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**АКТУАЛЬНІ ПИТАННЯ ПРАВООХОРОННОЇ**  
**ДІЯЛЬНОСТІ**

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**CRIMINAL OFFENCES AGAINST PRIVACY IN THE CRIMINAL**  
**CODE OF THE REPUBLIC OF SLOVENIA**

At a time when ever new technical means enable ever greater and ever-more covert invasions of privacy, the right to privacy is increasingly under threat. The protection of privacy is so important that it is guaranteed by the Constitution of the Republic of Slovenia [1]. Article 35 of the Constitution of the Republic of Slovenia guarantees the protection of the right to privacy and personality rights. In addition to this general provision, the Constitution of the Republic of Slovenia contains three other provisions that ensure the protection of individual rights associated with privacy. Article 36 of the Constitution of the Republic of Slovenia guarantees the inviolability of dwellings, Article 37 thereof guarantees the privacy of correspondence and of other means of communication, and Article 38 the protection of personal data.

The Criminal Code of the Republic of Slovenia (hereinafter: CC-1) [2] defines any encroachment on certain privacy rights as criminal acts. The following criminal acts that represent an encroachment on privacy are listed in the CC-1: stalking (Article 134a), unlawful body search (Article 136), unlawful eavesdropping and audio recording (Article 137), unlawful video recording (Article 138), Violation of the secrecy of communications (Article 139), unlawful publication of private writings (Article 140), violations of the sanctity of dwellings (Article 141), unlawful disclosure of professional secrets (Article 142) and abuse of personal data (Article 143).

I will focus on Violations of the sanctity of dwellings (Article 141 of the CC-1. (1) Whoever unlawfully enters another person's dwelling or other closed premises, or whoever remains therein in defiance of the rightful owner's order to leave, shall be punished by a fine or imprisonment for up to one year. (2) Whoever unlawfully searches such a dwelling or premises shall be punished in accordance with paragraph one of this Article. (3) If an act referred to in

paragraph one or two of this Article is committed by an official through abuse of office or official powers, he or she shall be sentenced to imprisonment for between three months and five years. (4) An attempt to commit an act referred to in paragraphs one, two and three of this Article shall be punishable. (5) If the Court imposes a suspended sentence, it may order the perpetrator to vacate the dwelling or premises within a specified time limit. (6) Prosecution of an act referred to in paragraphs one and two of this Article shall be initiated upon a proposal).

This criminal offence is based on the provisions of Article 36 of the Constitution of the Republic of Slovenia. The crimes referred to in paragraph one and two of this Article may be committed by any person, and the crime referred to in paragraph three of this Article only by officials. A legal person may also be held responsible for such a criminal offence. This criminal offence can only be committed with intent. The perpetrator must be aware of the unlawfulness of his or her conduct.

Paragraph one defines two alternative ways of committing a criminal offence: perperational committed by entering another person's premises and omissional, when the offender does not leave another person's premises. It also defines a third way of committing an offence where the perpetrator prevents the rightful owners from using a flat or other premises.

The flat or other premises must be owned by another person. The perpetrator of the crime has no right of occupancy and there are no legal grounds that would exclude unlawful character of his or her act. The concept of dwelling in criminal law is broader than that defined by the Housing Act, as criminal law considers dwelling to also include premises other than those defined as such by the Housing Act. In terms of criminal law, dwelling is considered to include premises that are used from time to time for holidays or leisure breaks, temporary housing for workers on construction sites, residence facilities for singles and elderly care homes, hotel rooms and even hospital rooms. Other premises covered by the provisions of this Article are any indoor premises owned by other persons (e.g. garages, sheds, woodsheds, warehouses, depositories, camper vans, etc.).

“Someone else's property” is not understood in terms of property ownership. It only used to define an encroachment on the lawful right of use of property by another person. The perpetrator can also be the owner of the flat who violates the sanctity of a dwelling that is lawfully used based on any legal grounds by another person who has been guaranteed peaceful use of the dwelling.

Trespass occurs in the absence of permission from the rightful occupant or in the absence of a lawful permission to enter another person's premises. The rightful occupant can also be the owner of a flat or other premises, or any other person that uses the premises on any legal grounds.

Paragraph two defines the unlawful search of a dwelling or premises. Such a criminal offence may be committed by anyone. The criminal offence is considered to be an aggravated offence under paragraph three when it is committed by an official by abusing their office or official duties.

The unlawful character of the act is excluded only when a person has the rightful occupant's permission or a lawful warrant to enter and search a dwelling or other indoor premises [3].

It has long been known that criminal law is the last and the least appropriate means of preventing and suppressing dangerous acts. Prevention of crimes by other means rather than by applying criminal law is much more reasonable and economical. This is all the more true as regards privacy protection, as the use of the means of criminal law becomes relevant only after a serious violation of privacy has already taken place, i.e. in the cases where the legal good protected under criminal law has already been harmed. Despite the undisputable advantages of preventing crimes, it is not possible to waive the punishment of the perpetrators, especially in cases where there are serious encroachments on privacy.

#### *Literature*

1. Constitution of the Republic of Slovenia, Official Gazette of the Republic of Slovenia Nos. 33/91-I; 42/97; 66/2000; 24/03; 69/04; 68/06; 47/13; 75/16 and 95/21.

2. Criminal Code of the Republic of Slovenia, (CC-1), Official Gazette of the Republic of Slovenia Nos. 55/08; 66/08; 39/09 (CC-1A); 91/11 (CC-1B); 54/15 (CC-1C); 38/16 (CC-1D); 27/17 (CC-1E); 23/20 (CC-1F); 91/20 (CC-1G); 95/21 (CC-1H); 186/21 CC-1I).

3. Deisinger M.: Kazenski zakonik 2017, Posebni del s komentarjem, sodno prakso in literaturo, Poslovna založba MB, založništvo d.o.o., Maribor, 2017, pp 210-212.

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### **POTENTIAL ENDANGERMENT OFFENCES: AN OLD BUT NEWLY DISCOVERED CONCEPT**

Slovenian criminal legal theory generally distinguishes between two types of criminal offences of endangerment: concrete and abstract endangerment offences (in German: *konkrete* and *abstrakte Gefährdungsdelikte*) [1]. The difference between the two is mainly in the intensity of the danger, caused by