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Law on Registration, Seizure and Examination of Private Documents and Intervention of Communications No.7425 of August 09, 1994.

LAW ON SEARCH, SEIZURE AND EXAMINATION OF PRIVATE DOCUMENTS AND INTERCEPTION OF COMMUNICATIONS

CHAPTER I

SEARCH, SEIZURE AND EXAMINATION OF PRIVATE DOCUMENTS

ARTICLE 1.- Jurisdiction.

The Courts of Justice may authorize the search, seizure or examination of any private document, when it is absolutely indispensable for the clarification of criminal matters submitted to them.

For the purposes of this Law, the following are considered private documents: correspondence by mail, fax, telex, telematic or any other means; videos, cassettes, magnetic tapes, disks, diskettes, writings, books, memorials, records, plans, drawings, pictures, radiographs, photographs and any other form of recording information of a private nature, used for representative or declarative purposes, to illustrate or prove something.

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ARTICLE 2.- Powers of the Judge.

When it is indispensable to ascertain the truth, the Judge may order, ex officio, at the request of the police authority in charge of the investigation, of the Public Prosecutor's Office or of any of the parties to the proceedings, the search, seizure and examination of any private document, provided that it may serve as indispensable evidence of the commission of any criminal conduct. The Judge will personally carry out the diligence, except in exceptional cases, in which, according to his criteria, it may be delegated to members of the Judicial Investigation Agency or the Public Prosecutor's Office, who must inform him of the result of the diligence.

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ARTICLE 3.- Requirements of the seizure, search or examination order.

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The order for seizure, search or examination shall be made, under penalty of nullity, by means of a substantiated order in which the documents on which the search, seizure or examination measure is to be executed, the name of the person who has them in his possession and the place where they are located, if possible, shall be identified.

If other documents that are not included in the order are seized, they must be immediately returned to the person to whom they were seized, unless the Judge deems them transcendental for that or another investigation; if so, the Judge must expand the order to include them and justify the reason for their inclusion.

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ARTICLE 4. Rights of the intervened party.

When executing the search, seizure or examination, the Judge or the designated official shall notify and deliver a copy of the court order authorizing the search, seizure or examination of the documents to the person to whom the documents are searched, seized or examined. A record of this shall be drawn up, a copy of which shall also be given to the person at the end of the proceeding.

The interested party, within three days after the execution of the measure, may request its reconsideration and the return of the documents seized. The resolution of the above request shall be substantiated by giving the parties a hearing for three days. An appeal may be filed against the Judge's decision.

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ARTICLE 5.- Inventory, custody and reproduction of documents.

An inventory of the documents seized shall be made and kept in safe custody, at the disposal of the Court, which shall provide the interested party with a detailed receipt of the documents that remain in its possession.

Only in cases of conviction, in which confiscation is applicable, the seized documents will remain in the possession of the Judge.

When the documents sequestered are in danger of disappearing, being altered, are difficult to keep, or when it is convenient for the process, the obtaining of copies or reproductions of them may be ordered. The documents must be secured with the seal of the Court, with the signature of the Judge and that of the Clerk; furthermore, the copies must be signed on each of their pages. The same procedure must be followed if copies of the originals are delivered to the person to whom they were seized. When their deposit causes any prejudice to the interested party, and it is possible in the Judge's judgment, the original documents will be returned to him. In that case, authentic copies of them will remain in the custody of the Court.

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ARTICLE 6.- Procedure in special cases.

In the case of a document forming part of a volume or a register from which it cannot be separated, the seizure shall apply to the whole, without prejudice to the possibility of proceeding as indicated in the preceding article.

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ARTICLE 7. Conditions for technical examination of documents.

When the seized documents must be subjected to technical examinations of any kind, the judicial authority shall make the referral and ensure that a certified copy of such documents is always attached to the case file at the time of dispatch.

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ARTICLE 8.- Certified copy to protect documents.

When the documents may be altered for any reason or when, due to their nature or content, they are difficult to replace in case of loss, the procedure shall be as stipulated in the preceding article.

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CHAPTER II INTERCEPTION

OF COMMUNICATIONS

ARTICLE 9.- Authorization of interventions.

Within the proceedings of a police or jurisdictional investigation, the courts of justice may authorize the intervention of oral, written or other types of communications, including fixed, mobile, wireless and digital telecommunications, when it involves the clarification of the following crimes: kidnapping for extortion, aggravated corruption, aggravated pimping, manufacture or production of pornography, trafficking in persons and trafficking in persons to market their organs; aggravated homicide; genocide, terrorism and the crimes provided for in the Law on narcotics, psychotropic substances, drugs for unauthorized use, money laundering and related activities, No. 8204, of December 26, 2001.

In the same cases, such courts may authorize the interception of communications between those present, except as provided for in the second paragraph of Article 26 of this Law; when the following occur

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within private homes and premises, the intervention may only be authorized if there are sufficient indications that a criminal activity is being carried out.

(As amended by Law No. 8238 of March 26, 2002)

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ARTICLE 10. Order of the Judge to intervene.

The Judge, by means of a well-founded resolution, ex officio, at the request of the Head of the Public Prosecutor's Office, the Director of the Judicial Investigation Agency or any of the parties to the proceedings, if any, may order the interception of oral or written communications, when it may serve as indispensable evidence of the commission of any of the criminal conducts referred to in the preceding article.

The Judge will personally carry out the diligence, except in exceptional cases in which, according to his criteria, he may delegate it to members of the Judicial Investigation Agency or the Public Prosecutor's Office, who must inform him, in writing, of the result. The corresponding minutes shall be drawn up.

(The Constitutional Chamber, by resolution No. 3195 of June 20, 1995, established that the phrase "may delegate it to members of the Judicial Investigation Agency or the Public Prosecutor's Office" in the previous paragraph is not unconstitutional, since what the judge may delegate is only the performance of the material acts of execution of the interception and not the responsibility for it or the listening of the intercepted communications).

(Subsequently added by interlocutory resolution No. 329-I-95 of June 27, 1995)

The request for intervention must be in writing, express and justify its motives and tasks, so that they may be evaluated by the Court. In case it is requested by the Judicial Investigation Agency, it must also contain the names of the officers in charge of the investigation. In all other cases, the Judge shall request the respective designation from the Judicial Investigation Agency.

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ARTICLE 11. Authorization or refusal to intervene.

Once the corresponding request has been examined, the Judge will issue a well-founded resolution authorizing or denying the intervention.

If the intervention is ordered and proceedings are already underway, the dictation must be kept secret and not added to the file until the intervention has ceased and the results obtained have been annexed.

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Once the foregoing has been done, the parties to the proceeding will be granted a hearing for a period of three days to formulate the necessary considerations.

Even if there are no proceedings pending, the procedure should be followed as indicated in the preceding paragraphs.

If the resolution denies the intervention, the applicant must be notified.

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ARTICLE 12.- Periods and extensions of the intervention.

The intervention ordered shall be authorized for a maximum period of up to three months, except in cases of extreme gravity or difficult investigation, in which the Judge, by means of a well-founded resolution, may order an extension. Exceptionally, up to a maximum of two extensions may be ordered for the same period.

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ARTICLE 13. Content of the authorization to intervene.

The resolution authorizing the interception of oral or written communications must contain, under penalty of nullity:

- a) The express indication of the fact to be clarified.
- b) The name of the owner or user of the media to be involved or of the addressee of the communication and its link to the facts.
- c) The period during which the ordered measure will be in effect.
- d) The name of the office and of the officials authorized to carry out the intervention.

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ARTICLE 14.- Use of technical means to know and preserve communications.

When carrying out the interception of oral or written communications, all relevant technical means may be used, aimed at knowing and preserving the communications that take place.

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ARTICLE 15. Appointment and training of personnel in charge of the intervention.

The Judiciary, through the corresponding bodies, shall appoint specialized technical personnel to fulfill the tasks ordered in this Law. Such personnel shall be of proven integrity and be trained in their specific duties and civil rights, which may be disturbed by the intervention.

The appointment of such personnel shall be ratified by the Plenary Court, which shall establish and develop its systems and forms of operation. The Plenary Court shall also establish the mechanisms for internal and external supervision. Internal supervision shall be the responsibility of the Chief of the Public Prosecutor's Office and the Director of the Judicial Investigation Agency; external supervision shall be the responsibility of a special commission, composed of three magistrates, appointed by the Plenary Court.

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ARTICLE 15 bis.- Prohibition

Officials of the 9-1-1 Emergency System or other similar systems are prohibited from participating or collaborating in the interception of communications.

(Thus added by Article 14 of the Law for the Creation of the 911 Emergency System No. 7566 of December 18, 1995).

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ARTICLE 16. Responsibility of the Judge.

The Judge who orders the intervention will be directly responsible for all the actions carried out in the application of the measures, without any delegation in this sense.

The technical personnel in charge of executing the measure shall be subordinate to the corresponding judicial authority for the duration of its application.

The Judge shall order and ensure that the intervention is carried out in the least burdensome manner for third parties not under investigation.

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ARTICLE 17. Taking of the record when installing means of interception.

When installing the means of interception, the Judge shall draw up a record stating the date, the time at which it begins and the conditions under which the measure will be carried out, in which all the circumstances useful for the investigation shall be added.

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ARTICLE 18. Selection of intercepted communications.

Communications shall be recorded and preserved, using all possible technical means; in the case of oral communications, they shall be recorded, without exception.

The Judge under whose responsibility and supervision the act was carried out, shall keep custody of each of the implements containing the communications. At the end of the intervention, the Judge, with the assistance of the Public Prosecutor's Office, the defense and the respective police authority, shall select the communications useful and related to the investigation, which shall be transcribed and kept; the rest shall be kept in the implements containing them, under the exclusive responsibility of the Judge, who shall guarantee absolute confidentiality.

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ARTICLE 19. Taking of the record upon removal of means of interception.

The judge in charge of the intervention shall record the time and date of removal of each recording device and record any other pertinent information in the minutes, in accordance with the formalities established by law.

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ARTICLE 20.- Obligation of companies and institutions to facilitate the intervention.

The companies and institutions that provide communication services are obliged to grant the judicial authority all the material and technical facilities to ensure that the interventions are effective, secure and confidential.

In order to inform them of the judicial disposition, an official letter from the Court will be necessary, stating the necessary information; it will not be required to notify them of the content of the resolution that ordered the measure.

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**CHAPTER III RESPONSIBILITIES,
PROHIBITIONS AND PENALTIES**

ARTICLE 21. Responsibilities of the Judge.

The Judge's responsibilities shall be:

1.- To issue resolutions authorizing the interception of communications or the search, seizure or examination of documents, as prescribed in this Law.

To keep the confidentiality and secrecy of all the information obtained through the application of the authorized measures, except for the effects that originated the act.

To ensure that the measure is provided only in the cases and with the formalities expressly provided for in this Law. In addition, he/she shall be directly responsible for all the actions carried out in the application of the measures, according to the stipulations of this Law.

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ARTICLE 22. Prohibitions to those in charge of intervening.

Officials and employees involved in the interception of communications, search, seizure or examination of documents or those who have the power to request these measures are prohibited from the following:

1.- Using the results of the intervention for purposes other than those that motivated it.

2.- Directly or indirectly assisting someone to evade investigation by the authorities or to evade their action.

3.- Violate the confidentiality and secrecy of all measures and information authorized in this Law, except for the effects that originated the act.

4.- Inducing the Judge to order a communications interception, search, seizure or examination of private documents, by means of simulation, alteration, concealment, supposition of false facts or documents or distortion of the true ones.

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ARTICLE 23. Obligations of those responsible for the communication companies.

The responsible officials of the public and private companies or institutions in charge of communications shall have the following obligations:

1.- To give all the facilities so that the measures ordered by the competent Judge become effective. To

comply with the court order, so as not to delay, hinder or impede the execution of the order.
orderly measurement.

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ARTICLE 24. Penalties for fraud.

The judge and the police officer or official of the Public Prosecutor's Office who discloses or uses the information obtained through the seizure of documents or the interception of communications for a purpose other than that established in the order shall be punished with imprisonment of one to three years.

The same penalty shall be imposed on any official who fails to observe the formalities and requirements prescribed in this Law when ordering or carrying out a seizure, examination, search of documents or interception of communications.

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ARTICLE 25. Penalties for fault.

A judge, police officer or official of the Public Prosecutor's Office who, through negligence, discloses or allows the disclosure of information obtained through the seizure of documents or the interception of communications, shall be punished with imprisonment of six months to two years.

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CHAPTER IV GENERAL

PROVISIONS

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ARTICLE 26.- Application of the subject matter of this Law during criminal proceedings.

Oral or written communications may be intercepted, searched, seized or examined, when transmitted or forwarded by the suspect or the accused if the criminal proceedings have been initiated, or if they are intended for criminal proceedings, even under an assumed name or through an interposed person, used as a connection, provided they are related to the crime.

Private documents may not be seized, searched or examined, nor may communications between the defense attorney, duly accredited as such, and his client be intercepted, provided they occur in the exercise of the right of defense.

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ARTICLE 27. Content of the minutes.

The minutes that must be drawn up when applying the measures provided for in this Law must contain the date, time and place of the proceedings; the name and surname of the persons acting and the position they hold, as well as the indication of the proceedings carried out, without prejudice to any other circumstance that may merit inclusion.

The minutes must be signed by the Judge and by the respective Secretary or, as the case may be, by the Judge and two witnesses to the proceedings. In the exceptional cases in which the Judge has not personally carried out the proceedings, the minutes must be signed by the delegated person, always with the Secretary or the two witnesses.

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ARTICLE 28.- Restricted use of information.

The results of the interception of oral or written communications may not be used for any purpose other than that for which the measure was taken.

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ARTICLE 29. Consent of the right holder.

There shall be no unlawful interference when the owner of the right grants his express consent. If there are several right holders, the express consent of all of them must be obtained. This consent may be revoked at any time.

When the person who participates in an oral, written or other type of communication, by means of which

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an offense defined by law is committed, records or keeps it, it may be presented by the offended person to the judicial or police authorities for the corresponding investigation.

If the communications indicated in the preceding paragraph have been used by the jurisdictional authorities to initiate criminal proceedings, the recordings of such communications or the texts transcribing them may be presented as evidence before the judge in the corresponding trial.

(As amended by Law No. 8200 of December 10, 2001)

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FINAL PROVISIONS

Addition to the Code of Criminal Procedures.

Chapter IX, entitled "Interception of Communications" is added to Title III "Means of Evidence" of Book Two of the Code of Criminal Procedure. This chapter will only consist of one article, the text of which will read as follows:

"Article 263 bis.- The judge may order, ex officio or at the request of the parties to the proceedings, the intervention of the oral or written communications of the accused, as well as the search, seizure and examination of private documents. He shall act according to the procedure and in the cases provided for in the law governing the matter."

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ARTICLE 31. Repeal and amendments.

Article 199 of the Penal Code is repealed.

Articles 196, 197, 198 and 200 of the Penal Code are amended to read as follows:

"Article 196.- It shall be punished with imprisonment from one to three years, whoever opens or takes possession of the content of a communication intended for another person, regardless of the means used."

"Article 197.- Whoever takes possession of a letter or other private document, even if it is not closed, or whoever suppresses or diverts from its destination a correspondence that is not addressed to him, shall be punished with imprisonment from one to three years."

"Article 198.- Whoever records, without his consent, the words of another or others, not intended for the public, or whoever, by means of technical procedures, listens to private statements that are not addressed to him, shall be punished with imprisonment of one to three years, except as provided for in the Law on registration, seizure and examination of private documents and interception of communications. The same penalty shall be imposed on anyone

who installs apparatus, instruments, or parts thereof, for the purpose of

intercept or impede oral or written communications, whether or not they achieve their purpose."

"In the cases of the three preceding articles, imprisonment of two to six years shall be imposed if the action is perpetrated:

- a) By public officials, in connection with the performance of their duties.
- b) By whoever executes the act, taking advantage of his relationship with a company or public or private institution in charge of communications.
- c) When the author publishes the information obtained or even without doing so, it is of a private nature, all at the Judge's discretion.

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ARTICLE 32.

Effective as of its publication.

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TRANSITIONAL PROVISIONS

SINGLE TRANSITORY.- For the immediate application of this Law, the Judicial Branch shall define its cost and the Ministry of Finance shall make the necessary adjustments during the current fiscal year. In the following years, the budget for this activity shall be incorporated to the Judicial Branch.

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