

SIMILAR, BUT NOT THE SAME – PERSONAL PERCEPTION AND COVERT SURVEILLANCE AND TRACKING THROUGH THE PRISM OF LEGAL REGULATIONS, PRACTICAL IMPLEMENTATION AND CASE-LAW IN SLOVENIA

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Abstract State and private surveillance authorities may lawfully infringe fundamental rights when obtaining information. However, the public often mistakenly equates private detectives' (hereinafter: detectives) personal perception with covert investigative measures used by police and intelligence services. It is essential to distinguish between these two forms of privacy interference. Detectives may use personal perception - lawful, time-limited observation from public spaces - to gather evidence for their clients. Although discreet, it is not a covert investigative act. Detectives may use imaging devices, while state authorities have broader surveillance powers. The purpose of personal perception is to develop evidence for a client, whereas covert surveillance serves criminal or intelligence objectives and entails a deeper privacy intrusion. Despite its lesser intensity, detective work must also be properly regulated and subject to oversight.

Keywords
entitlement,
detective,
privacy,
surveillance limits,
evidence

1 Introduction

While the work of private detectives has long been known and developed around the world, these activities in Slovenia started to develop only some 35 years ago (Dvojmoč, 2017). Detectives¹ are currently regulated by the Private Detective Services Act (Zakon o detektivski dejavnosti = ZDD-2). While the Act details the scope and manner of detectives' work, it also restricts the latter with explicit prohibitions. A detective may collect information for a client, often using personal perception – a method of work or an entitlement defined by the law. Since the first Private Detective Services Act was adopted in 1994, detective activity has been most affected and characterised by the field of observation, or personal perception, as this basic method of detective work later became known as. It took some time until the Private Detective Services Act (ZDD-1) in 2011 also legally defined this entitlement. It concerned the collecting of information by direct personal perception in and from public places, in publicly accessible open and closed spaces as well as places and spaces visible from a publicly accessible place and space, without interfering with a closed space and the private space of an individual designated as such by the latter (ZDD-1). This not only means that a detective may not physically enter such a space, but that any interference by them is forbidden. The latter proves controversial in some cases in practice since a detective may use means or devices for image recording in the course of personal perception, but solely if this is strictly necessary to secure evidence (ZDD-1). The new law, which entered into force in December 2024, has further expanded the scope of personal detection. The law stipulates that a detective can obtain information in the following areas of work: i) persons who are missing or hidden; ii) on the perpetrators of property and non-property damage and the materials and facts necessary to protect the rights and entitled parties before courts, other judicial authorities and other authorities or organizations that decide on these rights in procedures; iii) anonymous writings - on the writers and senders of anonymous writings, except in cases of anonymous reports for which the law prohibits the identification of their reporters; iv) debtors and their property; v) objects that are missing or lost; vi) compliance with contracts that contain non-compete provisions and the competition clause and g) abuse of rights to be absent

¹ In this article terms »detective«, »detective services« and »detective activities« are used without adjective »private« since in Slovenia all detectives are private persons, while »state« detectives are named »criminal investigators« or »criminalists«.

from work due to illness or injury, abuse of the right to reimbursement of travel costs to and from work, work under the influence of alcohol or illegal drugs and other disciplinary violations and violations in accordance with the legislation governing employment relationships. A detective may legitimately perform only the smallest possible scope necessary to obtain data from the area of work for which he is authorized, and may not perform a general and continuous personal detection (ZDD-2, Article 38).

Detectives often walk on the edge of the law while conducting personal perception. At least, this is apparent from the case law examined. It includes cases where a detective is accused of having illegally obtained evidence through the use of ‘covert’ investigative measures, the illegal use of technical means and interference with an individual’s private space. Savski et al. (2012) note that detectives only illegally obtain evidence when the legal element of significant interference with an individual’s privacy is satisfied. This also leads to a misunderstanding of personal perception and it being uncritically equated with a covert investigative measure or the method of covert observation and surveillance. The latter may only be used by the police, the Slovenian Intelligence and Security Agency, and the Intelligence and Security Service of the Ministry of Defence of the Republic of Slovenia. Since personal perception is a basic tool of a detective, the aim of this paper is to examine personal perception in detail and to highlight the key differences between it and the covert methods of information collection used by state security organisations. In the paper, we define the theoretical framework of the issue under analysis, which we support with analysis of judgements in the Republic of Slovenia concerning this field. We selected judgements of the High and Supreme Courts that directly relate to the definition of personal perception as a detective’s entitlement and describe what distinguishes it from covert methods.

The cases were chosen to provide a representative overview across different years, highlighting potential trends and changes in judicial practice over time. While the selection is not exhaustive, it reflects a balanced range of legal issues and outcomes relevant to the research question. Overall, the paper presents a literature review, comparative analysis of key concepts, and illustrative case law examples, with a focus on differentiation personal perception from the covert surveillance methods used by state security agencies.

2 Theoretical Framework

The role of private investigators and detective work has developed significantly in recent decades, particularly due to the increasing commercialization of security services and the increased complexity of modern security threats. Button (2020) emphasizes that private investigators today do not only deal with classic cases of infidelity or the search for missing persons, but also take on tasks in the field of economic crime, digital fraud and industrial counterintelligence. Gill & Hart (1997a) already pointed out in the 1990s that private investigation does not only take place on the periphery of the justice system, but is often complemented by the work of state authorities, especially concerning obtaining information and revealing irregularities in the economic sector. Compared to public authorities such as the police or intelligence services, detectives work on the basis of a private order, so that their work can in certain circumstances be intertwined with the tasks of state institutions.

The concept of detective work does not have a single and generally accepted definition, as the meaning and scope of this activity vary considerably around the world. Gill & Hart (1997b) defined a detective as an individual or company that provides investigative services for a fee. Similarly, George & Button (2000) defined a detective as a provider of services related to the collection and transmission of information about identity, behaviour and other personal data. Block (2013) emphasizes that a detective is a natural or legal person who provides investigative services for a client in their interest and for a fee. Different authors also differ in classifying the areas of detective work - from functions and categories (Johnston, 1992; Gill & Hart, 1997b; Prenzler, 2001) to definitions by international associations such as the IKD, which sees the activity as the collection of information about persons, their activities and circumstances. Based on a literature review, Trivunović (2012) summarizes that detective activity is an economic service where a detective, at the client's request, collects, analyses and documents information and, if necessary, preserves it as evidence.

Detective activity covers a wide area, the boundaries of which are determined by both the normative and legal regulations of each country. In general, it is a special form of economic activity that detectives perform as a freelance profession based

on contracts and authorizations from their clients (Aleksiev et al., 2023). Although the activity is broad in content, it can only be performed within the framework of legally defined jurisdictions, which applies primarily to countries where detective activity is regulated by legislation (Dvojmoč, 2017). Defining detective activity at the global level is challenging, as there is no uniform professional definition, and at the same time, the meaning and content of detective work differ significantly between countries. In most cases, detective activity is regulated by sectoral laws that reflect national needs and legal traditions. As Bilius (2012) points out, due to the lack of internationally harmonized legal frameworks, countries make independent decisions regarding the regulation of this area. At the EU level, detective activity is not regulated by a specific legal instrument. It is only indirectly affected by general EU legal frameworks. In particular the Charter of Fundamental Rights of the European Union (2010), the European Convention on Human Rights (1950), and the General Data Protection Regulation (Regulation (EU) 2016/679), which set minimum standards for protecting privacy and personal data. In regulating this field, these Acts try to find a balance between protecting the rights of clients, preventing potential abuses, and ensuring that the legislation does not excessively restrict activity providers. The Detective Activities Act (ZDD-2) defines detective activities as *»the acquisition and processing of data and information and the communication of information to the client, when the data and information relate to the detective's field of work and the detective's entitlements under this Act are used, and consulting in the field of preventing criminal conduct.«*

In recent years, detectives have increasingly undertaken tasks such as investigating and disclosing information, conducting private investigations using a polygraph, industrial counterintelligence, and investigating economic crime. In addition to these activities, they also engage in surveillance and tracking of individuals. Importantly, detectives have limited powers compared to the police. Their work is based on a contractual relationship with clients, whose interests and resources are not tied to the state or public institutions (Dvojmoč, Sotlar & Modic, 2022).

The detective's field of work in Slovenia is defined in Article 34 of ZDD-2: *»A detective may perform detective activities in the areas of obtaining information, serving letters and other items, providing advice in the field of preventing criminal conduct, planning and implementing the protection of business secrets, information systems, economic and personal data and information, and other entitlements granted to him by law.«*

Police operations in Slovenia, on the other hand, are regulated by the Police Tasks and Powers Act (*Zakon o nalogah in pooblastilih policije* = ZNPPol), which governs the powers and procedures given to the police to perform their tasks. The basic mission of the police is to protect the lives, personal safety and property of people, prevent, detect and investigate criminal offences and ensure public order and peace. Additionally, the police participate in protecting the state border, carrying out tasks in crisis situations and in controlling weapons and explosives. Police operations are based on the principles of legality, professionalism, proportionality, responsibility and protection of human rights (Modic, Sotlar & Dvojmoč, 2022). The tasks of the police are defined in Article 4 of the ZNPPol and cover a wide range of activities aimed at ensuring security and order in society. The police are also tasked with preventing, detecting and investigating criminal offences and misdemeanours. Within its competence, police detect and apprehend perpetrators of criminal acts, wanted or missing persons and and discharges them to the competent authorities. Police also collect evidence and investigates circumstances relevant to identifying illegally acquired property. In addition to investigative work, the police supervise and regulate traffic on public roads. Police forces also perform tasks related to controlling the movement and residence of foreigners, protecting certain persons, facilities, premises and classified data of state authorities. In the event of natural and other disasters, they participate in protective and rescue measures and perform other tasks specified by legislation and that implement regulations.

The Slovenian Intelligence and Security Agency (SOVA) is the central state body responsible for protecting the national security of the Republic of Slovenia. It was established after the country gained independence and performs a wide range of intelligence, security and counterintelligence tasks. Its operations are based on modern information technologies and analytical approaches, thus ensuring the timely identification and management of threats to the State. The SOVA Act defines in its Article 2 the agency's three fundamental operational briefs. Its first brief is to collect, analyse and transmit data from abroad that are important for the political, economic and security stability of the country, and on groups and individuals who, from abroad or in connection with it, threaten Slovenia's national security and the constitutional order. Its second brief includes cooperation with the competent authorities in the security screening of persons, workplaces, facilities and areas. Its

third brief includes implementing activities determined by the government on the basis of the national security program approved by the National Assembly.

The Intelligence and Security Service of the Ministry of Defence of the Republic of Slovenia (Obveščevalno varnostna služba Ministrstva za obrambo = OVS of MO) is a specialised intelligence and security service within the defence sector, whose primary task is to protect the country's defence system. Its operations are regulated by the Defence Act, which stipulates that the service carries out tasks in the field of military security, counterintelligence protection and acquiring intelligence data important for both for Slovenia's defence and operating the Slovenian Armed Forces. The OVS MO collects, analyses and evaluates information relating to military threats, the activities of foreign intelligence services, extremist groups and other factors that could endanger the operation of the defence system or national security in a broader sense (Republic of Slovenia, Ministry of Defence, 2022; Republic of Slovenia, Ministry of Defence, 2018). The service also performs security checks on persons who access classified data of the defence sector, protects military facilities, installations and equipment, and implements measures to prevent sabotage, espionage and terrorist activities against the armed forces. The OVS of MO is competent to perform counterintelligence tasks both at home and in international operations and missions where the Slovenian Armed Forces participate. It works in close cooperation with other national security authorities, such as the police and SOVA, and with partner services of NATO and EU Member States.

While the detectives, the police, SOVA and the Intelligence and Security Service of the Ministry of Defence comprise an important part of Slovenia's security apparatus, their powers, roles and operational purposes differ significantly. Although they do not formally cooperate directly, their procedures are interconnected, as detectives and the police in certain cases deal with the same events from different perspectives, for example, when intelligence and security services work to try to prevent and control broader security threats. Mutual cooperation is legally stipulated primarily between State authorities, and detectives are allowed to cooperate with these services when required by law or to protect major public interests (Dvojmoč, 2017).

3 The Right to Privacy vs. the Collection of Data About Individuals

Eventually, data collection on individuals collides with one of the most sensitive fundamental human rights and freedoms – the right to privacy. Privacy as a value has always been present, and was even mentioned in the Bible, which repeatedly refers to privacy as the right to be free from all observation (Turkington & Allen, 1999). In ancient times privacy as a right did not stand alone but was subsumed within various provisions that protected specific elements of human privacy (Žurej, 2001). In a modern sense, while privacy as an individual legal right was only recognized during the French Revolution, it made its greatest progress in the post-Second World War era when it was acknowledged internationally as a fundamental human right and freedom. Presently, almost every European country guarantees the right to privacy in their national constitution (Toplak, 2002; Sotlar & Trivunović, 2012). Toplak (2002) states that the right to privacy should be considered in a dualistic concept as a personality right, which is protected by civil law instruments (of a private nature), and as a human right (of a public law nature), which is protected by the Constitution and international law instruments. The Constitution of the Republic of Slovenia (CRS) states that all individuals residing in the territory of the Republic of Slovenia have personality rights, which are among the fundamental rights and freedoms. Article 35 of the CRS guarantees the inviolability of the human body, mental integrity, privacy and personality rights. Sotlar & Trivunović (2012) state that the CRS also protects and guarantees the right to privacy in Articles 34², 36³, 37⁴ and 38⁵. In the Slovenian legal order, the right to privacy is further protected by criminal law and specifically in Articles 136 to 143 of the Criminal Code (Kazenski zakonik = KZ-1), as well as by other civil legal acts under which it is possible to obtain not only restitution in the case of a breach but also injunctive relief of an equitable nature to prohibit further invasions of privacy through private legal proceedings.

² The right to personal dignity and security.

³ Guaranteeing the inviolability of the home.

⁴ Guaranteeing the protection of durability of letters and other communications.

⁵ Guaranteeing the protection of personal data.

The right to privacy is also protected by international documents and legal instruments, including the Universal Declaration of Human Rights (1948), the Charter of Fundamental Rights of the European Union (2000) and the European Convention on Human Rights (1950). The right to privacy is characterised by its absolute nature, meaning that interference with it is prohibited for everyone and can only be limited by the equal right of others or by broader, general interests. It can only be interfered with by institutions possessed with specific entitlements and powers, in accordance with the law, but at the same time only to the extent permitted by law.

The right to privacy is inalienable to the individual under current law and belief, yet privacy is difficult to define because it encompasses a broad range of aspects of an individual's privacy. Privacy is a multidimensional concept that includes informational, physical, communicational, and spatial privacy (Solove, 2006). Westin (1967) believes that privacy means the individual's right to control how and when information concerning them is communicated to others. It is precisely from a [legal](#) point of view that privacy, because of its subjectivity, and its inherently amorphous nature, is nearly impossible to unambiguously or clearly define. Still, scholars have and continue to try to do so. Teršek (2002), for example, divides the privacy sphere into three mixed levels of privacy. The most sensitive segment is the sphere of intimacy, the intermediate segment is the stage where the individual establishes contact with other people, while the third segment is defined by the author as the intertwining of privacy with the public, where the individual establishes a certain private-intimate connection with other people in a public place. In all three situations, the individual can reasonably expect privacy (Teršek, 2002). One simple and general definition of privacy is that a person has the right to be separate from the public and that privacy means an individual has the right to decide whether to make their personal affairs public (Lampe, 2004).

Lampe (2004) defines privacy as a set of four spheres that are constantly intertwined, complementary and overlapping, together constituting a holistic aspect/concept of privacy. Spatial privacy focuses primarily on the individual's desire to be able to be alone and separate from the physical presence of other people. Informational privacy refers to the individual's desire to retain information and data about themselves. Psychological privacy includes sexual integrity and the inviolability of personal and

family life. Finally, decisional privacy concerns the individual being able to make their own private decisions about their body, socialising etc. (Lampe, 2004). The right to privacy thus encompasses all four aspects of privacy – private life, family life, correspondence, and home (Sotlar & Trivunović, 2012) and modernly, it has also become increasingly valued, where it is institutionally determined that the individual is entitled to minimal interference with it. The right to the inviolability of privacy can therefore be defined as an intimate circle of the individual, which can only be interfered with exceptionally. The absolute nature of the right to privacy does not mean that it is also absolutely protected. Interference with the right to privacy is permissible, but only under certain defined criteria. Under the law, it can only be interfered with by state law enforcement authorities and intelligence and security services, and to some extent by employers and detectives hired by the latter. Any interference must be appropriate to achieve a desirable and constitutionally permissible objective, and proportionality must be taken into account (Lampe, 2004).

The case law presented below defines when interference with privacy in the field of detective activity is possible. Already Article 30 of the ZDD-1 allows certain interference with privacy, and case law has specified how these legal provisions should be understood. Case law has also clarified that what anyone can see from a public place without having to overcome obstacles (fences, barriers or visible signs separating the private from the public) can also be seen by a detective. Research shows that privacy violations not only affect individuals, but can also undermine trust in social and legal institutions more broadly (Zuboff, 2019). For these reasons, the right to privacy is crucial for maintaining democratic standards and protecting fundamental human freedoms in modern society.

4 Invasion of Privacy by Means of Personal Perception or Covert Surveillance – Legitimate Interest

Invasions of privacy through covert surveillance or personal perception constitute profound interference with human rights, fundamental freedoms and the right to privacy. Only entities established by law may interfere in this way with individuals' privacy, i.e., the entities of the pluralistic police activity and the intelligence-security services of the Republic of Slovenia, which hold legal authority for such interference

(Savski et al., 2012). Since measures that interfere with privacy necessarily involve interference with human rights, the State has a duty to protect the rights of individuals. At the same time as the State must allow their use, it must also define the legally permissible limits of the regulated interference with rights (Žurej, 2001).

In order for an interference with privacy to be lawful, a legitimate interest in observing the individual must first be met. A legitimate interest can be understood as a certain advantage or right of the protected person, or a pecuniary or non-pecuniary benefit (Škrabar, 2017). This is necessary as the observation interferes with the individual's right to privacy. Any authority or institution that interferes with privacy and thus initiates a surveillance procedure must adequately justify in advance the real interest of the interference, and whether that interest is protecting a specific right or that this right belongs to it in law (Škrabar, 2012).

An interference with privacy is justified and permissible when it is proportionate to the aim of the law and simultaneously fulfils the conditions of proportionality and necessity of the entitlement (Klatt & Meister, 2012). A measure is thus appropriate if it objectively leads to accomplishing a legally permissible objective and cannot be achieved by some less stringent means. This is also constitutionally guaranteed in the Slovenian legal order as the Constitution states that restrictions on human rights are only permissible if proportionality is met, which means that all the conditions for the permissibility of such interventions must also be met. The proportionality of the entitlement must be consistent with human rights and fundamental freedoms – an interference is thus only permissible when proportionate to the weight of one constitutional right and the other (Lampe, 2004).

The key limiting criteria that have a significant impact on police, intelligence, detective or any other interference with an individual's privacy are: i) the right to personal autonomy; ii) the right to be 'left alone'; iii) the right to a private life; iv) the right to control information about oneself; v) the right to limit access to personal data; vi) the right to exclusive control of access to the private sphere; vii) the right to the least possible interference with privacy; viii) the right to expect confidentiality; ix) the right to intimacy; and x) the right to secrecy (Klemenčič, Keranovič & Žaberl, 2002). This also implies an 'expectation of privacy'. Križnar (2016) notes the concept of expected privacy is important for protecting the overall integrity of the individual

(and not of the premises), and an expectation of privacy is justified if the individual has a legitimate expectation of privacy in a specific place through the actual expression of privacy, but at the same time their expectation of privacy must be such that society is willing to accept it as justified. There are exceptions to this generally accepted concept. The plain-view doctrine taken from search and seizure criminal procedure law is one such example. This concept is relevant from the perspective of detective work, according to which authorities, while carrying out lawful tasks within the scope of their powers and authority, and who inadvertently come across evidence of an incriminating nature that is left in the open as opposed to hidden (i.e., hence left in »plain view« of the observer), are allowed to use such evidence in subsequent proceedings (Križnar, 2016). Yet, even more logical seems to be the public disclosure doctrine whereby an individual cannot reasonably expect privacy concerning their movements that they have knowingly (or at least unwittingly) exposed to the public (Križnar, 2016). The essence of all the exceptions is that what an individual knowingly and willingly exposes to the public at large cannot enjoy the status of an expectation of privacy. Therefore, if the legitimate interest and the criteria of proportionality, reasonableness and necessity of entitlement are met, a legally designated entity (e.g., police, intelligence services, detectives) may in such a case be able to interfere with privacy that the individual otherwise understands to be an expectation of privacy. In practice, this also means that under ZDD-1 a detective may lawfully observe and record images of a person in public and publicly accessible places, together with places visible from public or publicly accessible places, so long as the detective does not overcome any special obstacles (fences, barriers or visible signs separating the private from the public), as a person cannot expect privacy in such public places (Škrabar, 2017). However, if a detective commits an unjustified invasion of privacy, they may be held liable for both misdemeanour and criminal offences.⁶

⁶ Detectives can be fined for offences committed in the course of their work. This is particularly the case when they violate the provisions of the law relating to the detective's field of work or exercise entitlements contrary to the law (ZDD-2). Detectives also face the threat of being prosecuted for unlawful wiretapping and audio recording (KZ-1) and unlawful image recording (KZ-1). These offences are punishable by a fine or up to 1 year in prison. The exposure of a detective to these offences is incomparably greater than that of other residents because a detective also uses image and sound recording as an entitlement.

4.1 Personal Perception in Detectives

Since 1994, when the first ZDD-1 (with subsequent amendments and supplements) was adopted, detectives have on one hand been able to obtain a wide range of information yet, on the other, they have not exactly had the tools (methods) to be able to do so effectively and without being accused of unlawful interference with human rights. This deficiency was remedied by Article 27 of the previous ZDD-1, which sets out the entitlements of a detective. In addition to collecting information from persons or from publicly available sources, and retrieving information from records and the use of technical means, the latter now includes the right to use personal perception, which provides a detective with an even more fundamental entitlement. Article 30 of ZDD-2, which defined personal perception, provided that a detective may obtain information by direct personal perception in or from public places, publicly accessible open and closed spaces, and places and spaces visible from a publicly accessible place and space. Still, when exercising this entitlement, they must not interfere with a private enclosed space and a private space which the individual has separated from the public space by erecting a fence, barrier or conspicuous marking or warning, thereby showing or implying that it is a private space (ZDD-1). The new law from 2024 has expanded this area even further. Detectives' rights are established in Article 35 of the ZDD-2, while the right to personal detection is further delineated in Article 38. Although these provisions still apply, the 2024 law further stipulates that a detective may obtain data through personal detection in the following areas of work: i) persons who are missing or hidden; ii) regarding the perpetrators of property and non-property damage and the materials and facts necessary to secure the rights and entitlements of the party before courts, other judicial authorities and other authorities or organisations that decide on these rights in proceedings; iii) anonymous writings – on the writers and senders of anonymous writings, except in cases of anonymous reports for which the law prohibits identifying their reporters; iv) debtors and their property; v) objects that are missing or lost; vi) compliance with the non-competition ban and the non-competition clause; and vii) abuse of the right to be absent from work due to illness or injury; abuse of the right to reimbursement of travel costs to and from work; work under the influence of alcohol or illegal drugs and other disciplinary violations and violators in accordance with the legislation governing employment relationships. In addition, acquiring data by personal detection may only until the violation is

discovered or as long as there is a justified need on the part of the client to determine the actual situation concerning the area in which the data is being acquired. However, the right for a detective to acquire data by personal detection lasts for a maximum of four months from the granting of the client's written authorization or the conclusion of a contract for performing the particular detective activities. The detective may exercise the authorization only to the least intrusive extent possible, as necessary to obtain data from the area of work for which he is authorized, and may not carry out a general and continuous personal detection (ZDD-2, Article 38).

At the same time, ZDD-2 expressly prohibits detectives from employing covert investigative measures used by the police, the Slovenian Intelligence and Security Agency, and the Intelligence and Security Service of the Ministry of Defence in accordance with the law (ZDD-2). Savski et al. (2012) define personal perception as a detective's entitlement when they use all five senses (sight, hearing, smell, touch, taste) to obtain information, while Škrabar (2017) defines the entitlement of a detective's personal perception as the act when "a detective deliberately, with the specific purpose of establishing facts and obtaining evidence, personally perceives using his senses". These authors are admittedly more precise in defining personal perception than the statutory provisions, which can be understood primarily as observation.⁷

Personal perception is thus an entitlement that can only be exercised by detectives under Article 38 of ZDD-2. The purpose of the latter is to obtain information, and a detective does not need a special licence to exercise this entitlement under the law. There must be a legitimate interest on the part of the client, whereupon the detective assesses the need to use this entitlement on a case-by-case basis. In order to be meaningful and effective, the personal perception has the character of a covert exercise, yet this does not make it an investigative measure. In practice, the personal perception is carried out in a planned manner, and the authorisation consists of a time-limited observation of a specific person or vehicles where the detective may use technical imaging devices to obtain material evidence for the purposes of the detective service's client. With respect to a specific case, a detective observes the movements of people and vehicles on behalf of their client, noting all relevant

⁷ The detective also relies on their senses in other entitlements. Moreover, it is questionable in what way a detective would, for example, invade the privacy of an individual by smelling, tasting or touching.

information. Detectives can carry out personal perception statically, mobile (by means of transport) and in a planned way by linking several detectives on the same case. Technical devices may be used for personal perception, but only those for image recording which the detective may use for personal perception within the scope of the authorisation and are strictly necessary to preserve evidence. The Detective Chamber of the Republic of Slovenia has expressed the view that direct observation by the detective is indispensable because without it the detective cannot carry out their duties (Detective Chamber of the Republic of Slovenia, 2008).

It is important that detectives strictly follow the provision of ZDD-2 which states that when conducting personal perception they must not interfere with a private space that an individual has separated from the public space by placing a physical or other conspicuous marking to indicate that it is a private space or a private enclosed space, where it is essential that this provision must also be followed when using imagery recording devices (Government of the Republic of Slovenia, 2010). The Protection of Public Order Act (Zakon o varstvu javnega redu in miru = ZJRM-1) defines a public space as any space that is accessible to everyone unconditionally or under certain conditions. An unlimited number of people can freely access a public place, without any conditions. The term is further defined by Nunič & Jarc (2007) who distinguish between two categories of public places:

- a) Relatively/conditionally public places – these are public places where access is free for people only under certain conditions (e.g., to purchase a ticket). This includes theatres, concert halls, sports venues, playgrounds etc.
- b) Absolutely public places – these are public places in the broadest sense of the word where an indefinite number of people are free to enter without any conditions. This refers to streets, public roads, waiting areas, shop and restaurant premises, lobbies etc. These forms of public places can be further subdivided according to their purpose and function into permanently absolute and open (streets, squares etc.) and limited absolute and open (pubs, shops etc.) (Nunič & Jarc, 2007).

Private access is a space that is privately owned or occupied and access to it is permitted only with the consent of the owner, possessor or other entitled person (ZJRM-1, Article 2).

A detective may use personal perception only when collecting information within the scope of Article 34 of ZDD-2. Personal perception is also used to collect evidence and facts necessary to secure or prove the rights and entitlements of the parties, to verify compliance with the restraint of trade or a non-competition clause, to collect information on abuses of the right to be absent from work due to sickness or injury, abuses of the right to the reimbursement of transport costs to and from work, working under the influence of alcohol or illegal drugs, other disciplinary offences and offenders. Finally, a detective also uses personal perception when serving letters and other items because it is often necessary to wait around for an individual who is evading mail inconspicuously in order to make direct contact with them (ZDD-2).

The planning of personal perception is essential for it to be successful. In any specific case the detective must set clear objectives and assess whether personal perception is an appropriate entitlement to use to achieve those objectives. In particular, it is necessary to evaluate whether the information desired by the client can be obtained in some other (less intrusive) way or by other entitlements available to detectives. In planning and preparation, it is vital to focus on obtaining information about the person regarding whom the personal perception is to be carried out. Most of the information is already obtained by the detective from the client and through other entitlements. The detective must then determine the starting point of personal perception and visit the areas where it will be carried out.

There are different forms of personal perception (Heibutzki, 2017; Shamshak, 2012): i) static personal perception; ii) dynamic/mobile personal perception; iii) technical personal perception; and iv) combined personal perception.

Static personal perception can be performed by a detective on foot, from a combined or other suitable vehicle, building or rural environment. Mobile personal perception may also be performed on foot, by motor vehicle, or on public transport. The most important thing for a detective is to master practically implementing a combined form of personal perception – in particular, personal perception on foot, personal perception by means of transport, and personal perception from a building. Personal perception on foot belongs to both static and dynamic forms. The detective's level of exposure (that is, their cover being exposed or »blown«) is very high when using

this form of personal perception. It is important that the detective 'blends in', i.e., does not stand out on the outside and is not in the direct field of vision of the person being observed.

Article 39 of the ZDD-2 allows a detective to use technical means when obtaining data in the areas of work referred to in the second paragraph of Article 34 of the ZDD-2, subject to the prohibition referred to in Article 40. These means may only be used if absolutely necessary to secure materials and facts. These means include: i) image recording (for example, a camera, a mobile device equipped with a camera); ii) sound recording (for example, a dictaphone, a mobile device equipped with a voice recorder); iii) searching, securing and comparing evidence and traces found at the scene of the incident (for example, a microscope, a spectrometer, a fingerprint examination system); iv) determining alcohol in exhaled air (for example, a breathalyser); v) determining the presence of illegal drugs or other illegal substances (for example, rapid tests for determining the presence of illegal drugs or other illegal substances in saliva); vi) conducting wiretapping checks; vii) communication between detectives in the field. Concerning the collection of information in a detective's work, Savski et al. (2012) stress that collecting credible information is essential to successfully achieve an investigation's objectives, but at the same time, the collection of information must comply with all legal regulations.

4.2 Covert Surveillance by the Police

The Criminal Procedure Act (Zakon o kazenskem postopku = ZKP) allows certain state authorities to use covert investigative measures to investigate, detect and prevent crime. The latter may not be used arbitrarily, randomly or to an unlimited extent. State authorities are obliged to use covert investigative measures in a constitutionally and legally permissible manner.

The covert investigative measure of covert surveillance, which is most similar in content to the personal perception used by detectives, is performed by the police under Article 149a of the ZKP. Covert surveillance is carried out secretly and its goal is to obtain material and testimonial evidence for use in criminal proceedings. The ZKP defines that *"where there are reasonable grounds to suspect that a person has committed,*

is committing, is preparing to commit or is organising the commission of a criminal offence⁸, and there are reasonable grounds for concluding that the offence cannot be detected, prevented or proved by other means or would involve disproportionate difficulties, covert surveillance may be ordered against that person." "Exceptionally, covert surveillance may also be ordered against a person other than the suspect if it can be reasonably assumed that surveillance of that person would lead to identification of the suspect, whose personal data are unknown, to the suspect's residence or whereabouts, or to the residence or location of a person who is the subject of a detention order, house arrest order, arrest warrant or order to bring a person to court, but has absconded or is in hiding, and the police officers cannot obtain this information by other means or doing so would involve disproportionate difficulties." (ZKP, Article 149a)

"A covert surveillance measure is ordered by the public prosecutor by written order on a written proposal from the police, or in certain cases by an investigating judge. For example, in the case of an intrusion into a private place, the order is issued by the investigating judge. The duration of the measure may be up to two months, but may be extended by two months at a time for compelling reasons. The police shall immediately cease performing covert surveillance when the reasons for which it was ordered cease to apply and shall inform the public authority that ordered the measure in writing. The police must carry out covert surveillance in a manner that minimises interference with the rights of persons other than suspects" (ZKP, Article 149a).

"Covert surveillance is performed by means of continuous or repeated observation or tracking, using technical positioning and locomotion devices and technical voice transmission and recording devices, photography and video recording, and shall focus on monitoring the person's position, movements and activities. Covert surveillance may be conducted in public and publicly accessible open and closed spaces and places and premises which are visible from a publicly accessible place or space. Covert surveillance may also be carried out in private premises if the owner of the premises consents to it" (ZKP, Article 149a).

⁸ These are: 1) offences punishable by law by imprisonment of 5 years or more; 2) offences referred to in Article 150 of the KZ-1, paragraph 2, item 2 of this Act and offences of the unlawful deprivation of liberty under Article 133 of the KZ-1, threats under Article 135 of the KZ-1, fraud under Article 211 of the KZ-1, concealment under Article 217 of the KZ-1, betrayal and unjustified acquisition of business secrets under Article 236 of the KZ-1, the misuse of inside information under Article 238 of the KZ-1, forgery and use of counterfeit securities or securities under Article 244 of the KZ-1, forgery of documents under Article 251 of the KZ-1, special cases of forgery of documents under Article 252 of the KZ-1, the abuse of official position or official rights under Article 257 of the KZ-1, betrayal of secret information under Article 260 of the KZ-1, aiding the perpetrator after the commission of a criminal offence under Article 282 of the KZ-1, causing general danger under Article of the 314, polluting and destroying the environment under Article 332 of the KZ-1, pollution of the sea and waters from vessels under Article 333 of the KZ-1, pollution of drinking water under Article 336 of the KZ-1, and the contamination of foodstuffs or feedstuffs under Article 337 of the KZ-1.

The ZNPPol regulates the scope of police officers' work and powers. Article 6 of the ZNPPol provides that police officers carry out their duties by observing, patrolling, intervention, ambush, enhanced surveillance and a security action. These measures may legitimately interfere with the right to privacy provided, of course, that the police officer is performing their duties and pursuing an appropriate aim/purpose. However, performing the abovementioned classical forms of police work, which do not use technical means, does not constitute performing a covert investigative measure, and therefore do not require the permission of the public prosecutor (Horvat, 2004).

4.3 Covert Surveillance and Tracking by the Slovenian Intelligence and Security Agency

The Slovenian Intelligence and Security Agency (SOVA) is the central civilian intelligence-security service created following the international recognition of the independent and sovereign State of Slovenia. Its core tasks are to act to protect the national interests in the security, political and economic spheres, and to ensure national security (SOVA, 2018); still, compared to the police, SOVA does not have jurisdiction in judicial proceedings.

SOVA operates according to the Slovenian Intelligence and Security Agency Act (Zakon o Slovenski obveščevalno-varnostni agenciji = ZSOVA), which stipulates that, as *“an independent service of the Government, it is responsible for the acquisition, evaluation and dissemination of information from abroad, relevant to the security, political and economic interests of the state, and on organisations, communities and persons whose activities from abroad or in connection with foreign countries threaten or could threaten the national security of the state and its constitutional order”* (ZSOVA, Article 1 with Article 2, para. 1). Pursuant to Chapter 5 of the ZSOVA, SOVA may obtain information by means of secret cooperation and special forms of information extraction. SOVA can thus monitor international communication systems; make secret purchases of documents and objects; and conduct covert surveillance and tracking in open or public places using technical means of documentation (ZSOVA, Article 20). Subject to fulfilling legal conditions, SOVA may also, exceptionally, obtain information by inspecting letters and other communications and by monitoring and recording telecommunications (ZSOVA, Article 23).

The form of data acquisition most comparable to personal perception is covert surveillance and tracking in open or public places using technical means of documentation. It is authorised by the Director of the Agency by a written order if there is a high probability that information important for the security, political and economic interests of Slovenia will thereby be obtained and if it is impossible to obtain such information in any other way, or if it would involve disproportionate difficulties to do so in any other way. The proposal and the order must be in writing and contain information on the person to whom the special form of obtaining data relates, the scope and duration of the special form of obtaining data, and a statement on the reasons for its use. Covert surveillance and tracking in open or public places using technical means of documentation may only relate to one-off covert surveillance and tracking (ZSOVA, Article 22).

4.4 Covert Surveillance and Tracking by the Intelligence and Security Service of the Ministry of Defence of the Republic of Slovenia

Covert investigative measures may also be used by the Ministry of Defence's Intelligence and Security Service (ISS) in order to obtain classified information. It is an internal organisational unit of the Ministry of Defence which conducts intelligence, counter-intelligence and security tasks, and is also responsible for ensuring a unified system to protect classified information within the Ministry of Defence.

While the powers of ISS employees who perform intelligence or counter-intelligence tasks are the same as those provided by law for the employees of the (SOVA) under the Defence Act (Zakon o obrambi = ZObr), the powers held by ISS employees who perform security tasks in the field of the prevention, detection and investigation of criminal offences in the area of defence are the same as those provided by law for members of the police. Accordingly, they may use such measures as regulated by law in line with the procedures and under the conditions and to the extent provided by law for the police. The covert investigative measure of covert surveillance may be performed and used by OVS of the MO officers pursuant to ZKP and, congruently, they may use covert surveillance and tracking under ZSOVA (Article 22), but only to achieve the objective of the tasks prescribed in ZObr (Article 32) and subject to the terms and conditions of ZSOVA (Articles 19 & 20).

5 Why is Personal Perception not a Covert Investigative Measure?

When interfering with an individual's privacy, it is always necessary to weigh whether the use of a particular entitlement is strictly needed to obtain evidence. A review of the legal framework for interferences with privacy reveals that, in technical terms, there are no significant differences between personal perception and covert surveillance, but that personal perception is nevertheless strictly distinguished from covert investigative measures or specific forms of information extraction. A comparison of the key elements is shown in Table 1.

The personal perception referred to in Article 38 of ZDD-2 is the basic entitlement of a detective to use their senses (sight, smell, hearing) to obtain information. They may use this method to collect information in places that are accessible to all on equal terms or are visible from publicly accessible places, but they may not overcome obstacles, e.g., climb over a fence surrounding a property or a house, lift door or window shutters and open blinds, or pull back curtains. A detective must respect the privacy of the person which the latter indicates by erecting fences or barriers, or clearly visible signs or warnings, separating the private space from the public space. The detective must take this into account and must not perform detective activity on these premises. However, they can collect information from a public place, if that is possible. This entitlement may be said to involve the intentional, authorised, time-limited observation of a specific person or vehicles, including by means of technical devices for image recording, in order to obtain material evidence for the client's purposes. Merely observing certain objects using the technical means to obtain photographic evidence referred to above does not constitute the implementation of covert investigative measures. In a specific case, a detective observes the movements of persons and vehicles on the instructions of their client, taking notes of times, places, encounters, registration numbers, makes of vehicles and other particulars in order to obtain information. From whom and how detectives collect information is set out in Article 35 of ZDD-2. The mere fact that the person about whom a detective is collecting information has not (previously) been informed does not make personal perception a covert investigative measure. The covert way of working is crucial for a detective in obtaining information and material evidence for their client's needs – thus, the Detective Chamber of the Republic of Slovenia has insisted

Table 1

Title of the entitlement/measure/ method of interference with privacy	PERSONAL PERCEPTION	COVERT SURVEILLANCE	COVERT SURVEILLANCE AND TRACKING	COVERT SURVEILLANCE AND TRACKING
Legal basis	Private Detective Services Act	Criminal Procedure Act	Slovenian Intelligence and Security Agency Act	Defence Act
Performed by	Detectives or group of detectives	Police employees	SOVA employees	ISS employees
Purpose	Obtaining information	Investigating and obtaining material and testimonial evidence for the purposes of criminal proceedings	Obtaining, evaluating and transmitting information from abroad relevant to safeguarding Slovenia's security, political and economic interests, as well as information on organisations, groups and persons whose activities from abroad or in connection with foreign countries threaten or could threaten the country's national security and its constitutional order.	1) In the performance of intelligence and counter-intelligence tasks: Obtaining, evaluating and transmitting information from abroad relevant for ensuring the security, political and economic interests of Slovenia, and on organisations, groups and persons whose activities from abroad or in connection with them threaten or could threaten the national security of the country and its constitutional order. 2) In the performance of security tasks: Investigating and obtaining material and testimonial evidence for the purposes of criminal proceedings

Title of the entitlement/measure/method of interference with privacy	PERSONAL PERCEPTION	COVERT SURVEILLANCE	COVERT SURVEILLANCE AND TRACKING	COVERT SURVEILLANCE AND TRACKING
Authorisation	No, a detective's assessment is sufficient. However, they are not allowed to interfere with private space, based on the client's authorisation.	Yes, an order of the public prosecutor or investigating judge in the case of intrusion into private space.	Yes, an order of the Director of SOVA, in some cases necessarily also permission of the Supreme Court of the Republic of Slovenia.	Yes, 1) an order of the Minister of Defence in the case of intelligence and counter-intelligence tasks; 2) an order of the public prosecutor, in some cases an order of the investigating judge when it comes to security tasks.
Investigative measure	NO	YES	NO	YES, but only for implementation of the measure as part of security tasks
Implementation of the entitlement/measure/method	Entitlement is performed in a planned manner, the duration is limited to the completion of a task defined in line with the authorisation, i.e., it is time-limited and aimed at obtaining specific information to provide material evidence for the needs of the client.	The measure is performed systematically, as continuous or repeated observation of a suspect over a prolonged period of time, using technical devices in order to transmit and record voice and images, in order to obtain material evidence to use in criminal proceedings.	The method is performed systematically, continuously or repeatedly for a prolonged period of time in open or public places, using technical means to document in order to ensure the security of Slovenia.	1) The method is performed systematically, continuously or repeatedly for a prolonged period of time in open or public places, using technical means to document in order to ensure the security of Slovenia. 2) The measure is performed systematically, as continuous or repeated observation of a suspect over a prolonged period of time, using technical devices to transmit and record, in order to obtain material evidence for use in criminal proceedings.

that detectives' direct observation is absolutely necessary and be allowed since detectives cannot perform any task under the authorisation given to them by the client without this entitlement (Detective Chamber of the Republic of Slovenia, 2008).

Thus, personal perception is not a covert investigative measure, even though in terms of its characteristics it is very similar to classical police direct perception and observation, as police officers can also collect information with their two basic senses of sight and hearing. This means that any direct observation by the police is not a covert surveillance measure.

A detective may only use image recording devices to perform a personal perception, while employees of the various departments of the State authorities conducting covert surveillance may use technical devices for position and movement detection, as well as technical devices for voice transmission and recording, photography and video recording, which focus on monitoring a person's position, movements and activities. While both entitlements or measures are performed covertly, only covert surveillance by the police and the security part of the ISS constitutes an investigative measure, whereas personal perception is not. Personal perception may only be used by a detective to obtain information and material evidence for the clients' needs, while the primary objective of covert surveillance as an investigative measure is to obtain material evidence for the purposes of criminal proceedings.

In summary, personal perception under Articles 38 and 39 of ZDD-2 differs from covert investigative measures or special forms of data acquisition in that:

- a) detectives are limited to direct personal perception in or from public places, publicly accessible and enclosed spaces and places and spaces that are visible from a publicly accessible place and space;
- b) they are limited in their assertion of entitlement by the fact that they may not intrude into a private space marked as such; and
- c) they may not use technical means not strictly needed to protect evidence.

6 Brief Analysis of the Case Law on the Use of Personal Perception by Detectives in Practice

Several judgements in Slovenia concerning detectives' interference in individuals' privacy through the use of personal perception have shaped the relevant case law. We examined the following judgements and decisions: Judgement VSC sodba Cp 198/2022; VSRS sodba VIII Ips 456/2006; VDS sodba Pdp 1171/2011; VDSS sodba Pdp 905/2015; VDSS sodba Pdp 612/2020; VSK sklep PRp 77/2020; VSK sodba PRp 4/2021; VSL sodba II Cp 1269/2004; VSL sklep I Kp 106/2008; VSRS sodba VIII Ips 217/2003; VSRS sodba VIII Ips 41/2004; VSL sklep I Cpg 690/2020). The relevant case law is very important for detective activity as the rulings of the Supreme Court of the Republic of Slovenia in different cases have clearly defined the boundary between personal perception and covert investigative measure, which can also be applied in all subsequent court cases where individuals bring a claim against a detective.

It is clear from the judgements that in most cases detectives have been accused of either interfering with an individual's privacy or private space, or using covert investigative measures etc. in their work. This only proves that the dividing line between personal perception and covert surveillance is fine, which makes knowledge of detective legislation crucial.

Case law emphasises that it is important that a detective, when performing personal perception, does not interfere with a private space and an enclosed private space (ZDD-2, Article 38). It is also crucial to be aware that the law expressly prohibits detectives from employing covert investigative measures that are reserved for specific departments of state authorities, but that in order to obtain evidence of certain offences, detectives may, in accordance with the detective sector legislation, interfere with the privacy of offenders. The case law points out that an individual cannot reasonably expect the same privacy in public places that they can expect in private enclosed places. This is also supported by the reasoning given in VDSS sodba Pdp 612/2020, where it follows that the taking of photographs of an observed person by a detective in or from a public place for the purpose of identifying and obtaining evidence is appropriate and does not constitute tracking, but rather personal perception.

In the judgements analysed, the courts support the view that personal perception is conducted both statically and dynamically. Dynamic personal perception does not in itself amount to covert surveillance and a tracking measure under Article 149a of ZKP (VSC sodba Cp 198/2022), since the very purpose of personal perception is to identify violations at a certain moment in time, in line with the detective's scope of work, which do not constitute the criminal prosecution of the individual, and the technical means used in personal perception are intended to secure evidence (photography). Yet, if the dynamic perception involves elements of covert surveillance, e.g., by using technical means not provided for in ZDD-2, this is an overstepping of the detective's entitlements and an abuse of trust in the performance of their detective activity. Critically, personal perception under ZDD-2 does not involve perception in this way. However, the dynamism of the detective, for example in the form of movement as a means of transport, is important for the actual performance of personal perception. It follows that personal perception can be both static and dynamic and cannot be equated with a static or dynamic perception of covert surveillance or tracking (VSK sklep PRp 77/2020, 2021; VSL sklep I Cpg 690/2020).

Importantly, a detective can use a photograph to protect evidence that they have procured by means of personal perception (static or dynamic), as also confirmed by the Supreme Court in VSRS sodba VIII Ips 217/2003, where it stated: *"Information provided by a contracted detective based on the detective's performance of their duties may be used as evidence in disciplinary proceedings, as well as in proceedings before an employment tribunal"*. When conducting personal perception, a detective must not use, for example, GPS trackers or other technical devices, except for image recording devices Article 39 of ZDD-2 clearly stipulates that even image recording devices may only be used within the scope of the task and the authorisation and when needed to secure evidence.

When performing personal perception, a detective may not proceed with a covert pursuit, which is the sole responsibility of the police, SOVA and ISS. The Court's view is that, due to the provisions contained in the ZPP, the provisions of ZDD-1 did not prohibit conducting a covert pursuit, or as the Court refers to it: "dynamic perception using a means of transport". The permitted method of detective work ends when it turns into a 'covert pursuit', which is defined and intended exclusively for State security organisations.

It is clear from the judgements analysed, where the detective was performing surveillance of person's on sick leave and using technical means to interfere with the individual's privacy, that the Court found that these were not cases of pursuit. Instead they were cases of personal perception, which detectives when they follow a person in a public place, when the person drives past the detective, they drive from point A to point B to find out what that person is doing there, especially regarding establishing breaches of sick leave. Accordingly, a detective utilize both a camera and a personal vehicle, but may not use tracking devices, wiretaps or other devices typical of covert investigative measures.

In Slovenia, case law has also developed (VSC sodba Cp 198/2022; VSRS sodba VIII Ips 456/2006; VDSS sodba Pdp 1171/2011; VDSS sodba Pdp 905/2015; VDSS sodba Pdp 612/2020; VSK sklep PRp 77/2020; VSK sodba PRp 4/2021; VSL sodba II Cp 1269/2004; VSL sklep I Kp 106/2008; VSRS sodba VIII Ips 217/2003; VSRS sodba VIII Ips 41/2004; VSL sklep I Cpg 690/2020), which supports the provisions of the previous law ZDD-1. Namely, that a detective may obtain information by direct personal perception in public places or from public places, publicly accessible open and enclosed spaces, and places and spaces visible from a publicly accessible place and space, but may not interfere with a private enclosed space and a private space which the individual has separated from a public space by erecting a fence, a barrier, or a conspicuous marking or warning, thereby outwardly indicating that it is a private space. A detective may hence obtain information by direct personal perception in accordance with the above provisions, using technical means within the scope of the authorisation (to the extent strictly necessary), but with limited provisions on sound recording. A detective may only use sound recording devices based on the clearly demonstrated written or oral consent of the person being recorded. This also raises questions whether this case involves the use of technical means or merely the use of a means for securing evidence. A detective may also collect data on the basis of a written authorisation from the individual's employer at the time and in line with explicit legal powers, but these activities cannot be equated with covert investigative measures, which can only be performed by the police on the basis of an order of a public prosecutor or a court, with the aim of detecting criminal offences, and provided that the conditions set out in ZKP are fulfilled (VSK sodba PRp 4/2021).

Also relevant to detective work is the ruling of the Slovene Supreme Court stating that merely observing certain objects without using technical means does not constitute conducting a covert investigative measure of covert surveillance and tracking, which involves the planned, repeated or continuous observation of a particular person over a prolonged period of time, by technical means for recording or transmitting a voice or by means of image recording. It is clear from the case law that covert surveillance is prohibited for detectives only when the detective performs this measure for the purpose of detecting or prosecuting the perpetrator of a criminal offence, when they use technical means which are not within the scope of their powers, and when they carry out ZDD-2 continuously.

The Detective Chamber of the Republic of Slovenia has always maintained the position that direct observation by detectives is permissible and indispensable since detectives cannot perform tasks under the client's authorisation without this entitlement (Detective Chamber of the Republic of Slovenia, 2008). Concerning the use of photo and video documentation, there have been a few cases before the courts where evidence obtained by personal perception was used at first instance courts, but otherwise there is no higher or even Supreme Court judgement on the subject, nor a first-instance court judgement that has found video or photo recording in collecting information to be unlawful.

7 Conclusion

Detectives under the law rely on the personal perception entitlement whereby a detective *“may obtain information in or from public places, publicly accessible open and enclosed spaces, and places and spaces that are visible from a publicly accessible place and space”* (ZDD-2, Article 38). Exercising this entitlement is often wrongly equated in the professional and lay public spheres with a covert investigative measure or the intelligence method of covert surveillance and tracking. This is not surprising as the dividing line between personal perception and covert surveillance and tracking is fine, but on the other hand it places the onus on the profession and regulators to define the key differences between the two ways of obtaining data. It is clear from both a review of the legal framework, where more space is devoted to covert investigative measures and their implementation, and an analysis of the case law, that they are distinct measures which interfere differently with the privacy of the individual. In particular, the intrusion is

greater in the case of covert surveillance and tracking, and the intrusion is much more intrusive than in the case of personal perception.

Personal perception should be understood as an entitlement of a detective carried out in a planned manner (static or dynamic), limited in time, conducted as specified in the client's authorisation, and designed to obtain material evidence for the client's needs. Only detectives may use personal perception, and then only to advance a client's legitimate legal interests, after which the detective shall assess the need to use this entitlement on a case-by-case basis. In order to be meaningful and effective, personal perception has the character of a non-public exercise. However, this does not make it a covert measure or a covert form of data acquisition as only the police, the Slovenian Intelligence and Security Agency, and the Intelligence and Security Service of the Ministry of Defence are allowed to use under the law, while detectives are explicitly prohibited from doing so by law (ZDD-2, Article 40). Despite its technical and legal similarity to personal perception, a covert measure or method of covert surveillance and tracking is defined as a deliberate measure involving the continuous or repeated observation of a suspect over a prolonged period of time, which may involve the use of technical devices for voice transmission and recording, image recording, and documentation, in order to obtain material evidence for the purposes of a criminal proceeding or for the purpose of ensuring the security of Slovenia. Here, the competent State authorities can therefore interfere with the privacy of an individual, while detectives are limited to personal perception in or from public places, publicly accessible and enclosed spaces, and places and spaces visible from a publicly accessible place and space. In exercising their entitlement, they are further limited by the fact that they may not interfere with a private space marked as such – physically or otherwise. Another important difference lies in the use of technical means. A detective may only use technical means for image recording or photography in connection with personal perception (which is also provided for as an entitlement in ZDD-2, Article 39), but only if this is strictly necessary to secure evidence. After theoretical and judicial analysis, we may conclude that the courts correctly understand a detective's entitlement to the "use of technical means" and do not equate them with technical means under Article 149a of ZKP or Chapter 5 of ZSOVA.

A review of case law in Slovenia also demonstrated that when interpreting the legal concept of personal observations, courts have repeatedly taken a position in favour of employers, ruling that observation by detectives are permissible. It follows from case law that personal observations are not equated with covert investigative measures that can only be performed by law enforcement agencies. Courts have also decided that when collecting information from other persons, one's own observation and visual recording of events to a reasonable extent do not constitute an inadmissible interference with the privacy of the person being observed. Analysis of the case law shows that personal perception is well-defined and explained in the courts' judgements. Further, the courts have ruled in several cases that a detective may observe everything that is visible to all other persons from a public place and collect information in this way. The key here is courts' understanding that anything detectives can see from a public place (including what is happening in a private place), and that everyone can see under the same conditions, can be secured as evidence by the detective and utilized in court proceedings.

Legal Acts, Case-law

- Charter of Fundamental Rights of the European Union (2010): Official Journal of the European Union, C 83/389. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT> (accessed: December 2, 2025).
- Constitution of the Republic of Slovenia (CRS): Official Gazette of the RS, 33/91-I, 42/97, 66/00, 24/03, 69/04, 68/06, 47/13, 75/16, 92/21, 98/25.
- Criminal Code (Kazenski zakonik = KZ-1): Official Gazette of the RS, 50/12, 6716, 54/15, 38/16, 27/17, 23/20, 91/20, 95/21, 186/21, 105/22 – ZZNŠPP, 16/23, 107/24 – odl. US.
- Criminal Procedure Act (official consolidated text) (Zakon o kazenskem postopku = ZKP): Official Gazette of the RS, 176/21 – uradno prečiščeno besedilo, 96/22 – odl. US, 2/23 – odl. US, 89/23 – odl. US, 53/24, 93/25 – ZNUZJV.
- Defence Act (Zakon o obrambi = ZObr): Official Gazette of the RS, 103/04, 95/15, 139/20, 112/25 – ZSSloV-C.
- European Convention on Human Rights (1950). Council of Europe. Retrieved from: https://www.echr.coe.int/documents/convention_eng.pdf (accessed: January 10, 2026).
- Police Tasks and Powers Act (Zakon o nalogah in pooblastilih policije = ZNPPol): Official Gazette of the RS, 22/25 – uradno prečiščeno besedilo.
- Private Detective Services Act (Zakon o detektivski dejavnosti = ZDD): Official Gazette of the RS, 96/07, 29/10, 17/11.
- Private Detective Services Act (Zakon o detektivski dejavnosti = ZDD-1): Official Gazette of the RS, 17/11.
- Private Detective Services Act (Zakon o detektivski dejavnosti = ZDD-2): Official Gazette of the RS, 95/24.
- Protection of Public Order Act (Zakon o varstvu javnega reda in miru = ZJRM-1): Official Gazette of the RS, 70/06, 139/20, 113/24.

- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation). Official Journal of the European Union, L 119, 1–88. Retrieved from: <https://eur-lex.europa.eu/eli/reg/2016/679/oj> (accessed: December 13, 2025).
- Slovenian Intelligence and Security Agency Act (Zakon o Slovenski obveščevalno-varnostni agenciji = ZSOVA): Official Gazette of the RS, 81/06.
- Universal Declaration of Human Rights. (1948). United Nations. Retrieved from: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed: December 15, 2025).
- VDS sodba Pdp 1171/2011, 09.05.2003.
- VDSS sodba Pdp 612/2020, 23.12.2020.
- VDSS sodba Pdp 905/2015, 24.03.2016.
- VSC sodba Cp 198/2022, 08.09.2022.
- VSK sklep PRp 77/2020, 17.12.2020.
- VSK sodba PRp 4/2021, 18.02.2021.
- VSL sklep I Cpg 690/2020, 02.02.2021.
- VSL sklep I Kp 106/2008, 31.01.2008.
- VSL sodba II Cp 1269/2004, 13.04.2005.
- VSRS sodba VIII Ips 217/2003, 18.05.2004.
- VSRS sodba VIII Ips 41/2004, 28.09.2004.
- VSRS sodba VIII Ips 456/2006, 18.06.2007.

References

- Alekseev, S. N., Uvarov, M. A., & Remizov, P. V. (2023). *On the issue of ways to improve legislation on private detective and security activities*. *Journal of Private Security & Law*, 16(8), 83–89.
- Bilius, M. (2012). The right to privacy and private detective activities in Lithuania. *Baltic Journal of Law & Politics*, 5(2), 1–26. <https://doi.org/10.2478/v10076-012-0008-9>
- Block, L. (2013). International cooperation in private investigation of economic crime in the EU: Exploring relevant issues. IN: O'Neill, M., Swinton K. & Winter, A. (eds.), *New challenges for the EU internal security strategy* (pp. 96–122). Cambridge: Cambridge Scholars Publishing.
- Button, M. (2020). *Private Policing* (2. ed.). Oxfordshire: Routledge.
- Detective Chamber of the Republic of Slovenia (2008). The Chamber's position on the illegal activities of detectives. *Detektiv*, 7(1-2), 28–30.
- Dvojmoč, M. (2017). Detective activity in Slovenia – (Normative) development of the activity and a view to the future. *Revija za kriminalistiko in kriminologijo*, 68(3), 280–297.
- Dvojmoč, M., Sotlar, A. & Modic, M. (2022). Normative legal regulation of private detective services in Slovenia – research – based proposals for legislative changes. *International Journal of Public Sector Performance Management*, 9(4), 366–381. <https://doi.org/10.1504/IJPSPM.2022.123706>
- George, B. & Button, M. (2000). *Private Security*. Warwickshire: Perpetuity Press.
- Gill, M. & Hart, J. (1997a). Policing as a business: The Organisation and Structure of Private Investigation. *Policing & Society*, 7, 117–141.
- Gill, M., & Hart, J. (1997b). Private investigators in Britain: The development of a security profession. *British Journal of Criminology*, 37(4), 549–567.
- Government of the Republic of Slovenia (2010). Draft Private Detective Services Act. Retrieved from: <http://www.arhiv.ds-rs.si/kb/seje/index5a1e.html?View=entry&EntryID=1260> (accessed: August 18, 2025).
- Heibutzki, R. (2017). Types of surveillance in criminal investigations. *Chron*. Retrieved from: <https://work.chron.com/types-surveillance-criminal-investigations-9434.html> (accessed: August 18, 2025).

- Horvat, Š. (2004). *Criminal Procedure Act with commentary*. Ljubljana: GV založba.
- Johnston, L. (1992). *The Rebirth of Private Policing*. Oxfordshire: Routledge.
- Klatt, M. & Meister, M. (2012). *The constitutional structure of proportionality*. Oxford: Oxford University Press.
- Klemenčič, G., Keranović, B. & Žaberl, M. (2002). *Your rights in police proceedings*. Ljubljana: Založba Pasadena.
- Križnar, P. (2016). Protecting location privacy with mosaic data theory. *Proceedings of scientific papers*, 76, 2–39.
- Lampe, R. (2004). *Right to privacy system*. Ljubljana: Bonex.
- Nunič, M. & Jarc, S. (2007). *Protection of Public Order Act (ZVJRM-1) with commentary*. Ljubljana: GV založba.
- Prenzler, T. (2001). *Private Investigators in Australia: Work, Law, Ethics and Regulation*. Brisbane: Griffith University.
- Republic of Slovenia, Ministry of Defence (2018). *Annual report 2018: Intelligence and security operations* (pp. 59–108). *GOV.SI*. Retrieved from: <https://www.gov.si/assets/ministrstva/MO/Dokumenti/MoD-Annual-Report-2018.pdf> (accessed: August 15, 2025).
- Republic of Slovenia, Ministry of Defence (2022). *Intelligence and Security Service. GOV.SI*. <https://www.gov.si/en/state-authorities/ministries/ministry-of-defence/about-the-ministry/intelligence-and-security-service/> (accessed: January 5, 2026).
- Savski, S., Grilc, B., Jarc, S. & Male, Z. (2012). *Zakon o detektivski dejavnosti s komentarjem (ZDD-1); Zakon o zasebnem varovanju s komentarjem (ZZaV-1)*. Ljubljana: GV založba.
- Shamshak, T. (2012). Private investigator basics: Surveillance. *Pinow.com*. <https://www.pinow.com/investigations/surveillance> 20.08.2025datum
- Solove, D. J. (2006). A taxonomy of privacy. *University of Pennsylvania Law Review*, 154(3), 477–564. <https://doi.org/10.2139/ssrn.667622>
- Sotlar, A. & Trivunović, J. (2012). Detectives and privacy protection in the Republic of Slovenia. *Revija Varstvoslovje*, 14(3), 307–330.
- Škrabar, B. (2012). Right, interest, legal interest in the work of a detective. *Detektivski blog Detektivsko varnostne agencije*. Retrieved from: <https://www.detektiv-dva.si/pravica-interes-pravni-interes-pri-delu-detektiva/> (accessed: August 20, 2025).
- Škrabar, B. (2017). *Normative-legal definition and practical implementation of observation as an operational method of detective work*. (Master's thesis). Ljubljana: Faculty of Criminal Justice and Security.
- Teršek, A. (2002). An introduction to the major modern legal systems. *Teorija in praksa*, 39(2), 282–286.
- Toplak, L. (2002). Commentary on the Constitution of the Republic of Slovenia. *E-kurs.si*. Retrieved from: <https://e-kurs.si/komentar/uvodna-opredelitev/> (accessed: August 18, 2025).
- Trivunović, J. (2012). *Invasion of privacy by detectives*. (Master's thesis). Ljubljana: Faculty of Criminal Justice and Security.
- Turkington, R. C. & Allen, A. L. (1999). *Privacy law: cases and materials*. Eagan, Minnesota: West Group.
- Westin, A. F. (1967). *Privacy and Freedom*. New York: Atheneum.
- Zuboff, S. (2019). *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. New York: PublicAffairs.
- Žurej, J. (2001). The right to privacy. *Proceedings of scientific papers*, 61, 289–311.

Povzetek v slovenskem jeziku

Državni in zasebni nadzorni organi lahko pri pridobivanju informacij zakonito kršijo temeljne pravice. Vendar javnost pogosto napačno enači osebno zaznavanje zasebnih detektivov (v nadaljnjem besedilu: detektivi) s prikritimi preiskovalnimi ukrepi, ki jih uporabljajo policija in obveščevalne službe. Bistveno je razlikovati med tema dvema oblikama poseganja v zasebnost. Detektivi lahko za zbiranje dokazov

za svoje stranke uporabijo osebno zaznavanje, ki pomeni zakonito in časovno omejeno opazovanje iz javnih prostorov. Čeprav je to diskretno, ne gre za prikrito preiskovalno dejanje. Detektivi lahko uporabljajo naprave za slikovno snemanje, medtem ko imajo državni organi širša pooblastila za nadzor. Namen osebnega zaznavanja je pridobiti dokaze za stranko, medtem ko prikrito nadzorovanje služi kazenskim ali obveščevalnim ciljem in pomeni globlje poseganje v zasebnost. Kljub manjši intenzivnosti mora biti delo detektivov ustrezno urejeno in podvrženo nadzoru.

