the conspiratorial nature of the sales network is very difficult, this motive is also constitutionally acceptable. The interest of forced realisation of material criminal law outweighs the idea of the criminal compromising of the executive branch of authority (the police). This also means that the co-operation of the police would not be acceptable for the discovery of any kind of criminal offence of classical criminality (murder, rape, arson, theft), as it would not be acceptable if they were to incite a perpetrator to do something that without police co-operation or incitement they would not do. Incitement to criminal activity is explicitly forbidden by ZKP in the fourth paragraph of article 151, when it forbids "incitement of criminal activities". However this is raised for the most part as an actual question in each concrete case. Since on the level of principle this is a hypothetical question to which the answer is necessarily speculative, the constitutional acceptability of police behaviour is in the end dependent on careful judgement of the actual question by the regular criminal courts.

90. Also on the intrusion on human rights or freedoms of the suspect, such as dignity, personal rights and privacy, is difficult to answer in the abstract with apparent purchase of objects. In relation to the enumerated rights, namely, apparent purchase of objects appears to be permissible use of guile on the part of the state, thus as a measure with which the boundary between understanding that it is an moral-ethical question and that it is an infringement on human rights is fairly blurred. The American Supreme Court has taken the standpoint that the use of secret police collaborators is a moral-ethical question, in its decisions when it has decided on the well-found nature of claims under the heading "entrapment of the defence". The infiltration of agents into criminal networks and their collaboration in illegal activities is characterised as a recognised and allowable method of conducting an investigation, which does not violate any of the independent rights of the affected person. In relation to the manner of work of agents, it has stressed that it is not possible to consider it a violation of basic principles of honesty or shocking behaviour which affects the general sense of justice. Also from the standpoint of law, namely, it would not be particularly desirable to protect from criminal prosecution those who have decided to commit a criminal offence and have also committed it. Since the apparent purchase of objects may only be carried out after there has been the perpetration of a criminal offence and thus a

decision on criminal behaviour by an individual, it is difficult to speak of an infringement of human dignity, which the Constitution protects in articles 2123 and 3424 and which should signify in particular human ethical and moral qualities.

For the same reason - since the affected individual has already decided on criminal behaviour - it is only possible to speak of an encroachment on freely formed will, if we count this to be an element of human dignity or personal rights (psychic integrity) to a limited extent. Freedom in the choice of own's own partners in communication really also belongs in the context of the protection of personality, although according to the accepted understanding of the notion of personality, this is no longer given as a protected right if the affected person himself has decided to abandon the private sphere. In relation to the use of agents of provocation (e.g. in the disposing of drugs) in the practice in the European Court the standpoint has been taken that it is not impermissible because the affected person has decided by their free will on illegal behaviour.

91. In a case in which it would be asserted in a constitutional appeal that with the apparent purchase there had been a constitutionally unacceptable violation of privacy or other personal rights, the Constitutional Court would decide on that in relation to the concrete circumstances. Since the interest of the state in the prosecution of criminal offences connected with drugs, weapons and forged banknotes, because of their rejection, great social danger or the evil, conspiratorial nature of sales networks, is suitably higher than is the case with classical criminality, the Constitutional Court draws attention that in the light of the doctrine of proportionality, it will also judge differently in such cases the proportionality of the legitimate interest of the executive branch of power on the one hand and the interests of the suspected citizen on the other.

92. In view of what has been said, abuse is therefore particularly possible (for personal or political purposes), which can be manifested as impermissible intrusion into the privacy of an individual or as abuse of (police) powers on the part of the state, of that which in conformity with the demand for a state ruled by law under article 2 of the Constitution dictates a statutory arrangement of the measure. The potential negative side of the use of the measure is, namely, incomparably stronger than with traditional police methods, especially because of the secret nature of the measure, which opens the door to improprieties (including corruption) in the behaviour of the police. While the boundary is fairly blurred between the committal and investigation of criminal offences, the legal question is raised in relation to permissible interference in the privacy of the individual. An exact statutory arrangement in particular demands the intention of a criminal proceeding, which is protection against arbitrary state powers. In the sense of its own basic postulate that an innocent person not be convicted, the criminal process should be especially guaranteed, in order that the power of the state against an individual is not abused in order to pronounce penal sanctions against him.

93. As the Constitutional Court has already established, ZKP restricts legally the use of all special measures enumerated in article 150, including those impugned. In articles 150 and 151 are determined those conditions which must be (cumulatively) met at the time of ordering the measure, and throughout the time that the measure is implemented. In the following articles (from 151 to 156), ZKP regulates the procedure by which the measure must be ordered and implemented, the competent organs, the consequences of use and consequences of possible abuse of the measure (exclusion of evidence). With these provisions, as with listening in rooms and with other measures, it guarantees a judicial decision on ordering the measure, judicial control over implementation of the measure and over the material obtained, and the possibility of the use of legal remedy in the case of illegal or unconstitutional proceeding of state organs.

The general claim of the initiator of the possibility of arbitrary use and implementation of the measure does not therefore hold. Which concrete provisions are in conflict with constitutional requirements for certainty and proportionality and why is clear from section B. - II of this decision. Since and insofar as the legislator established for the apparent purchase of objects the same conditions and requirements for a court decision as with listening in rooms with technical equipment, the arrangement of the impugned measure is equally inadequate or deficient. Within the time limit set, the legislator is therefore bound, in order to remedy the established unconstitutionality, to specify the degree of suspicion also in relation to the measure of apparent purchase of objects, such that in connection with the impugned measures are insufficiently defined the concept of co-operation in carrying out a criminal

offence under the first paragraph of article 150 and the content of the demand or conditions under the third paragraph of the same article and the content of the order under article 152 ZKP. In connection with the impugned measures the condition by which reason for suspicion is supposed to exist even prior to the ordering of the measure is especially unclear, that a specific person against whom the measure is ordered has collaborated with one or more persons in the perpetration of a criminal offence which is supposed to be proved by the use of special measures. Such a condition, namely, puts in question the content of the measure or even its sensibleness, since the apparent purchase of objects such as the purchase of the subject of a criminal offence (e.g., drugs, weapons, money) on the part of a police agent represents the concluding phase in the perpetration of a criminal offence and thus prior to the carrying out of the apparent purchase, it is not possible at all to speak of a concluded criminal act.

94. Because of its non-specifity, in the judgement of the Constitutional Court, for the apparent purchase of objects (and apparent corruption), the specific provision of the fourth paragraph of article 151 ZKP, which forbids the incitement of criminal activities by the apparent purchase of objects (and corruption), is also unconstitutional. Since it is a provision which in order to protect legality (the principle of a state ruled by law) establishes a boundary at which the co-operation of the state in a criminal offence is still permissible, it should, namely, be especially clear and foreseeable, both for the organs which implement the measure and supervise its implementation, and for the affected person. In order that the legislator will satisfy the demand for the certainty of a statutory arrangement (lex certa) the concept of "inciting criminal activity" would have to be defined by content, and at the same time, so that also in this direction effective judicial control is ensured, he will have to envisage the legal consequences in a case in which the provision is not respected.

B. - V.

95. In view of what has been stated, the Constitutional Court did not find the anti-constitutionality of the impugned measures of listening in rooms with technical equipment and the apparent purchase of objects. However, it found that individual conditions and individual provisions of the procedures as are prescribed for ordering and implementing the measures, are anti- constitutional, because they do not provide to a sufficient extent the guarantees which are guaranteed by the Constitution.

The established conflicts with the Constitutio , especially the manner of statutory regulation of the measures, do not allow the Constitutional Court to annul only individual provisions. The Constitutional Court therefore, as it did in case no. U-I-184/94 of 14.9.1995 (OdlUS IV, 73), decided to annul the entire arrangement. The arrangement of individual measures will thus have to be adapted as a whole to constitutional requirements in the manner described in this decision. Since the established anti-constitutionality is not of such a nature that it requires immediate annulment, and since the entire regulation of special measures is annulled by the decision, the Constitutional Court deferred the effective annulment for a period of one year and thus determined for the legislator the maximum possible time limit for adjusting the statutory provisions with the Constitution. The annulment shall begin take effect in conformity with article 43 ZUstS the day following the expiry of the time limit determined by the Constitutional Court.

C.

96. The Constitutional Court adopted this decision on the basis of article 43 of ZUstS, composed of: president Dr. Lovro Šturm and judges Dr. Tone Jerovšek, Mag. Matevž Krivic, Mag. Janez Snoj, Dr. Janez Šinkovec, Franc Testen, Dr Lojze Ude and Dr. Boštjan M. Zupančič. The resolution was adopted by six votes against two. Judges Krivic and Snoj voted against. Judge Krivic gave a dissenting opinion, and judges Šturm and Zupančič concurring separate opinions.

P r e s i d e n t:
dr. Lovro Šturm

Notes:
1. Article 36 (the inviolability of dwellings)
The dwellings of all persons shall be inviolable.
No person may enter the dwelling or any other premises of another person nor may he search the same against the will of that person without a court order.
Any person whose dwelling or other premises are searched has the right to be present in person or to have a representative present.
Any such search may only be conducted in the presence of two witnesses.
An official may enter the dwelling or other premises of another person without a court order should such entry be absolutely necessary and, subject to compliance with statutory requirements, such official may, in exceptional circumstances, conduct a search in the absence of witnesses should the same be absolutely necessary to apprehend a person who has committed a criminal offence or in order to protect persons or property.
2. Article 38 (protection of personal data)
The protection of personal data relating to an individual shall be guaranteed.
Any use of personal data shall be forbidden where that use conflicts with the original purpose for which it was collected.
The collection, processing and the end-use of such data, as well as the supervision and protection of the confidentiality of such data, shall be regulated by statute.
Each person has the right to be informed of the personal data relating to him which has been collected and has the right to legal remedy in the event of any misuse of the same.
3. Article 8 (right to respect for private and family life)
1) Each person has the right to respect for their private and family life, their home and correspondence.
2) Public authority may not interfere in the exercise of this right, except if this is determined by statute and is necessary in a democratic society for the sake of state security, public safety or the economic well-being of the state, in order to prevent disorder or crime, in order to protect health or morals, or in order to protect the rights and freedoms of other people.
4. Fifth paragraph of article 15 (exercise of and limitations on rights)
It shall not be permissible to restrict any human right or fundamental freedom excersisable by acts which would otherwise be legal in Slovenia, on the basis that this Constitution does not recognise that right or freedom or only recognises it to a limited extent.
5. Rechsstaatlichkeit und Menschenrechte, Grundatze und Definitionen, Internationale Juristen-Komission, Genf, 1967.
6. See Ustavno kazensko procesno pravo, Ljubljana 1996, case of Katz v. United States, 1967, Smith v. Maryland, 1979, Oliver v. United Sates, 1984
7. Article 37 (protection of privacy of the post and other means of communication)
The privacy of the post and of other means of communication shall be guaranteed.
In accordance with statute, a court may authorise action infringing on the privacy of the post and of other means of communication, or on the inviolability of individual privacy, where such actions are deemed necessary for the institution or continuance of criminal proceedings or for reasons of national security.
8. Article 22 (equal protection of rights)
Each person shall be guaranteed equality in the protection of his rights in any proceeding before a court, as well as before any government body, local government body or statutory authority which determines the rights, obligations or legal entitlements of such person.
9. Article 23 (due process of law)
Each person shall be entitled to have all issues relating to his rights and obligations and to have any criminal charges laid against him decided without undue delay by an independent, impartial court constituted according to statute.
Only a judge duly appointed pursuant to principles established by statute and in accordance with normal judicial practices shall be empowered to try any such person.
10. Article 25 (right to legal remedies)
Each person shall be guaranteed a right of appeal and a right to any other legal redress in relation to the decision of any court, government body, local government body or statutory authority which determines the rights, obligations or legal entitlements of such person.
11. Article 29 (legal guarantees in criminal proceedings)

Any person charged with a criminal offence must be afforded absolute equality in implementation of the following additional rights:
- the right to have sufficient time and opportunity to prepare his defence;
- the right to be tried in his own presence and to conduct his own defence or to be defended by a legal representative; - the right to produce all evidence assisting his case; - the right not to be compelled to incriminate himself or his family or friends, or not to be compelled to plead guilty.
12. OdlUS III, 62
13. Agenda 2000
14. Case of Klass and others v. FRG (6 September 1978, Collection of cases of the European Court - series A, no. 28)
15. Draft Recommendation on Crime Policy in Europe in a Time of Change, 1996
16. Second paragraph of article 157:
If no other legal redress is provided, courts of competent jurisdiction shall also be empowered to decide upon the legal validity of individual activities and acts which infringe the constitutional rights of the individual.
17. Article 25 (right to legal remedies)
Each person shall be guaranteed a right of appeal and a right to any other legal redress in relation to the decision of any court, government body, local government body or statutory authority which determines the rights, obligations or legal entitlements of such a person.
18. The Decision divided so-called operative technical means and methods which are used be security organs into basic and auxiliary. It classified secret listening, secret control of telephones and teleprinters, secret control of international telephone and teleprinter traffic, secret control of written and other postal consignments and technical survey and technical protection of facilities among basic means and methods. As auxiliary means and methods, the Order counted secret following and observation, secret investigation and suitable methods of documentation (point 2.). The security organs could use these means and methods (1) exclusively in order for the timely discovery, documenting and more effective prevention of activities of individuals, groups or organisations, aimed at undermining or destroying the order determined by the constitution SFRY and threatening the security of the state, in cases in which there existed reasons for suspicion that such activities were being carried on or their implementation could be expected, and also (2) in order to discover and document criminal acts of wider significance for the arrangement determined by the constitution SFRY and state security, if reasons for suspicion existed on the organised implementation of these criminal acts or links of their perpetrators with abroad (point 3). Methods and means were also used (3) (with the consent of the protected person) in providing protection of specified persons, working posts and facilities from intelligence, terrorist, commando and other subversive activities. In these cases, the state security service was bound to inform the person who was protected, or the head of the security organ.
19. According to point 1 of the Instructions for state security services in the federal, republican and district secretariats for internal affairs, security organs in the armed forces SFRY, military intelligence organs and the Service for investigation and documentation of the Federal Secretariat for Internal Affairs, in order to protect the constitutionally determined order and to carry out their tasks and in compliance with numerous executive regulations (rules of work of individual services and organs), they should mutually cooperate, assist each other, inform each other and agree on the implementation of activities of state security which was in the common interest.
In the case of the existence of an operative interest in the use of operative-technical means and methods against a citizen SFRY or a foreigner who was situated in SFRY, the interested service or organ (through its head) submitted a written demand for the means or method with the competent service of state security.
For military personnel, it was necessary to submit the demand to the competent security organ of the armed forces. In the demand had to be stated all data envisaged in the Rules on the work of the services of state security or the security services of the armed forces. The competent organ was bound to inform those who submitted the demand of all facts and data and to cede all material in connection with the use of the demanded operative means or methods (point 35). The person responsible for the business of building, use and maintenance of facilities and equipment for the secret listening in on telephone and teleprinter traffic, for the secret control of written and other postal consignments and for secret listening was the state security service. Other organs had to submit a demand for their use (point 37).

20. Operative-technical means could be used for the discovery, verification, documentation and prevention of enemy activities (offensive means) and for the security of specific persons, working posts and facilities (defensive means) (first paragraph of article 55). Among offensive means, the Rules considered secret control of telephone and teleprinter traffic and secret control of postal consignments; secret listening; secret investigation, secret following and observation, photo and TV documentation; maintaining secret links with collaborators.
Operative-technical means could be used for a specific time or permanently. The state security service could place means for secret listening of citizens or institutions if reasons for suspicion existed that they operated hostilely or were linked to such activities or if this was unavoidable for other security reasons (second paragraph of article 64).
21. In contrast to the Rules from 1975, they stressed in particular that they may be used only under prescribed conditions and in the prescribed manner (article 36), it was also explicitly determined that the use of operative-technical means could be permanent or temporary: there was permanent use when the means were constructed into a facility, dwelling or other premises with the intention of long-term permanent use; there was temporary use when they were used for the implementation of a specific one-off task (article 64). The Rules from 1989 also determined the minimum obligatory content of the resolution on the use of operative-technical means (fourth paragraph of article 74). The resolution had to, among other things, also determine the period of duration of use of the means: up to four years in the case of permanent use and up to eight days in the case of temporary use; the period of permanent use could for well-founded reasons be extended (fifth paragraph of article 74).
22. Secret control of telephone conversations and other telecommunication means and secret control of written and other postal consignments of citizens SFRY was implemented if a suspicion existed that they were involved in intelligence or terrorist activities or when in such a way data of wider significance to the security and international, economic and other interests of the state could be achieved (points 38 and 39). The service could temporarily restrain written and other postal consignments which contained data and material in connection with intelligence, terrorist and anticonstitutional activities of specific persons, groups, organisations and institutions. It was bound immediately to inform the competent public prosecutor about this and behave thereafter in accordance with his tasks (point 40). Obligatory elements of the resolution on the use of operative-technical means were the same under the Rules from 1989 (point 41). The period of duration of use was shortened to one year. However, also under the Rules from 1990 it was possible for well-founded reasons to extend use (point 41). The proposal for the use of means was provided to the competent secretary of the head of service in written form. The heads of competent organisational units were bound to inform the head of the service of a cessation of the need for use. After a decision on the cessation of further use, they were bound to take the necessary measures to remove inbuilt means in the shortest possible time.
23. Article 21 (protection of human personality and dignity)
Respect for the humanity of the individual and for the dignity of the person shall be guaranteed in all criminal and other proceedings, upon the arrest or detention of any person, whenever any person is detained or arrested and in the carrying out of any penalty.
The use of violence of any sort on any person, whose liberty has been restricted in any way, shall be forbidden, as shall be the use of all forms of force in obtaining confessions and admissions.
24. Article 34 (right to personal dignity and personal safety)
The dignity and security of the individual shall be guaranteed.