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DOI: 10.35117/A_ENG_22_06_02

Responsibility of the operator for the operation of the unmanned aerial vehicle - selected issues

Abstract: The article presents the issue of responsibility for the use of unmanned aerial vehicles. As part of the study, selected domestic and foreign regulations will be analyzed. The author will present selected legal regulations of the European Union Member States: Poland and Croatia. Moreover, the laws of Canada and the United States will be discussed.

Keywords: Drone; Civil liability; Criminal Liability

Introduction

According to the data provided by the *Federal Aviation Administration* (hereinafter: FAA), as of March 28, 2022, 853,857 drones were registered [1]. Of course, the presented statistics refer only to the United States and it is only a part of the total number of registered unmanned aerial vehicles around the world. It is worth noting that the value of the global civilian drone market is USD 73.5 billion, and the European market is USD 20.7 billion [2]. Considering the above, it can be seen that the use of drones is very popular nowadays. However, it should be remembered that a drone is not a toy and its possession may involve liability in various spheres, e.g. civil or criminal. Thus, it is important to familiarize yourself with the applicable legal regulations at both European and national levels before making a purchase.

For the purposes of this article, legal regulations relating to legal liability for the use of drones in selected European Union Member States and third countries will be presented.

Poland

According to the White Book of the Unmanned Aerial Vehicles Market [2], there are about 100,000 drones in the Polish airspace. Moreover, in the first quarter of 2019, as many as 10,000 people obtained a qualification certificate that allows them to perform commercial flights. In turn, as many as 93.8 thousand people downloaded the Drone Radar application. The drone industry is developing, which is confirmed by the statistics from December 31, 2020. According to them, 22,962 people (1,866 women and 21,096 men) received a certificate of qualification for an unmanned aerial vehicle operator used for purposes other than recreation and sports [3]. However, with the increased movement of drones in the airspace, there is a risk of an aviation incident or accident. In this case, the operator of an unmanned drone may be subject to criminal liability. The source of criminal liability may result from a violation of the law:

- air law: relating to air traffic (Articles 211 and 212 of the *Aviation Law*);
- criminal law: liability for causing a catastrophe or causing the danger of a catastrophe in air traffic (Articles 173 and 174 of the Penal Code), liability for causing damage to health (Articles 156 and 157 PC), liability for persistent harassment (Article 190 a PC) and liability for violation of home privacy (Article 193 of the Penal Code) [4].

Analyzing the above criminal provisions, it can be seen that the drone operator is criminally responsible for causing heavy, medium, and light bodily harm. In the event of serious damage, the operator is subject to imprisonment for not less than 3 years. If the result

is the death of a person, then the sentence of imprisonment oscillates from 5 years. In addition, he is punishable by 25 years imprisonment and life imprisonment. It cannot be overlooked that in the case of medium or light damage, the perpetrator is subject to imprisonment from 3 months to 5 years. Please note that both in the case of Art. 156 and 157 PC the legislator provided for mitigation of the penalty if the perpetrator acted unintentionally [5].

In the light of Art. 173 PC criminal liability threatens the perpetrator who causes a catastrophe in air traffic that threatens the life or health of many people or property in large dimensions. In this case, the legislator provided for a mitigation of the penalty if the person committing the prohibited act acted unintentionally and an increase in the penalty if the disaster resulted in the death of a person. The perpetrator of this act is punishable by imprisonment from one to 10 years [5].

In turn, under Art. 174, the responsibility will be borne by the person who caused the danger of a catastrophe in air traffic. At the same time, it should be remembered that drones are considered aircraft [6], and thus we can assume that the regulations regarding aircraft will also apply to drones. In this case, a hypothetical scenario may be, for example, a collision of a drone with an airplane. As a consequence, the perpetrator is subject to imprisonment from 6 months to 8 years. It is also worth emphasizing the provisions of Art. 190a and 193 PC which concern persistent harassment and violation of home privacy. Taking into account Art. 190a, it can be assumed that the drone operator could constantly observe a given person, which would violate their privacy. As a consequence, he would be liable for imprisonment from 6 months to 8 years. It should be noted that, according to the judgment of the District Court of September 5, 2017, the harassment must be continuous. In addition, the perpetrator should significantly violate the privacy of another person and make them feel threatened [7]. Taking this into account, this ruling can be applied analogously to the drone operator, because continuous flights and recording of a given person would fulfill the features of this act.

In the light of Art. 193 PC it can be assumed that we will apply this regulation in a situation where a drone flies into private property that it does not own [5]. In this regard, it is worth mentioning the decision of the Supreme Court of 9 July 2013, in which it was emphasized that the condition for the punishability of an offense under Art. 193 PC there will be a fence around the area. Thus, if the property is fenced, it can be concluded that the owner does not consent to the entry of third parties. In this situation, we can assume that this also applies to drones that could fly on the property [8]. Another decision of the Supreme Court of February 3, 2011, indicates that the perpetrator may only be a person who is not entitled to access the facility [9]. In this case, the culprit would be the operator of the unmanned aerial vehicle. Moreover, in the light of the judgment of the Supreme Court (II AKa 384/10), the encroachment specified in Art. 193 PC refers to a violation of the will of the authorized person, and not to the actual act of physical entry (in the case of a drone - entry) into the property [10]. A similar opinion was expressed by the Supreme Court in the judgment of 9 May 2018, in which it was explained how the encroachment of Art. 193 PC. According to the position of the Supreme Court, an intrusion cannot only be understood as overcoming physical obstacles but also breaking the will of the entitled person must be taken into account [11].

Croatia

In the case of Croatia, aviation is dealt with by the local Civil Aviation Authority, i.e. *Hrvatska agencija za civilno zrakoplovstvo* [12]. According to the information on the Office's website, it can be seen that there is a difference in the terms of an unmanned aerial vehicle operator and a remote pilot. The first means a legal or natural person operating or intending to operate using one or more unmanned aircraft systems. In this case, drone operators must register in the system of the Croatian Civil Aviation Agency. The remote pilot, on the other

hand, is the person operating the drone in a specific operation. In addition, he does not need to register with the CCAA registration system. Nevertheless, the pilot must undergo training and pass the exam in accordance with applicable regulations [12].

It is worth noting that in the Croatian legal system, there is the Ordinance *Uredba on snimanj iz zraka*, which defines the rules for recording and registering images from the air. In the light of Art. 1 of the above-mentioned legal act indicates the circle of persons who may take aerial photographs of water areas and surfaces. The legislator covered natural persons and legal persons in this scope. In Art. 3 defines the concept of aerial recording, which occurs when the device with which the image is recorded is not located on land or water. It is worth adding that in light of Art. 4 entities indicated in art. 2 and 6 must obtain permission to take aerial photos. These entities include, among others: foreign legal and natural persons; legal persons involved in film and television co-production with foreign natural and legal persons; and legal and natural persons registering for their own needs. Permission for recording is issued by the State Geodetic Administration (*Državna geodetska uprava*) after prior approval by the Minister of Defence. According to Art. 5, the application should contain the following data: client; recording contractors and proof of registration of the activity aimed at aerial filming; developer details; recording date; a list of objects, a sketch or a map with the recording area marked; information on shooting type and scale, camera, lens focal length, film or format (analog/digital); how the original recording data is stored. It is worth noting that if the recording concerns aerial filming of the individual military, telecommunications, energy, and industrial facilities, areas of national parks and nature parks, and other protected parts of nature, it is necessary to attach the opinion of the user of the facility or the institution managing the protected part [13].

Canada

According to Canadian law [14, 15] drones used for recreational purposes cannot fly above 90 meters above the ground and within 5.5 km from the airport. In the event of a violation of these regulations, there is a penalty of up to 25,000 Canadian dollars. In 2017, in Canada, there was a collision between a plane and a drone, which hit the machine on the right-wing [16]. Also noteworthy is the ruling in the case of *R v. Shah*, in which a drone flight was performed in a park near Calgary International Airport (YYC). The police fined Mr. Shah under the then Art. 602.45 Canadian Aviation Regulations (CARs). The case was considered by the Canadian Court. During the proceedings, an expert from the drone industry was called as a witness. Mark Wuennnberg testified that the operator often loses control of the drone, which can pose a threat to aviation safety [17, 18]. Currently, Art. 900.06 stipulates that no person shall operate a remotely piloted aircraft system in such a reckless or negligent manner as to endanger, or be likely to endanger, aviation safety or the safety of any person [15]. It should be noted that the current regulations regarding drones are contained in Part 9 of the *Canadian Aviation Regulations* (CARs).

United States

An interesting case is the United States, where we have both federal, local, and state laws. Thus, each state may have different legal regulations relating to unmanned aerial vehicles. For the purposes of this article, only exemplary legal regulations relating to selected states will be presented.

Arkansas state law prohibits the use of drones to record video as it is an invasion of privacy and will be classed as a Class B misdemeanor. It will be a Class A misdemeanor to distribute the recorded images or post them online. Moreover, according to art. 1019 prohibits the use of drones to observe or gather information about "critical infrastructure" without

written permission. The infrastructure will include, for example, an oil refinery, a chemical production plant, a power plant [19].

Another state that has its own drone rules is California. Under the California Code (Civil Code), a person who uses a drone to record video or audio with another person without their consent will be held liable. In this outing, there is a breach of privacy and the act is punishable by up to three times the damages related to the breach of privacy and a civil fine of between \$5,000 and \$50,000 [20].

The state of Florida has enacted provisions that prohibit unmanned aerial vehicles from being used to observe other people in violation of their privacy. However, the Police are an exception to this rule as they can use drones with a valid search warrant. Anyone who breaches this provision may be charged legal fees and damages. In addition, injured parties can apply for an injunction [21].

Under Illinois law, the Unmanned Aerial System Surveillance Task Force Act was created. The purpose of this group is to regulate the commercial and private use of drones. Thus, their activities concern the rights of landowners, privacy rights, and the principles of safe and lawful operation of drones [22].

In turn, Louisiana law regulates the use of drones for agricultural purposes (monitoring, etc.). Thus, drone operators must be licensed and registered. The license is renewable every three years [23].

In Maine, you must obtain approval from the relevant authorities before purchasing a drone. It is worth adding that the state of Minnesota has federal, state, and administrative regulations relating to unmanned aerial vehicles [24]. At the federal level, there are regulations in Title No. 14 of the *Combined Federal Regulations* (CFR), which can be analogously referred to unmanned aerial vehicles, e.g. 14 CFR Part 1[25], 14 CFR Part 91[26], 14 CFR Part 107 [27]. For the state of Minnesota, the provisions contained in the *Minnesota Statutes* [28]: 360.012; 360.013; 360,075; 360.511-360.675. In turn, the *Minnesota Administrative Rules* specify the regulations that apply to drones: 8800.3100 [29]; 8800.3200 [30]; 8800.3950 [31].

In Mississippi, *Mississippi Code Section 97-29-61* prohibits the use of drones to spy on other people. The premise of punishing such an act is the lewd, licentious, obscene purpose of such observation. As a consequence, this action is punishable by up to 5 years in prison. However, if the subject of observation is a child aged 16 or under, the penalty is up to 10 years of imprisonment [32].

In Nevada, the drone was classified as an aircraft. Under Section 18, it is prohibited to arm an unmanned aerial vehicle. Moreover, under Section 18.5. it is not allowed to use drones within a certain distance from airports and other "critical" facilities [33].

New Hampshire law (Section 207:57) prohibits the use of drones to interfere with legal hunting [34]. What's more, it is forbidden to record people who hunt legally with a drone. It should be emphasized that the concept of an unmanned aerial vehicle has been defined here. Which is: *any device capable of flying in the air which is remotely, automatically, or otherwise piloted without an occupant, including but not limited to, drones* [34].

North Dakota law sets restrictions on the use of drones [35]. According to them (29-29.4-02), information obtained through an unmanned aerial vehicle cannot be used in prosecution or proceedings. However, there is an exception to this rule. Data that has been obtained under a valid search warrant may be used. Moreover, this document lists exceptions to the ban on the use of drones. Thus, an unmanned ship can be used for, for example, research and scientific purposes. In addition, it is forbidden to arm the drone and observe another person without their consent.

In turn, the state of Texas Gov. Code contains provisions relating to drones. According to Section 423.002(a), you can record an image using a drone if you are conducting, for

example, scientific or academic research [36]. It is worth adding that it is possible to record the image of people using drones if it is impossible to identify them or if they consented to it [37]. Another important regulation is Section 423.0045, which deals with the crime of illegally using drones over a "critical infrastructure facility", e.g. a power plant [38].

Not to forget the state of Virginia, where under the Code of Virginia a warrant must be obtained before unmanned aerial vehicles are used in investigations. Moreover, the concept of a drone has been clarified. According to the definition, it is *an aircraft that is operated without the possibility of human intervention from within or on the aircraft* [39]. In turn, according to West Virginia law, you cannot use a drone for, for example, hunting or killing wild birds (West Virginia Code, §20-2-5.) [40].

In the case of the United States, several drone proceedings in federal courts are worth mentioning:

-Taylor v. FAA I (three cases, but the Court merged them) - ruling. Taylor won with the FAA. The court found that the drone registration rules were created illegally [41]. In this case, the complainant alleged that the Federal Aviation Administration (FAA) had issued a rule relating to certain unmanned aerial vehicles, or "drones". Petitioner John Taylor argues that this rule goes beyond the statutory powers of the FAA.

-EPIC v. FAA II (2016) - Litigation is currently pending. In this case, EPIC filed a lawsuit against the FAA alleging the FAA's failure to consider privacy in its small drone regulations [42].

Summary

Analyzing the example regulations of the European Union Member States (Poland, Croatia) and third countries (Canada and the United States), it can be seen that each country has separate regulations regarding the responsibility of the operator for the performance of flights. Undoubtedly, the most common punishment is harassment or disturbing the peace of the home. The Polish judicial practice confirms that what is important in the notion of encroachment is breaking the will of the entitled person, and not merely overcoming the physical obstacle.

In turn, using the example of the United States, it should be pointed out that, on the one hand, there are federal regulations regarding drones, and on the other, each state can regulate the issue of drones in a detailed way. Given the statistics on unmanned aerial vehicles, it must be said that the drone industry is developing rapidly, which can also be confirmed by the number of cases that have been resolved by courts.

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