

Use of images recorded by drones for upholding law and order: the existing legal framework offers adequate guarantees

The Conseil d'État, responding to an appeal by voluntary organisations, finds that the processing of images taken by drones for the purpose of upholding law and order complies with data protection requirements under European Union and French law. Indeed, that framework does not allow facial recognition, sound recording or combining with other files, and specifies that authorisation to take images must be assessed on a case-by-case basis in the absence of other solutions.

Several voluntary organisations appeared before the Conseil d'État to challenge the [Decree of 19 April 2023](#) that provides for the processing of images obtained by drones to uphold law and order, and protect the security and safety of individuals and property.

Today, the Conseil d'État dismissed the appeal, finding that the existing legal framework – including the abovementioned decree and also the act on criminal liability and domestic security of 24 January 2022¹ supplemented by the interpretation reservations of the Constitutional Council² – guarantees compliance with privacy and data protection requirements under French³ and EU law⁴.

The Conseil d'État recalled that the framework sets out the instances of upholding law and order in which drones may be used, and that each use must be permitted on a case-by-case basis by the prefect, who must ensure that the police or gendarmerie cannot use other means, and that only data that is strictly necessary is collected. The prefect's authorisation can also be challenged before the administrative courts, including in urgent applications.

Additionally, the Conseil d'État noted that in accordance with the law and the interpretation reservations of the Constitutional Council, the decree does not permit sound recordings or the use of facial recognition while processing the collected images, or automatic comparison, interconnection or combination with other files. The use of images must further be limited to what is strictly necessary, and the data retention period is limited to seven days.

The organisations claim that the decree fails to specify the “circumstances” that allow exemptions to the ban on the recording of images at the entrance to or inside homes, provided by the law of January 2022. The Conseil d'État found that it was not necessary for the decree to specify this, since circumstances that prevent the interruption of recording can only be objective material circumstances, specific to each operation, that make it impossible to stop recording (for instance the configuration of the areas flown over, the speed and predictability of flying over homes and their entrances, and the impossibility of avoiding this without compromising the operation in progress).

¹ [Act No. 2022-52 of 24 January 2022 on criminal liability and domestic security](#)

² [Decision No. 2021-834 DC of 20 January 2022](#)

³ [Act No. 78-17 of 6 January 1978 on data protection](#)

⁴ [Directive 2016/680 of the European Parliament and the Council of 27 April 2016](#)