

PARTIAL DECISION

At a session held on 4 July 2019 in proceedings to review constitutionality initiated upon the request of the Ombudsman for Human Rights, the Constitutional Court

decided as follows:

- 1. The third indent of the second paragraph of Article 114a of the Police Tasks and Powers Act (Official Gazette RS, Nos. 15/13, 23/15 – corr., and 10/17) is not inconsistent with the Constitution.**
- 2. The Constitutional Court will decide separately on the remaining part of the request.**

REASONING

A

1. The Ombudsman for Human Rights (hereinafter referred to as the applicant) requested, in addition to a review of the constitutionality of the fourth paragraph of Article 113 and the sixth and eighth paragraphs of Article 112a of the Police Tasks and Powers Act (hereinafter referred to as the PTPA), also a review of the third indent of the second paragraph of Article 114a of the PTPA. The challenged provision regulates one of eight legal bases for using unmanned aerial vehicles (hereinafter referred to as UAVs) for the collection of data when performing police tasks.

2. The applicant alleges that the challenged provision is general, and that [the use of] UAVs allegedly represents the introduction of technology that will enable constant and omnipresent surveillance and which is becoming increasingly sophisticated, advanced, and powerful; as a result, the challenged provision is allegedly not

proportionate. Allegedly, UAVs can be used with respect to any criminal or minor offence dealt with by the Police. The applicant claims that any use of a UAV can be justified by stating that its purpose is to find evidence of a criminal or minor offence, as the Police initiate the investigation of criminal offences on the basis of grounds for suspicion (Article 148 of the Criminal Procedure Act (Official Gazette RS, Nos. 32/12 – official consolidated text, 47/13, 87/14, 66/17, and 22/19 – hereinafter referred to as the CrPA), and the Police also exercise all of their powers directly on the basis of Article 33 of the PTPA. The applicant also draws attention to the variety of minor and criminal offences, the lack of the requirement of a prior court order, and the risk of abuses. Since the matter at issue concerns the processing of data for police purposes, the legislature should allegedly have particularly diligently balanced the weight of the measure, and the Act should be all the more precise. In alleging the inconsistency of the challenged provision with Article 32 of the Constitution, the applicant refers to her allegations regarding the inconsistency of the challenged regulation of the optical recognition of licence plates (so-called ANPR [i.e. automatic number plate recognition]) with this provision of the Constitution. Since the legitimate benefits of the use of UAVs on the basis of the challenged regulation allegedly do not outweigh the weight of the interferences, the challenged provision is allegedly inconsistent with Articles 32, 35, and 38 of the Constitution, and Article 2 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette RS, No. 33/94, MP, No. 7/94 – hereinafter referred to as Protocol No. 4 to the ECHR).

3. The request was sent to the National Assembly, which did not submit a reply thereto. The Government sent its opinion, in which it reiterated the statements it made in the legislative procedure, and referred to the original opinion of the Information Commissioner on the use of UAVs dated 16 February 2015, in accordance with which the key question is allegedly under which conditions the Police may use certain systems for gathering and processing data and not where these systems are mounted. The Government admits that the Information Commissioner subsequently modified that position, however, in its view, the new position appears to be “questionable.” The Government opines that the challenged provision does not entail a broadening of the scope of instances wherein it is admissible to use technical means [as referred to in the PTPA] for taking photographs and recording video and audio, but only “determines” that they may also be mounted on UAVs. Allegedly, it is not admissible to use technical means as referred to in Article 113 of the PTPA for preventive purposes or for detecting criminal and minor offences. The Government draws attention to the fact that the challenged provision must be read in conjunction with powers in other laws. The PTPA allegedly exhaustively determines when the use of UAVs for recording is permitted, and these powers allegedly do not include the power to perform road traffic surveillance, which the Police may also perform preventively. According to the Government, using UAVs for such purposes would entail mass surveillance. Hence, the use of UAVs to detect criminal and minor offences is allegedly not permitted. Allegedly, Article 114a of the

PTPA does not broaden the scope of instances wherein it is admissible to use technical means for taking photographs and for video and audio recording, nor does it render the use of such technical means generally admissible, but instead determines that, on the basis of the challenged provision, police officers may – in instances determined by law when they have a legal basis in a law to use technical means for taking photographs and recording video and audio (e.g. by using a helicopter) – use these technical means also on UAVs, which is a new technical means and which requires that it be regulated by law. Article 114a of the PTPA allegedly exhaustively lists the powers in the performance of which the use of UAVs is allowed. Allegedly, the challenged provision does not provide an independent legal basis for using technical means, but only provides one in conjunction with the other regulations that impose on the Police the obligation to collect personal and other data to prove minor and criminal offences. Thereby, the proportionality of the measure determined by the challenged provision is allegedly ensured, which allegedly already the Police Act allows (Official Gazette RS, No. 66/09 – official consolidated text and 22/10 – PA). The authorisation is allegedly conditional upon the concrete performance of police tasks and the direct perception of a violation.

4. The opinion of the Government was submitted to the applicant. In her reply, the applicant states that she does not question the use of the challenged [technical] means as such and maintains the allegations contained in the request. Allegedly, the interpretation of the challenged statutory provision should be expressed already in the statutory regulation due to the [requirement] that regulations be precise.

B – I

5. On the basis of Article 6 of the Constitutional Court Act (Official Gazette RS, No. 64/07 – official consolidated text and 109/12 – hereinafter referred to as the CCA), and in accordance with the *mutatis mutandis* application of the first paragraph of Article 314 of the Civil Procedure Act (Official Gazette RS, No. 73/07 – official consolidated text, 45/08, and 10/17), the Constitutional Court assessed that the time is ripe to decide on the part of the request that refers to the third indent of the second paragraph of Article 114a of the PTPA. The Constitutional Court will decide separately on the part of the request that refers to the review of the constitutionality of the first through sixth and eighth paragraphs of Article 112a, and of the fourth paragraph of Article 113 of the PTPA (Point 2 of the operative provisions).

B – II

Interpretation of the Challenged Provision

6. The applicant challenges one of the exhaustively determined legal bases for the use of UAVs for the collection of data when performing police tasks,^[1] i.e. the third indent of the second paragraph of Article 114a of the PTPA, which reads as follows:

“For the purposes of collecting data, police officers may use UAVs:

[...]

– in order to prove minor and criminal offences and to identify the perpetrators thereof (the first paragraph of Article 113 of this Act).”

7. A UAV is an aerial vehicle intended to perform flights without a pilot or other persons on board that is remotely controlled, programmed, or autonomous.^[2] It consists of three systems: (1) the mount, i.e. the aerial vehicle, (2) the operation and control system, and (3) the system for performing the tasks of the UAV (i.e. the system that enables the UAV to perform the task that is the reason for the deployment of the UAV, e.g. a weapon system, a surveillance system for capturing data, or a system for transport and delivery).^[3]

8. In accordance with the first paragraph of Article 114a of the PTPA, police officers may use, mounted on a UAV, technical means used on the basis of the PTPA or some other act in order to collect data when performing police tasks. In accordance with the third paragraph of the same article, police officers must observe the general conditions that are prescribed for the flying of UAVs when using them. Exceptionally, if necessary for the performance of a police task, deviations from these conditions are acceptable if the use of a UAV does not pose a risk to the life, health, or property of individuals due to a collision or loss of control of the UAV system, and if the safety of air traffic is not jeopardised or [air traffic] disturbed.^[4] In the second paragraph of Article 114a of the PTPA, eight instances are listed in which UAVs may be used to collect data; namely, police powers, i.e. investigative actions under the PTPA, the CrPA, the MOA-1, the SBGA-2, and the RTRA, are listed, together with the relevant provisions of the corresponding law that regulates individual police powers, i.e. investigative actions. Under which conditions UAVs may be used is determined by the provisions to which the individual indents of the second paragraph of Article 114a of the PTPA refer.

9. The challenged third indent of the second paragraph of Article 114a of the PTPA calls for the application of the first paragraph of Article 113 of the PTPA, which regulates the use of technical means when collecting personal and other data intended to prove minor and criminal offences and to identify the perpetrators thereof in accordance with the law, and does not by itself determine special conditions for or limitations on the use of UAVs in such instances (in contrast to [the regulation of] the use of technical means when collecting personal and other data without the use of UAVs). Such special limitations on the use of UAVs are not determined even in the remaining seven instances of the use of UAVs listed in the second paragraph of Article 114a of the PTPA, which the applicant does not even challenge.^[5]

10. In accordance with the first paragraph of Article 113 of the PTPA – which the Constitutional Court had to interpret as the challenged provision refers thereto – wherever necessary for the collection of personal or other data in order to prove minor and criminal offences and to identify the perpetrators thereof in accordance with the law, police officers may, in the performance of police tasks, use technical means used by the police for taking photographs and recording video and audio and for marking or identifying persons, vehicles, and objects. Recordings that are not used to prove minor or criminal offences, or to identify offences or perpetrators must be deleted as soon as possible but not later than within 30 days of when they were made.

11. The provision of the first paragraph of Article 113 of the PTPA does not provide police officers an independent legal basis for using such technical means, which due to continuous technical development are not exhaustively listed in the Act (in contrast to police powers and forcible measures).^[6] In accordance with the fifth paragraph of Article 114 of the PTPA, the technical means referred to in Articles 113 and 114 must be categorised; however, the categorisation, i.e. a list and description (in particular regarding their technical characteristics) of the technical means used by the Police,^[7] is determined by the minister [responsible for internal affairs] by an internal act. However, from the interpretation of the first paragraph of Article 113 of the PTPA it follows that technical means [as referred to therein] must be used in conformity with the law. This means that police powers (which are exhaustively listed in the first paragraph of Article 33 of the PTPA) and police tasks (as determined by the first paragraph of Article 4 of the PTPA),^[8] for the performance of which the minister's internal act determines individual technical means, are determined and substantively defined by law. This law (as a general rule the PTPA, but it can also be another law) also determines when a particular technical means may be used when exercising individual police powers^[9]; sometimes a specific technical means or at least the type thereof^[10] is also listed. The first paragraph of Article 113 of the PTPA thus must be applied in conjunction with the other regulations that determine the legal basis for the Police to collect personal and other data in order to prove minor and criminal offences and to identify the perpetrators thereof.^[11] Consequently, the technical means referred to in this provision may only be used in instances where the PTPA or another law envisages their use and concurrently determines the conditions of individual police powers or (investigative) actions and, as a result, also the conditions for the use thereof. In other words: the Act determines which police power or interference with a human right or fundamental freedom can be performed by the Police, while the internal act of the aforementioned ministry determines by which technical means such interference is to be carried out.

12. The use of technical means on the basis of the first paragraph of Article 113 of the PTPA is conditional upon the performance of concrete police tasks and is not admissible within the framework of general preventive Police activities that could result in the discovery of individual minor or criminal offences.^[12] Hence, it is

conditional upon the performance of concrete police tasks relating to proving minor and criminal offences and identifying the perpetrators thereof. The provision does not have a general preventive character^[13] such as to also enable preventive Police activities or supervision (e.g. of road traffic) during which the Police, by using the technical means in such a manner, might by chance also detect that a minor or criminal offence has been committed, and which in the same manner would also be recorded. It is only admissible to use a technical means once a violation that contains the constituent elements of a criminal or minor offence has already been detected.

13. The first paragraph of Article 113 of the PTPA regulates two types of technical means for the collection of personal or other data to prove minor and criminal offences and to identify the perpetrators thereof: (1) technical means for taking photographs and recording video and audio and (2) technical means for marking or identifying persons, vehicles, and objects. Already from the literal interpretation of technical means for taking photographs and recording video and audio it follows that the recordings made by these means are photographs and audio and video recordings. With respect to the second group of technical means, it follows from the legislative file of the Police Tasks and Powers Act (Official Gazette RS, No. 15/13), dated 18 February 2013, that such entails technical assistance in registering particular characteristics and identification signs on the basis of which reliable identification [of persons, vehicles, and objects] is possible and the recording of identification data that can serve as the basis for initiating criminal proceedings. These technical means function in accordance with the principle of automatic computer-controlled identification of individual targets (i.e. vehicles, criminal offence suspects, and objects, considering their characteristics) whose characteristics are, as a general rule, presented in the form of official markings of objects or vehicles, such as electromagnetic bar codes, licence plate numbers, ship container numbers, the serial numbers on banknotes, ID numbers, etc. The identification of persons with technical means entails the identification of persons on a recording, namely criminal offence suspects, on the basis of their known characteristics, gathered information, and information regarding the criminal offence itself.^[14]

14. In order to interpret the third indent of the second paragraph of Article 114a of the PTPA, it is also relevant whether the technical means (referred to in the first paragraph of Article 113 of the PTPA) is a UAV or merely a part thereof, i.e. the part for performing the tasks of the UAV, or a device that is mounted on the UAV and whose use is the reason the UAV is deployed (cf. Paragraph 8 of the reasoning of this Decision). From the literal interpretation of the first paragraph of Article 114a of the PTPA it follows that the technical means for collecting data when performing police tasks in accordance with the first paragraph of Article 113 of the PTPA is primarily a system enabling performance of the tasks of the UAV. Namely, this provision determines that the technical means used by police officers on the basis of the PTPA or another law in order to collect data when performing police tasks may also be used mounted on an (unmanned) aerial vehicle.

15. In view of the definition of an aerial vehicle in the AA^[15] and in view of the already mentioned definition of a UAV in point 2 of the second paragraph of the Decree on unmanned aerial vehicle systems, a UAV, i.e. a mount supporting such systems, is also a type of aerial vehicle.^[16] At the same time, considering the content of the legislative file on the Act Amending the Police Tasks and Powers Act (Official Gazette RS, No. 10/17 – hereinafter referred to as the PTPA-A),^[17] the opinion of the Information Commissioner in the legislative procedure at issue,^[18] and the opinion of the Government submitted upon the request of the petitioner dated 18 December 2017, it must be deemed that also a UAV itself is a technical means.^[19]

16. From the challenged provision and the first paragraph of Article 113 of the PTPA it follows that on the basis of the challenged provision a UAV can be used to prove criminal and minor offences and to identify the perpetrators thereof only by using technical means employed by the police for taking photographs and recording video and audio or technical means for marking or identifying persons, vehicles, and objects. Hence, in conformity with the literal interpretation of the challenged provision and the first paragraph of Article 113 of the PTPA, it is admissible to use both types of technical means referred to in the first paragraph of Article 113 of the PTPA, as both the challenged provision and the first paragraph of Article 113 of the PTPA mention technical means for proving criminal and minor offences and for identifying the perpetrators thereof, and the first paragraph of Article 113 of the PTPA designates both types of technical means for that purpose. However, in view of the definition of technical means for marking or identifying persons, vehicles, and objects (*cf.* Para. 14 of the reasoning of this Decision), the use of these technical means on UAVs on the basis of the challenged provision is excluded by the nature of the matter. Only technical means for taking photographs and recording video and audio can be used mounted thereon. By taking into account the other provisions of the PTPA and other regulations, it can be further established that it is not admissible for some technical means regulated by the PTPA to be used mounted on UAVs on the basis of the challenged provision (*cf.* Paragraphs 19–31 of the reasoning of this Decision).

17. On the basis of the first paragraph of Article 113 of the PTPA, it is only admissible to use the mentioned technical means in accordance with the law, i.e. in instances where the use thereof is envisaged by law, and under the conditions imposed by law for such instances. Concurrently, the first paragraph of Article 114 of the PTPA again determines and stresses the duty to determine by law (i.e. either in the PTPA or some other law) the use of technical means and the conditions for their use. By taking the above into account, as well as the definition of technical means, it follows from the literal interpretation of the challenged provision that, as regards UAVs, in instances where the PTPA (or some other law) determined the use of the mentioned technical means even prior to the PTPA-A entering into force, it is admissible under the PTPA-A, on the basis of this provision, to use the same technical means under

the same conditions and limitations also mounted on a UAV (and no longer only mounted on a helicopter or on some other mount). Also as regards the use of technical means mounted on UAVs on the basis of the challenged provision it hence applies that the law determines when they can be used and under what conditions. Which technical means for taking photographs and recording video and audio can be mounted on UAVs is determined on a general level in the [above-mentioned] categorisation in the internal act of the minister. These limitations also follow from the interpretation of the other provisions of the PTPA, as will be stated below in this Decision. Hence, the PTPA-A did not increase or modify the range of technical means that may be mounted on UAVs; the PTPA-A only prescribed an additional new mount therefor.[\[20\]](#)

18. When interpreting the challenged provision it is also necessary to take into consideration the limitation that it is only admissible to use technical means for taking photographs and recording video and audio mounted on UAVs in order to (retroactively) prove criminal and minor offences and to identify the perpetrators thereof. It is only admissible to use them once a minor or criminal offence has already been detected. Hence, the use of UAVs for preventive or surveillance purposes in the sense of detecting unlawful acts that contain the constituent elements of minor and criminal offences is excluded.[\[21\]](#) This limitation follows from both the first paragraph of Article 113 of the PTPA (*cf.* Paragraph 13 of the reasoning of this Decision) and the challenged provision itself. As a result, in view of the above and in view of the listing of police tasks in the first paragraph of Article 4 of the PTPA, it is only admissible to use UAVs for the limited performance of police tasks determined by the second indent of the first paragraph of Article 4 of the PTPA,[\[22\]](#) namely for investigating criminal and minor offences and for detecting[\[23\]](#) and apprehending the perpetrators thereof.

19. It is not correct to interpret the statutory limitation that only technical means that the Police may use on the basis of the PTPA or some other law may be used mounted on UAVs[\[24\]](#) in the way the applicant interpreted it, i.e. such that the Police can characterise any of their activities as proving criminal and minor offences and as identifying the perpetrators thereof, which would as a result render admissible the use of technical means – and consequently also the use of technical means mounted on a UAV – in virtually every activity. It is also incorrect to interpret Article 148 of the CrPA, Article 55 of the MOA-1, and Article 33 of the PTPA in the way the applicant interpreted them, i.e. such that when proving criminal and minor offences the Police can carry out any necessary action, including actions that are not specifically prescribed by law, and exercise police powers directly on the basis of Article 33 of the PTPA.

20. In fact, the second paragraph of Article 148 of the CrPA, which lists the general police powers in police procedures, determines, with respect to the first paragraph of the same Article, that if there exist grounds for suspicion that a criminal offence liable

to public prosecution has been committed, the Police must take steps necessary to discover the perpetrator, and ensure that the perpetrator and his or her accomplices do not go into hiding or flee, to detect and preserve traces of the criminal offence or objects that may serve as evidence, and to collect all information that may be useful for successfully carrying out a criminal procedure. In order to execute these tasks, the Police may exercise the exhaustively listed powers (namely, requesting necessary information from citizens; inspecting transportation vehicles, passengers, and luggage; restricting movement within a specific area for a specific period of time; performing what is necessary to identify persons and objects; sending out notifications regarding missing or wanted persons and objects; inspecting, in the presence of the responsible person, specific buildings, premises, and documentation of enterprises and other legal entities) and undertake other necessary measures. Similarly, Article 55 of the MOA-1 determines the general rule that a minor offence authority shall *ex officio*, without delay, expeditiously and straightforwardly establish the facts and collect the evidence necessary for adjudication on the minor offence, while police powers are exhaustively listed in the first paragraph of Article 33 of the PTPA.

21. However, Article 33 of the PTPA only lists individual police powers, which are determined in more detail in individual articles of the PTPA. In this framework, also the conditions under which individual powers are exercised are determined, including [the determination of] when a certain power is exercised and the possible limitations of that power. Police powers are determined in more detail in the Rules. As regards proving criminal offences and identifying the perpetrators thereof, it must be taken into account that the powers of the Police relating to detecting criminal offences and the perpetrators thereof are determined not only in the CrPA but also in the PTPA and in other regulations. However, the Police must exercise all powers lawfully, under the conditions and in the manner determined by laws.^[25] The actions listed in the second paragraph of Article 148 of the CrPA are in fact not exhaustively listed, as the Act determines the powers and limitations of the Police, but cannot prescribe all its activities. What the Police must do in a certain case depends on the concrete case, the criminal investigation tactics, the equipment of the Police, and other factors.^[26] However, police powers are measures determined by law, and the law also determines the conditions for their exercise, with regard to which also tactical consideration and the principle of proportionality must be taken into account.^[27] Therefore, the Police must not perform any activities outside the scope of police powers. This also applies to minor offence procedures.

22. It follows from the above that it is not correct to proceed from the interpretation proposed by the applicant that the Police will exercise police powers and thus at their discretion use technical means mounted on UAVs directly on the basis of Article 33 of the PTPA, as individual police powers may only be exercised under the conditions and limitations determined by the regulation of these powers in the PTPA, the CrPA, the MOA-1, or in another law. Consequently, it is also not correct to accept the

interpretation of the applicant that the Police can use UAVs and technical means mounted thereon when exercising any power (e.g. in order to prove a criminal or minor offence or to identify the perpetrator thereof). Namely, it may only use individual technical means when exercising those police powers with regard to which these technical means have already been envisaged [by law] until now, only that hitherto it was technically envisaged for them to be used on a different type of mount, whereas henceforth a UAV can serve as a mount therefor.[28]

23. The CrPA thus determines the legal basis for taking photographs of a person regarding whom there exist grounds for suspicion that he or she has committed a criminal offence;^[29] for covert surveillance carried out by continuous or repeated surveillance or tracking by means of technical devices for determining position and movement and technical devices for transmitting and recording audio, for taking photographs and recording video that is focused on monitoring the position, movement, and activities of persons (the third paragraph of Article 149a of the CrPA); for measures determined by Article 150 of the CrPA; for wiretapping, covert listening, and surveillance in someone's apartment or on some other premises by means of technical means for recording (the first paragraph of Article 151 of the CrPA); for using a technical device for transmitting and recording audio, for taking photographs, and for recording video during covert operations (the second paragraph of Article 155a of the CrPA); and for taking photographs of an accused person during a judicial investigation.^[30] Under the CrPA-N, the use of technical means is also envisaged during an inspection.^[31] A special legal basis for using technical means during an inspection exists in the seventh indent of the second paragraph of Article 114a of the PTPA, and the legal basis for their use when performing the measures referred to in Articles 149a and 155a of the CrPA exists in the sixth indent of the second paragraph of Article 114a of the PTPA; therefore, the mentioned provisions are not relevant from the aspect of the interpretation of the challenged provision. Hence, the second paragraph of Article 114a of the PTPA (and not even the sixth indent of the same paragraph, which specifically regulates the use of UAVs when performing covert investigative measures under the CrPA) does not expressly regulate the use of UAVs when performing covert investigative measures determined by Articles 150 and 151 of the CrPA. Such a regulation would also allow the literal interpretation that, in accordance with the challenged provision, it is admissible to also use UAVs for the execution of these measures, since the covert investigative measures determined by Articles 150 and 151 of the CrPA entail measures for proving criminal offences and for identifying perpetrators. However, from the logical, teleological, and systemic interpretations of the second paragraph of Article 114a of the PTPA, it follows that the legislature intended to exhaustively regulate the use of UAVs when performing covert investigative measures only within the framework and the limits of the sixth indent of the second paragraph of Article 114a of the PTPA, but not also within the framework of the other indents of that paragraph, including the challenged provision. The measures referred to in Articles 150 and 151 of the CrPA entail measures of an equal nature as the measures referred to in Articles 149a and 155a of the CrPA, and

they also entail an interference with the protection of privacy.^[32] The MOA-1 does not specifically regulate the use of technical means for taking photographs and recording video and audio. Similarly, Article 58 of the MOA-1, which provides that the provisions on regular judicial proceedings apply, *mutatis mutandis*, to expedited minor offence procedures, and Article 67 of the MOA-1, which provides that the provisions of the CrPA apply *mutatis mutandis* in regular judicial proceedings, do not allow for the interpretation that the mentioned instances of the use of technical means referred to in the CrPA also apply to minor offence procedures.

24. On the other hand, the PTPA and the Rules, which are based thereon, enacted the use of technical means for taking photographs and recording video and audio when exercising individual police powers:

- when establishing a person’s identity and performing an identification procedure (Article 42 of the PTPA);
- when searching for persons (the third paragraph of Article 43 of the PTPA);
- when detaining a person (Article 64 of the PTPA);
- when using an electroshock weapon (Article 86a of the PTPA);
- when using forcible measures against a crowd (the fifth paragraph of Article 91 of the PTPA);
- when protecting persons and buildings (Article 98 of the PTPA);
- when exercising police powers on water (Articles 106 and 108 of the PTPA); and
- when exercising police powers and monitoring public gatherings (Article 114 of the PTPA).

25. For the use of technical means mounted on UAVs in the instances referred to in Articles 43, 91, 98, and 114 of the PTPA (the second, fifth, sixth, and eighth indents of the preceding paragraph of the reasoning of this Decision), the Police have a special legal basis already in the first, second, eighth, and fourth indents of the second paragraph of Article 114a of the PTPA. Therefore, in these instances, the challenged provision is not relevant as regards the use of UAVs. Namely, the Police use such technical means on the basis of the challenged provision only in those instances in which they do not have a special legal basis in the other indents of the second paragraph of Article 114a of the PTPA. Therefore, instances of using UAVs to search for people, to apply means of restraint against a crowd, to protect persons and buildings, and to exercise police powers on water are irrelevant to the review of the challenged provision.

26. The instances of the use of technical means in accordance with the PTPA that are not encompassed in the other indents of the second paragraph of Article 114a must be further limited in accordance with the purpose of the use of the technical means; only means that entail proving criminal and minor offences and identifying the perpetrators thereof are relevant, and consequently the (limited) police tasks referred to in the second paragraph of Article 4 of the PTPA. In addition to ascertaining a person’s identity in accordance with Article 42 of the PTPA, no other power with

respect to which the PTPA envisages the use of technical means – and which do not have an independent basis in the other indents of the second paragraph of Article 114a of the PTPA – is intended to enable criminal and minor offences to be proven and the perpetrators thereof to be identified, therefore it is inadmissible to use them mounted on UAVs.

27. Through an interpretation of the provisions of the PTPA, it is also possible to establish that it is inadmissible to mount on UAVs the technical means referred to in the third paragraph of Article 113 of the PTPA, in accordance with which police officers may, during the performance of road traffic surveillance on public roads and in other public areas, use technical means for detecting and proving speeding at control points and exceeding the maximum average speed on road sections and technical means for detecting other minor offences (so-called speed cameras). Namely, it is not correct to interpret technical means for detecting and proving instances of exceeding the maximum average speed on road sections referred to in the third paragraph of Article 113 of the PTPA as entailing technical means for taking photographs and recording video and audio, which in accordance with the first paragraph of Article 113 of the PTPA may be used mounted on a UAV.[\[33\]](#) Furthermore, road traffic surveillance is a preventive activity, while on the basis of the challenged provision UAVs may only be used when exercising a concrete police power, namely for proving violations that have already been detected and for identifying the perpetrators thereof.

28. Not even the technical means referred to in the fourth paragraph of Article 113 of the PTPA may be mounted on UAVs, i.e. technical means for the optical recognition of licence plates. Namely, from the fourth paragraph of Article 113 of the PTPA it follows that the mentioned technical means may only be used mounted on or in police [road] vehicles. The PTPA expressly differentiates between a [road] vehicle and an aerial vehicle, and in this respect it must be deemed that a UAV is an aerial vehicle not a road vehicle.[\[34\]](#) Also the Decree on Police [Road] Vehicles, Vessels, Armaments, and Special Equipment (Official Gazette RS, No. 2/14 and 60/16 – hereinafter referred to as the Decree) is based on a clear dividing line between different types of [road] vehicles, on the one hand, and vessels and aerial vehicles, on the other.

29. From the Decree, which regulates armaments (Article 6 of the Decree) separately (separately from aerial vehicles and special equipment, into which category also (special) technical equipment falls), it also follows that on the basis of the challenged provision it is not admissible to mount armament systems on UAVs.

30. It follows from the above that it is not correct to proceed from the applicant's interpretation of the challenged provision, namely that it would be possible to justify any use of a UAV by arguing that the purpose of such use is to prove a criminal or minor offence, in such a manner that the Police would exercise police powers and

thus at their own discretion use technical means mounted on UAVs directly on the basis of Article 33 of the PTPA. From the established methods of interpretation of the challenged provision, the PTPA, the CrPA, and the MOA-1, it namely follows that on the basis of the challenged provision UAVs may only be used on the basis of Article 42 of the PTPA (to establish a person's identity and to carry out an identification procedure) and on the basis of the second paragraph of Article 149 and the fourth paragraph of Article 172 of the CrPA (which regulates taking photographs in police procedures and in judicial investigations).

31. Police powers are otherwise also determined by numerous other sectoral laws. Where such a sectoral law envisages the use of technical means for taking photographs and recording video and audio, in accordance with the challenged provision, the Police may, as a general rule, also use such technical means mounted on UAVs to collect data to prove criminal and minor offences and to identify the perpetrators thereof.^[35] However, also when interpreting these provisions and when interpreting whether it is admissible to use UAVs when exercising these powers, the limitations referred to in the challenged provision and in the first paragraph of Article 113 of the PTPA must be taken into account^[36] (*cf.* in particular Paragraphs 16–23 of the reasoning of this Decision), i.e. that it is only admissible to use such technical means to prove criminal and minor offences and to identify the perpetrators thereof; that on UAVs it is only admissible to use technical means for taking photographs and recording video and audio; and that UAVs must not be used for preventive Police activities within the meaning of detecting unlawful actions that contain the constituent elements of criminal and minor offences. Furthermore, on the basis of the challenged provision, UAVs may not be used directly on the bases of Articles 148 of the CrPA, Article 55 of the MOA-1, and Article 33 of the PTPA, and in the instances that are specifically regulated in other indents of the second paragraph of Article 114a of the PTPA. Also the limitations mentioned in Articles 27–29 of the reasoning of this Decision must be taken into consideration.

Review of the Conformity of the Challenged Provision with the Constitution

32. The applicant first alleges the inconsistency of the challenged provision with Articles 35 and 38 of the Constitution. Since a violation of the protection of personal data is certainly also one form of violating personal privacy, which the Constitution addresses separately due to the importance and particularities of the right to the protection of personal data,^[37] the Constitutional Court reviewed the challenged provision from the viewpoint of Article 38 of the Constitution.

33. By regulating the right to the protection of personal data independently, the Constitution assigns to such protection a special place and importance within the overall protection of personal privacy. It also has a special place on the EU level. Included in Article 8 of the Charter of Fundamental Rights of the European Union (OJ C 202, 7 June 2016), the right to the protection of personal data is placed among the

fundamental rights. In conformity with the established constitutional case law, any collecting and processing of personal data entails an interference with the right to the protection of privacy, i.e. with the right of individuals to keep information regarding themselves private, and to prevent others from accessing such. The fundamental value basis of this right is the realisation that individuals have the right to keep information about themselves to themselves and that they are the ones who are to decide how much information about themselves they want to reveal and to whom.^[38] However, the right to information privacy is not unlimited; it is not absolute. Therefore, individuals must accept limitations of information privacy, i.e. they must allow interferences therewith that are in the prevailing public interest, provided that the constitutionally determined conditions are fulfilled. Interferences are admissible if they satisfy the conditions determined by the third paragraph of Article 15 and Article 2 of the Constitution. Within this framework, the Constitutional Court must review whether the legislature pursued a constitutionally admissible aim; if such is the case, it must further review if the limitation is consistent with the principles of a state governed by the rule of law, i.e. with those principles that prohibit excessive measures by the state (the general principle of proportionality).^[39] The law must be precisely determine which data may be collected and processed, and for what purpose such data may be used; supervision over the collection, processing, and use of personal data must be envisaged, as well as protection of the confidentiality of the collected personal data. The purpose of collecting personal data must be constitutionally admissible. The second paragraph of Article 38 of the Constitution requires the clear, concrete, and precise determination of the (constitutionally admissible) purpose of personal data processing.^[40] Only data that are appropriate and absolutely necessary for the implementation of the statutorily defined purpose may be collected.^[41] When what is at issue is the processing of personal data for the purposes of police work, the legislature must balance the measure by which it interferes with a sensitive area of the privacy of an individual without his or her consent in an especially meticulous manner.^[42] The same also applies to the processing of personal data by other state authorities for the purposes of the defence of the state, national security, and the constitutional system.^[43]

34. In view of the above, the Constitutional Court first had to assess whether the use of technical means on UAVs on the basis of the challenged provision of the PTPA entails an interference with the protection of personal data determined by the first paragraph of Article 38 of the Constitution.

35. In accordance with the Personal Data Protection Act (Official Gazette RS, No. 94/07) – official consolidated text – hereinafter referred to as the PDPA-1), personal data can be any data that refer to an individual, regardless of the form in which they are expressed. An individual is a determined or determinable natural person to which personal data refer, with regard to which a natural person is determinable if he or she can be directly or indirectly identified, in particular by referring to an identification number or to one or more characteristics of the person's physical, physiological,

mental, economic, cultural, or societal identity, with regard to which the manner of identification does not incur significant costs and does not require disproportional effort or time (point 2 of Article 6 of the PDPA-1). By using technical means for taking photographs and recording video and audio in order to prove criminal and minor offences and to identify the perpetrators thereof in accordance with the challenged provision, the Police obtain photographs and audio and video recordings. As early as in Decision No. U-I-25/95 the Constitutional Court held that by installing covert listening devices (i.e. by a covert investigative measure that includes the use of technical devices at least for audio recording), data of a personal nature are collected, and hence they are protected on the basis of Article 38 of the Constitution. In fact, in that Decision the Constitutional Court assessed, *inter alia*, covert listening in dwellings and on some other premises, and not the use of technical means for taking photographs and recording video and audio on UAVs. However, in both instances the same data or at least data of the same type are collected by the technical means used. Video and audio recordings and photographs are intended for the identification of perpetrators and as such entail personal data. The collection and storage of such data entail the use of personal data and hence an interference with the protection of personal data determined by Article 38 of the Constitution. Also under the established case law of the European Court of Human Rights (hereinafter referred to as the ECtHR), the results of covert listening, monitoring communications, and covert surveillance are protected by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette RS, No. 33/94, MP, No. 7/94 – hereinafter referred to as the ECHR).^[44] In view of the above, by using a UAV in accordance with the challenged provision the Police obtain data on identifiable individuals who must enjoy, from the viewpoint of privacy, the protection of personal data as guaranteed by Article 38 of the Constitution.

36. In the request, the applicant provided very few reasons as to why the challenged provision is allegedly inconsistent with the protection of personal data (Article 38 of the Constitution). She only referred to an interpretation of the law that is inconsistent with the established methods of interpretation. All of the arguments that then follow are based on her interpretation of the challenged provision; on the basis of her interpretation of the law and on the basis of the generalised claim that the technology at issue will enable constant and omnipresent surveillance, which is becoming ever more sophisticated, advanced, and powerful,^[45] she further states that, on the basis of the challenged provision, the use of UAVs without a court order is admissible for any criminal offence that must be prosecuted *ex officio* and for any minor offence. From these statements it would be possible to conclude that the applicant claims that because of the greater threat to privacy, under the challenged regulation there should exist a different regime for the use of UAVs (the applicant probably had in mind a stricter regime). Nevertheless, in this part of the request, the applicant remains at the level of alleging in general that UAVs pose a particular threat to the protection of privacy. However, by merely interpreting the Act in a manner that is inconsistent with the established methods of interpretation and by alleging in general that UAVs pose

a threat to the protection of privacy, the applicant cannot substantiate the inconsistency of the challenged provision with the protection of personal data determined by the first paragraph of Article 38 of the Constitution.

37. The applicant also alleges the inconsistency of the challenged provision with the right to freedom of movement determined by Article 32 of the Constitution and Article 2 of Protocol No. 4 to the ECHR, which she substantiates by her interpretation of the [PTPA] and by referring to her reasoning as to why the fourth paragraph of Article 113 of the PTPA is allegedly inconsistent [with the Constitution], whereby she claims that [as a result of the challenged provision] the state has broad possibilities to monitor movement on its territory and that the will of people is affected to such a degree that it is no longer possible to speak of movement that is truly free, with regard to which the legitimate societal benefits do not outbalance the interference with that human right. However, merely by presenting such an opinion that has no basis in the law and by making generalised statements, the applicant cannot substantiate even the alleged inconsistency of the challenged regulation with the right to freedom of movement determined by Article 32 of the Constitution and Article 2 of Protocol No. 4 to the ECtHR.

38. Therefore, the Constitutional Court established that the challenged provision is not inconsistent with the Constitution (Point 1 of the operative provisions).

C

39. The Constitutional Court adopted this Decision on the basis of Article 21 of the CCA, composed of: Dr Rajko Knez, President, and Judges Dr Matej Accetto, Dr Dunja Jadek Pensa, Dr Etelka Korpič – Horvat, Dr Marijan Pavčnik, Marko Šorli, and Dr Katja Šugman Stubbs. The Decision was reached unanimously.

Dr Rajko Knez
President

[\[1\]](#) In conformity with the second paragraph of Article 114a of the PTPA, UAVs may also be used:

- when searching for people (Article 43 of the PTPA);
- in order to safely carry out procedures (the fifth paragraph of Article 91 of the PTPA);
- to monitor the lawfulness of the exercise of police powers and to monitor public gatherings (Article 114 of the PTPA);
- to prevent and detect unlawful crossings of the state border in conformity with Articles 8 and 9 of the State Border Control Act (Official Gazette RS, No. 35/10 – official consolidated text, 5/17, and 68/17 – hereinafter referred to as the SBCA-2);

- to carry out covert investigative measures determined by Articles 149a and 155a of the CrPA, if so determined by the law regulating criminal procedure;
- when carrying out an inspection as referred to in Article 245 of the CrPA, Article 120 of the Minor Offences Act (Official Gazette RS, No. 29/11 – official consolidated text, 21/13, 111/13, and 32/16 – hereinafter referred to as the MOA-1), and Article 111 of the Road Traffic Rules Act (Official Gazette RS, No. 82/13 – official consolidated text, 69/17 – corr., 68/16, and 54/17 – hereinafter referred to as the RTRA); and
- when protecting persons and buildings determined by a regulation referred to in Article 103 of the PTPA.

[2] See the second paragraph of Article 2 of the Decree on Unmanned Aerial Vehicle Systems (Official Gazette RS, Nos. 52/16 and 81/16 – corr.). Cf. International Civil Aviation Organisation, Unmanned Aircraft Systems (UAS), Cir 328, 2011 (https://www.icao.int/Meetings/UAS/Documents/Circular%20328_en.pdf), and R. L. Finn, D. Wright, Unmanned Aircraft Systems: Surveillance, Ethics, and Privacy in Civil Applications, *Computer Law & Security Review*, No. 2 (2012), p. 187.

[3] The use of UAVs when performing police tasks, Annex to the Draft Act Amending the Police Tasks and Powers Act, dated 3 November 2016, p. 2.

[4] These conditions are determined by the Aviation Act (Official Gazette RS, No. 81/10 – official consolidated text and 46/16 – hereinafter referred to as the AA), and in particular by the already mentioned Decree on Unmanned Aerial Vehicle Systems. In accordance with the third paragraph of Article 1 of that Decree, its provisions do not apply to UAV systems that are intended for performing military activities, customs activities, police activities, search activities, rescue activities, firefighting activities, activities of the coast guard services, or similar activities (i.e. state activities), however flights conducted by UAV systems for the performance of state activities shall be carried out in conformity with the procedures and regulations that apply to general air traffic (GAT) within the airspace of the Republic of Slovenia prescribed by Articles 10 through 12 of that Decree, unless other regulations determine otherwise (the fourth paragraph of Article 1 of that Decree). Otherwise, the conditions regulate the safety aspect regarding the usage of UAVs. Cf. the use of UAVs when performing police tasks, Annex to the Draft Act Amending Police Tasks and Powers Act, dated 3 November 2016, p. 2.

[5] The legislature in the German Free State of Bavaria decided to use a similar legislative technique. Cf. Article 47 of the Police Powers Act (*Gesetz über die Aufgaben und Befugnisse der Bayerischen Staatlichen Polizei, Polizeiaufgabengesetz – PAG*), in which police measures are listed regarding which it is admissible to use UAVs. At the federal level, the general legal basis for measures used in criminal procedures applies to the use of UAVs (cf. Article 100h of the Criminal Procedure Act, *Strafprozessordnung – StPO*).

[6] From the legislative file on the PTPA it follows that the Information Commissioner and the Legislative and Legal Service of the National Assembly had reservations [and opined that] the technical means should be exhaustively determined by law (as are police powers and forcible measures). See the Opinion of the Legislative and

Legal Service of the National Assembly, dated 20 November 2012, p. 7, and the Opinion of the Information Commissioner of the Republic of Slovenia, dated 18 December 2012, p. 1.

[7] See the Report of the National Assembly Committee on the Interior, dated 18 January 2013, and M. Nunič in: M. Nunič (Ed.), Police Tasks and Powers Act with Commentary, GV Založba, Ljubljana 2015, p. 362.

[8] Cf. Decision of the Constitutional Court No. U-I-28/16, dated 12 May 2016 (Official Gazette RS, No. 42/16, and OdlUS XXI, 25).

[9] E.g. the second paragraph of Article 39 of the PTPA.

[10] E.g. the fifth paragraph of Article 91 of the PTPA. The Rules on Police Powers (Official Gazette RS, Nos. 16/14 and 59/17 – hereinafter referred to as the Rules) regulate the manner of exercising the police powers determined by the law regulating police tasks and powers, and by other laws.

[11] The Report of the Committee on the Interior regarding the PTPA Draft Act, dated 18 January 2013.

[12] The legislative file of the PTPA Draft Act, dated 20 September 2012.

[13] Such is also stated in the amendment proposed by the Slovene Democratic Party dated 10 January 2013, see the Report of the Committee on the Interior regarding the PTPA Draft Act, dated 18 January 2013.

[14] The legislative file of the PTPA Draft Act, dated 20 September 2012.

[15] Point 78 of the first paragraph of Article 17 of the AA determines that an aerial vehicle is any device that can sustain itself in the atmosphere as a result of the reaction of air, except the reaction of air on a land surface.

[16] Or an aerial vehicle under the Decree on Police [Road] Vehicles, Vessels, Armaments, and Special Equipment (Official Gazette RS, No. 2/14 and 60/16).

[17] The PTPA Draft Act, dated 3 September 2016.

[18] The Opinions of the Information Commissioner dated 8 March 2016, 12 May 2016, and 14 July 2016.

[19] The Legislative and Legal Service of the National Assembly was of a different opinion, which it expressed in the opinion dated 12 January 2017, p. 7, according to which a UAV is merely considered to be a mount for a technical means.

[20] The legislature used similar legislative tactics also as regards the instances regulated by the other indents of the second paragraph of Article 114a of the PTPA. Such also follows from the Act Amending the Criminal Procedure Act (Official Gazette RS, No. 22/19 – hereinafter referred to as the CrPA-N), which amended Article 245 of the CrPA, which regulates inspection as an investigative action, such that it expressly determines that also technical means can be used during an inspection. In a complementary manner, the seventh indent of the second paragraph of Article 114a of the PTPA determines that a UAV may be used during an inspection determined by Article 245 of the CrPA and Article 111 of the RTRA. The applicant stated in the request that in the annex to the legislative file the legislature itself had already listed all possible types of use of UAVs, but in this instance these are documents that present, from the technical perspective, all practical, i.e. technical, possibilities of their use, which must be distinguished from the constitutional and

statutory [i.e. admissible] possibilities of their use in view of the constitutional limitations and the legal basis for their use.

[21] Cf. Opinion of the Ministry of the Interior Regarding the Draft Act Amending the Police Tasks and Powers Act (PTPA-A), dated 23 January 2017, page 4.

[22] Taken as a whole, this indent is intended “to prevent, detect, and investigate criminal and minor offences, to detect and apprehend perpetrators of criminal and minor offences and other wanted or missing persons, and to hand them over to the competent authorities, as well as to collect evidence and investigate circumstances that are important for identifying the material gain arising from criminal and minor offences.”

[23] Which corresponds to the notion of identifying the perpetrator in the challenged provision.

[24] As already stated, this statutory limitation is determined twice in the PTPA, in the first paragraph of Article 113 and in the first paragraph of Article 114a.

[25] Š. Horvat, *Zakon o kazenskem postopku (ZKP) s komentarjem* [The Criminal Procedure Act (CrPA) with Commentary], GV Založba, Ljubljana 2004, p. 309.

[26] *Ibidem*.

[27] M. Nunič in: M. Nunič (Ed.) *op. cit.*, p. 114. This is similarly stated by P. Gorkič and K. Šugman Stubbs, *Dokazovanje v kazenskem postopku* [Evidence in Criminal Proceedings], GV Založba, Ljubljana 2011, p. 113, and Z. Dežman and A. Erbežnik, *Kazensko procesno pravo Republike Slovenije* [Criminal Procedural Law of the Republic of Slovenia], GV Založba, Ljubljana 2003, pp. 764, 782.

[28] In fact, the legislature could also determine by law a new police power or a new instance of the use of a technical means, which as a consequence could also be used mounted on a UAV; however, the applicant does not contest that and, furthermore, such regulation would be the subject of an independent constitutional review.

[29] The second paragraph of Article 149 of the CrPA.

[30] The fourth paragraph of Article 172 of the CrPA.

[31] Article 245 of the CrPA.

[32] Cf. Decisions of the Constitutional Court No. U-I-25/95, dated 27 November 1997 (Official Gazette RS, No. 5/98, and OdlUS VI, 158), Para. 29. of the reasoning *et seq.*, and No. Up-326/14, dated 6 December 2017 (Official Gazette RS, No. 6/18), Para. 17 of the reasoning.

[33] Namely, the Rules on the Metrological Requirements for Speed Measuring Devices for Road Traffic (Official Gazette RS, No. 91/15) define speed measuring devices as radar speed measuring devices (i.e. those that use the RADAR principle and Doppler effect for their functioning), laser speed measuring devices (i.e. those that use the transmission and reception of a laser signal under the LIDAR principle for their functioning), speed measuring devices that operate under the “path/time” principle (i.e. those that measure the speed of a vehicle on the basis of the measured travel time of the vehicle and the measured length of the path), detection speed measuring devices (which are a subcategory of speed measuring devices that operate under the “path/time” principle and which measure the speed of a vehicle at

a short distance by measuring the travel time between at least three successive positions of the vehicle and where the detectors of the position of the vehicle are connected to the same time source and where the distance between the detectors is known), section speed measuring devices (which are a subcategory of speed measuring devices that operate under the “path/time” principle and which measure the average speed of a vehicle over a longer distance by measuring the travel time and by identifying the vehicle at the initial and final points of a measuring section of known length), and speed measuring devices based on following [the target vehicle] (i.e. a subcategory of speed measuring devices that operate under the “path/time” principle; they are installed in a measuring vehicle that follows the vehicle whose speed is being measured, and on the basis of the measured distance of the [road] section, i.e. the path travelled, and travel time of the measuring vehicle they calculate the average speed of the vehicle whose speed is being measured). See Article 2 of these Rules.

[34] Namely, the first paragraph of Article 114a of the PTPA determines the following: “The technical means used by police officers on the basis of this Act or another law in order to collect data when performing police tasks may be used directly [i.e. independently] or from a road vehicle, vessel, aerial vehicle (also a UAV), buildings, or other infrastructure.”

[35] In fact, the PTPA envisages such an instance already in the seventh indent of the second paragraph of Article 114a of the PTPA – which was not challenged – namely when carrying out an inspection under Article 111 of the RTRA.

[36] For instance, Article 37 of the Inland Waterways Navigation Act (Official Gazette RS, No. 30/02 – hereinafter referred to as the IWNA) determines that the Police shall carry out the [inspection] supervision referred to in points 1, 2, 6, and 7 of Article 36 of the IWNA.

[37] Decisions of the Constitutional Court No. Up-32/94, dated 13 April 1995 (OdlUS IV, 38), Para. 12 of the reasoning; No. U-I-238/99, dated 9 November 2000 (Official Gazette RS, No. 113/2000, and OdlUS IX, 257), Para. 16 of the reasoning; No. U-I-69/99, dated 23 May 2002 (Official Gazette RS, No. 54-I/02, and OdlUS XI, 89), Para. 10 of the reasoning.

[38] Decision of the Constitutional Court No. U-I-98/11, dated 26 September 2012 (Official Gazette RS, No. 79/12), Para. 12 of the reasoning.

[39] Decision of the Constitutional Court No. U-I-18/02, dated 24 October 2003 (Official Gazette RS, No. 108/03, and OdlUS XII, 86). See also Decision of the Constitutional Court No. U-I-122/13, dated 10 March 2016 (Official Gazette RS, No. 25/16, and OdlUS XXI, 23).

[40] Decision of the Constitutional Court No. U-I-246/14, dated 24 March 2017 (Official Gazette RS, No. 16/17), Para. 52 of the reasoning.

[41] Decision of the Constitutional Court No. U-I-411/06, dated 19 June 2008 (Official Gazette RS, No. 68/08, and OdlUS XVII, 43).

[42] Decision of the Constitutional Court No. U-I-312/11, dated 13 February 2014 (Official Gazette RS, No. 15/14, and OdlUS XX, 20). See also Decision of the

Constitutional Court No. U-I-65/13, dated 3 July 2014 (Official Gazette RS, No. 54/14, and OdlUS XX, 27), Paras. 16 and 17 of the reasoning.

[43] Decision of the Constitutional Court No. U-I-65/13, Para. 16 of the reasoning.

[44] See, e.g., the ECtHR Judgment in *Roman Zakharov v. Russia*, dated 4 December 2015.

[45] In this respect, the applicant refers to the ECtHR Judgment in *Vukota-Bojić v. Switzerland*, dated 18 October 2016, Para. 67 of the reasoning, in which the ECtHR addressed, *inter alia*, an alleged violation of the right determined by Article 8 of the ECHR as a result of the systematic recording and retention or publication of photographs of the applicant within the framework of the monitoring that an insurance company carried out against her.

Abstract

The interpretation that on the basis of the challenged provision it is possible to justify any use of a UAV by arguing that the purpose of such use is to prove a criminal or minor offence or to identify the perpetrator thereof such that the Police will exercise police powers and thus at their discretion use technical means mounted on UAVs directly on the basis of Article 33 of the Police Tasks and Powers Act is not supported by the Police Tasks and Powers Act. It is only admissible to use technical means mounted on a UAV in accordance with the law, i.e. in instances where the use thereof is envisaged by law, and under the conditions imposed by law for such instances. By claiming in a generalised manner that the technology at issue will allow for constant and omnipresent surveillance, which is becoming ever more sophisticated, advanced, and powerful, and that on the basis of the challenged provision, the use of UAVs without a court order is admissible for any criminal offence that must be prosecuted *ex officio* and for any minor offence, the applicant failed to substantiate the alleged inconsistency of the challenged regulation with the right to the protection of personal data.