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### **REGULATION OF UNMANNED AERIAL SYSTEMS AND RELATED PRIVACY ISSUES IN LITHUANIA**

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**ABSTRACT**

In the past few years the use of unmanned aerial vehicles in Lithuania has significantly increased. However, enjoying the advantages of this technology, which improves society's socio-economical safety (public safety in a broad sense), raises some privacy concerns. This article analyses European Union and national legal regulations regarding the use of unmanned aerial vehicles as well as legal tools for defence of the right to privacy or prevention from its breaches in the Republic of Lithuania. Unmanned aerial vehicles have become popular only recently; thus, legislation regarding their use has not yet become a common topic among lawyers. Furthermore, case law of the Republic of Lithuania is silent about it. Thus, the authors model a situation of breach of privacy using an unmanned aerial vehicle and analyse possible defence mechanisms.

**KEYWORDS**

Unmanned, drones, privacy and security, legal regulation

## INTRODUCTION

According to the European Union open data, economic and financial matters are one of the biggest challenges to the security of European Union citizens, after terrorism<sup>1</sup>. Thus, the insurance of people's security includes not only their physical safety which is assured by governmental institutions, but also protection of their socio-economic interests. New technologies significantly contribute to developing economics, as they have become a tool for business, social and civilian life. One of these relatively recent technological inventions is unmanned aerial systems (UAS) (in other words, drones).<sup>2</sup> Their use cannot be disputed: besides their importance in military, crime investigation, public order insurance, they perform a variety of roles in civilian life, such as entertainment, broadcasting, small cargoes' delivery, search and rescue of individuals, things, traffic monitoring, flood or geological disaster monitoring, remote sensing (volcanic sensing, mapping, meteorology, geological agricultural, wildlife surveying), etc.<sup>3</sup> Economic study has proven "the significant contribution of UAS development and integration in the nation's airspace to the economic growth and job creation in the aerospace industry and to the social and economic progress of the citizens in the U.S."<sup>4</sup> Drones could "help to create promising new opportunities in Europe, offering sustainable jobs and new prospects for growth both for the manufacturing industry and for future users of drones in all sectors of society."<sup>5</sup> Infrastructure monitoring and photography are the areas that the most promising market lies in.<sup>6</sup> However, like all moving objects, UAS cannot be totally protected from accidents and, most importantly, keeping in mind that UAS are usually used as camera platforms, they are also a threat to one of the main human rights – the right to privacy. This sort of threat could be illustrated by an example: an operator takes a video with a help of UAS and captures a fenced private yard and two people standing there. The owner of the yard claims that her right to privacy had been

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<sup>1</sup> EU Open Data Portal, "Special Eurobarometer 432: Europeans' attitudes towards security" (May 2015) // [http://data.europa.eu/euodp/en/data/dataset/S2085\\_83\\_2\\_432\\_ENG/resource/ae0b54bc-3974-4165-9f7d-c2907cb3f41f](http://data.europa.eu/euodp/en/data/dataset/S2085_83_2_432_ENG/resource/ae0b54bc-3974-4165-9f7d-c2907cb3f41f).

<sup>2</sup> Even though the unmanned aerial vehicles have been used since the World War I (Martin McKown, "The New Drone State: Suggestions for Legislatures Seeking to Limit Drone Surveillance by Government and Nongovernment Controllers," *University of Florida Journal of Law and Public Policy* 26 (2015): 73), the device called "drone" with technological capabilities as they are nowadays, is quite new.

<sup>3</sup> Des Butler, "The Dawn of the Age of the Drones: an Australian Privacy Law Perspectives," *UNSW Law Journal* 37(2) (2014): 436.

<sup>4</sup> AUVSI, "Economic Impact of Unmanned Aircraft Systems Integration in the United States," Economic report by Darryl Jenkins & Bijan Vasigh (March 2013) // [https://higherlogicdownload.s3.amazonaws.com/AUVSI/958c920a-7f9b-4ad2-9807-f9a4e95d1ef1/UploadedImages/New\\_Economic%20Report%202013%20Full.pdf](https://higherlogicdownload.s3.amazonaws.com/AUVSI/958c920a-7f9b-4ad2-9807-f9a4e95d1ef1/UploadedImages/New_Economic%20Report%202013%20Full.pdf).

<sup>5</sup> EU, "Riga Declaration on Remotely Piloted Aircraft (drones) 'Framing the Future of Aviation'" (March 2015) // <https://ec.europa.eu/transport/sites/transport/files/modes/air/news/doc/2015-03-06-drones/2015-03-06-riga-declaration-drones.pdf>.

<sup>6</sup> EU, "Commission Staff Working Document 'Towards a European strategy for the development of civil applications of Remotely Piloted Aircraft Systems (RPAS)'" (September 2012) // <https://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2013438%202012%20INIT>.

violated as the video, becoming a part of a movie, which later was spread on the internet, disclosed the facts of her private life (people, that she had been keeping in touch with). She insists that after the video became publicly available her long-lasting relationship with her fiancé broke-up as she was not supposed to keep in touch with the person that she was recorded communicating with. As the given example illustrates, the UAS is not only a beneficial invention, it could also cause a threat to privacy. So, the balance between its use and harm must be found and it must be enshrined in legislation.

The use of UAS has been discussed quite a few years back by many authors in common law countries; however, it has not been discussed much Lithuania. In Lithuania the UAS have become popular only recently. Therefore the necessity of regulation of their use is essential. Bearing in mind that Lithuania is a member of the European Union, it has been waiting for the uniform regulation, foreseen in the nearest future<sup>7</sup>, but before that it has taken at least minimal steps by setting the minimum standards in this domain.

By analysing the earlier mentioned practical example, this article aims to find whether the current regulation is sufficient and if not, to suggest ways how, with minimum restrictions, to properly regulate the use of the UAS (as it would serve for the insurance of people's public security) so that the right to privacy of others is not breached and at the same time the benefits of the use of UAS are taken. The authors analyse the main operating principles of UAS, legal regulation in Lithuania and suggest possible solutions on how the regulation could be adjusted in order to achieve this aim.

## **1. UAS AND THEIR OPERATING PRINCIPLES**

### **1.1. THE DESCRIPTION AND DEFINITION OF UAS**

As Lithuanian legislation suggests, unmanned aircraft is any aircraft without a crew (including toy models and air-models), which can be operated remotely or automatically, as well as free flying aircraft.<sup>8</sup>

There is great confusion between the concepts describing the mechanisms, most commonly called as "drones", because it is not always clear whether devices, programmed to fly autonomously without the involvement of an operator, controlling

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<sup>7</sup> EU, "Proposal for a Regulation of the European Parliament and of the Council on common rules in the field of civil aviation and A European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council" (December 2016) // <http://data.consilium.europa.eu/doc/document/ST-15155-2016-INIT/en/pdf>.

<sup>8</sup> *Bepiločių orlaivių naudojimo taisyklės (The rules for the use of unmanned aircrafts)*, TAR (2014, no. 2014-00438), art. 2.1, sec. 1.

the system from a distance (i.e. operating autonomously), could be called drones. This confusion comes from national legislations and especially from the absence of uniform concept among the institutions of the European Union. For example, Latvian legislation, setting the rules of use of the UAS, suggests the following description: an unmanned aerial vehicle is understood as an aircraft, which is designed in such a way that a person managing the flight is not located in the aircraft but controls it from a distance, and such aircraft is used for recreation, sports and special aviation works.<sup>9</sup> Thus, it does not separately mention automatic operation. Meanwhile relevant Lithuanian legal act governing the use of drones, as it was mentioned before, RPAS (remotely piloted aircraft systems) and devices, programmed to fly automatically (operating autonomously), treats as two subcategories of unmanned aerial vehicles.

More interestingly, the European Commission in its communication<sup>10</sup> describes RPAS (remotely piloted aircraft systems) as follows: RPAS "form part of a wider category of Unmanned Aerial Systems (UAS), which also includes aircraft that can be programmed to fly autonomously without the involvement of a pilot."<sup>11</sup> Thus, "RPAS, as the name suggests, are controlled by a pilot from a distance"<sup>12</sup> and the term "remotely piloted aircraft systems" (excluding autonomously operating aircraft systems) is used. However, in its website<sup>13</sup> the term "unmanned aircraft" or, its equivalent, "drones" is used, even though it is indicated that the information on the website is based on the same topic as mentioned previously. Moreover, in Riga Declaration on Remotely Piloted Aircraft (drones) "Framing the Future of Aviation"<sup>14</sup> RPAS are equated with the term "drones" (indication of the word "drones" in brackets).

For the purposes of clarity, this article uses the term Unmanned Aerial Systems (UAS) as it includes both: aerial vehicles operated by pilot from a distance, and aerial devices programmed to fly autonomously without the involvement of an operator controlling the system from a distance, as both of them could be the tools of achieving all earlier mentioned drones' advantages and, accordingly, breaching people's right to privacy (as they both could be used as camera platforms or intruding objects). A person programming the device to fly automatically could be called an operator as well. Thus, we contend that both types of UAS could be treated as drones. And seems

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<sup>9</sup> *Kārtība, kādā veicami bezpilota gaisa kuģu un tādu cita veida lidaparātu lidojumi, kuri nav kvalificējami kā gaisa kuģi (Regulations on the operation of unmanned aerial vehicles)*, Official Gazette (2016, no. 231), art. 2, sec. 1.

<sup>10</sup> EU, "Communication for the Commission to the European Parliament and the Council, A New Era for Aviation. Opening the aviation market to the civil use of remotely piloted aircraft systems in a safe and sustainable manner" (April 2014) // <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0207&from=EN>.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> EU, "Unmanned aircraft (drones)" // [https://ec.europa.eu/transport/modes/air/uas\\_en](https://ec.europa.eu/transport/modes/air/uas_en).

<sup>14</sup> "Riga Declaration," *supra* note 5.

that this approach corresponds with the one finally set by the Council of the European Union: “unmanned aircraft’ means any aircraft operated or designed to be operated without a pilot on board and which has the capacity to operate autonomously or to be piloted remotely.”<sup>15</sup>

## 1.2. OPERATING PRINCIPLES OF THE UAS

Controlling aerial vehicles from a distance is a great advantage because it eliminates the risk of the pilot’s (in the UAS case – the operator’s) injuries. Since the operator does not have to be on the aircraft himself, it allows for smaller construction, lighter weight, and better manoeuvring. These advantages make the UAS more obtainable not only to governmental, but to civilian users as well and do not reduce the value of the targets that can be achieved by using them: road maintenance, monitoring of electricity transmission lines, thermal conductivity of buildings, agriculture and forestry,<sup>16</sup> photography, recording, etc.

However, the mentioned technical capabilities, intentionally or not, could contribute to other people’s privacy infringement. By analysing online websites, advertising the UAS, a few facts, helping to understand the main UAS’s operating principles, have been determined. Firstly, not all UAS have GPS maps installed to prevent the UAS from getting into restricted areas: airport areas and zones set by local municipalities (“no fly zone” drone technology<sup>17</sup>). However, it does not prevent the operator of the UAS from breaching someone’s right to privacy, as the aforementioned restricted areas are connected more with public security. Secondly, the UAS may have zoom cameras adjusted to photograph and record videos. The recorded material can be of such a quality that it might be used for “inspecting cell towers or wind turbines to get a very detailed look at structures, wires, modules and components to detect damage.”<sup>18</sup>

Furthermore, the development of technologies used on the UAS is surprising, as in 2016 Time-of-Flight 3D depth camera sensors started being mounted on drones. ToF depth ranging camera sensors are used for object scanning, indoor navigation, obstacle avoidance, gesture recognition, tracking objects, measuring volumes, reactive altimeters, 3D photography, augmented reality games, etc.<sup>19</sup> With Lidar and photogrammetry mapping, the UAS can be programmed to fly over an area using

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<sup>15</sup> “Proposal,” *supra* note 7.

<sup>16</sup> CAA, “Bepiločiai orlaiviai (BPO) – naujas etapas aviacijos istorijoje” (Unmanned aerial systems – new stage in a history of aviation) // <http://www.caa.lt/index.php?1863262406>.

<sup>17</sup> DRONEZON, “How Do Drones Work and What Is Drone Technology” (May 2017) // <https://www.dronezon.com/learn-about-drones-quadcopters/what-is-drone-technology-or-how-does-drone-technology-work/>.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

autonomous GPS waypoint navigation. The camera on the drone could be taking photographs at 0.5 or 1 second intervals and when these photos are stitched together, the 3D image is created.<sup>20</sup>

All these technological advantages open spectacular opportunities to increase people's lives by improving their socio-economic interests. On the other hand, all of them increase the risk of breaching other people's right to privacy.<sup>21</sup>

## 2. LEGAL EU, INTERNATIONAL, AND NATIONAL REGULATION(S)

The best tool to tackle possible breaches of privacy caused by the usage of UAS is obviously legal regulation. European Union and national legislation are analysed below in order to understand whether it is sufficient and capable of protecting people from misuse of the UAS.

### 2.1. RELATED EUROPEAN UNION LEGISLATION, INTERNATIONAL LEGISLATION

As the norms of European Union law are a constituent part of the legal system of the Republic of Lithuania and have supremacy over the national laws,<sup>22</sup> it could be said that the most important regulation on the use of drones is set at the European Union level. As previously mentioned, the Regulation of The European Parliament and of the Council on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and repealing Regulation (EC) No 216/2008 of the European Parliament and of the Council (hereinafter called – EASA project)<sup>23</sup> is being prepared by the European Commission.<sup>24</sup> However, currently we have

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<sup>20</sup> *Ibid.*

<sup>21</sup> It is important to note that European Union Agency for Network and Information Security has been making a great effort in "bridging the gap between the legal framework and the available technological implementation measures by providing an inventory of existing approaches, privacy design strategies, and technical building blocks of various degrees of maturity from research and development. Starting from the privacy principles of the legislation, important elements are presented as a first step towards a design process for privacy-friendly systems and services" (ENISA, "Privacy And Data Protection By Design" (January 2015) // <https://www.enisa.europa.eu/publications/privacy-and-data-protection-by-design>), even though the researches have shown that the interviewed "developers and the researcher (D1–D5, R1) stated that privacy is too abstract of a problem to solve technically. D2 even stated 'that [it] is not possible' to solve technically. They argued that during the development process, it is not foreseeable how privacy will be situated in the contexts in which the system is to be used" (Sven Braun, Michael Friedewald, and Govert Valkenburg, "Civilizing Drones: Military Discourses Going Civil?" *Science & Technology Studies* 28(2) (2015): 81). However, this article does not cover these technological solutions.

<sup>22</sup> *The Law Supplementing the Constitution of the Republic of Lithuania with the Constitutional Act 'On Membership of the Republic of Lithuania in the European Union' and Supplementing Article 150 of the Constitution of the Republic of Lithuania (no. IX-2343) of 13 July 2004*, Official Gazette (2004, no. 111-4123), point 2.

<sup>23</sup> "Proposal," *supra* note 7, preamble, point 1.

<sup>24</sup> "Since unmanned aircraft also operate within the airspace alongside with manned aircraft, this Regulation should cover such aircraft, regardless of their operating mass" ("Proposal," *supra* note 7, preamble, point 18).

Regulation (EC) No 216/2008 of the European Parliament and of the Council<sup>25</sup> in force. It does not separately regulate the use of UAS and does not mention anything about privacy, nor about personal data or privacy protection. The Regulation emphasizes people's safety and environmental protection. Nevertheless, as the UAS is quite a specific object because of its distance or automatic management possibilities, size, technical characteristics allowing the easy gathering of private information, fast and flexible manoeuvring, and more precise regulation is essential.

As previously mentioned, when the final document, prepared on the basis of EASA project, comes into force, it shall be a constituent part of the legal system of the Republic of Lithuania. Repealing Regulation (EC) No 216/2008, the final act (hereinafter called Regulation) will again be dedicated mostly to security and environmental protection, but not much for protection of other values, such as people's privacy. The former two values are stressed in the preamble<sup>26</sup> as the ones targeted at by the Regulation. But a certain degree of flexibility shall be provided to Member States "as regards unmanned aircraft operations, taking into account various local characteristics of Member States such as population density, while ensuring an adequate level of safety."<sup>27</sup> This is for the purposes of implementation of a "risk-based approach and the principle of proportionality."<sup>28</sup>

However, contrary to the Regulation (EC) No 216/2008, in the coming regulation there will be certain provisions linking it with values such as privacy and family life protection. For example, point 19 of the Regulation suggests that the rules connected with unmanned aircraft should "as much as possible contribute to achieving compliance with relevant rights guaranteed under Union law", especially the right to respect for private and family life (Article 7 of the Charter of Fundamental Rights of the European Union), and the right to protection of personal data (Article 8 of that Charter and Article 16 of the Treaty on the Functioning of the European Union ('TFEU') and as regulated in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data).<sup>29</sup> Moreover, Annex IX of the EASA proposal pays particular attention to UAS and insists that for the purposes of mitigating risks pertaining to safety, privacy, protection of personal data, security or the environment, arising from the operation of UAS, the UAS must have specific features and functionalities helping to ensure principles of privacy and

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<sup>25</sup> Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, OJ L 79, 19.3.2008, p. 1–49.

<sup>26</sup> "Proposal," *supra* note 7, preamble, point 1.

<sup>27</sup> *Ibid.*, preamble, point 18(a).

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, preamble, point 19.



protection of personal data, such as “possibility of easy identification of the UAS and of the nature and purpose of the operation, also insurance of compliance with applicable limitations, prohibitions, conditions.”<sup>30</sup>

As noted above, the Regulation based on EASA project is improved in comparison with the Regulation (EC) No 216/2008 because the specificity of the UAS is taken into account, but not much attention is paid to technical and operational requirements related to protection of privacy in this act. However, let us see whether the lack of regulation with regard to operation of UAS is compensated by the international and EU norms related to privacy protection.

To begin with, the right to privacy is firstly preserved at the international level in the Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>31</sup> Its Article 8 states that “everyone has the right to respect for his private and family life, his home and his correspondence.” The European court has explained that “the notion of ‘private life’ within the meaning of Article 8 of the Convention is a broad concept...,”<sup>32</sup> which “is not susceptible to exhaustive definition”<sup>33</sup> but is definitely connected with various rights, such as the right to personal development,<sup>34</sup> right of living privately, away from unwanted attention.<sup>35</sup> However, the European Court of Human Rights has also stressed that it would be too restrictive to limit the notion of “private life” to an “inner circle” in which the individual may live his or her own personal life as he or she chooses, thus excluding entirely the outside world not encompassed within that circle.<sup>36</sup> In order to determine whether the notion of “private life” is protected in a particular situation, the Court has on several occasions examined whether individuals had a reasonable expectation that their privacy would be respected and in that context, it has stated that a reasonable expectation of privacy is a significant though not necessarily conclusive factor.<sup>37</sup> Adjusting the above interpretation to the example given at the beginning could be possible only if the operator of the UAS was the governmental body. However, even if the case law of the European Court of Human Rights is not applicable in the given example, the earlier mentioned rulings give the general understanding of the extent and essence of the right to privacy. Besides, the application of the criteria of reasonable expectation of privacy is supported quite widely. For example, section 7(1) of Surveillance Devices Act 1999 (Vic) (Australia) states that private activity is defined

<sup>30</sup> *Ibid.*, point 1.3 Annex IX.

<sup>31</sup> *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 1950, ETS 5 // <http://www.refworld.org/docid/3ae6b3b04.html>.

<sup>32</sup> *M.M. v. Russia*, no. 7653/06, ECHR 1237.

<sup>33</sup> *Sargsyan v. Azerbaijan [GC]*, no. 40167/06, § 255, ECHR 2015; *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, § 43, ECHR 2004-VIII.

<sup>34</sup> *K.A. and A.D. v. Belgium*, nos. 42758/98 and 45558/99, § 83, February 17, 2005.

<sup>35</sup> *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 95, ECHR 2003-IX (extracts).

<sup>36</sup> *Niemietz v. Germany*, December 16, 1992, § 29, Series A no. 251-B.

<sup>37</sup> *Köpke v. Germany (dec.)*, no. 420/07, October 5, 2010.

as an activity carried on in circumstances that may reasonably be taken to indicate that the parties to it desire it to be observed only by themselves, but does not include an activity carried on in any circumstances in which the parties to it ought reasonably to expect that it may be observed by someone else.<sup>38</sup> The courts of the USA also support the criteria of actual (subjective) expectation of privacy.<sup>39</sup>

The right to privacy in European Union level is enshrined in the Charter of Fundamental Rights of the European Union (hereinafter called the EU Charter).<sup>40</sup> The preamble of the EU Charter points out that the Charter reaffirms the rights also resulting from the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights. Thus, even though the equality mark cannot be added between the earlier described interpretation of the privacy, made by European Court of Human Rights, and interpretations of national courts made on the grounds of the EU Charter, but it could be said that the decisions of national courts cannot contradict neither EU fundamental rights, nor case law of the European Court of Human Rights.

Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>41</sup> is currently in effect. This legal act is intended to protect natural persons' personal data which is a part of fundamental right to privacy. However, the General Data Protection Regulation shall apply from 25 May 2018 and from that day the Directive 95/46/EC shall be repealed with effect.<sup>42</sup> This new regulation also intends to protect natural persons' personal data, which is treated as a "third generation" fundamental right. However, this right is not an absolute right and "must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality."<sup>43</sup> These other fundamental rights, as indicated in the General Data Protection Regulation, are the ones recognized in the Charter of Fundamental Rights of the European Union<sup>44</sup> and the Treaty on the Functioning of the European Union<sup>45</sup> in particular:

The respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of

<sup>38</sup> Percited from Des Butler, *supra note 3*: 460.

<sup>39</sup> Percited from John Villasenor, "Observations from Above: Unmanned Aircraft Systems and Privacy," *Harvard Journal of Law & Public Policy* 36 (2013): 478.

<sup>40</sup> *Charter of Fundamental Rights of the European Union*, OJ C 326, 26.10.2012, p. 391–407. Article 7 states: "Everyone has the right to respect for his or her private and family life, home and communications."

<sup>41</sup> *Directive 95/46/EC*, OJ L 281, 23.11.1995, p. 31–50.

<sup>42</sup> *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, and repealing Directive 95/46/EC (General Data Protection Regulation)*, OJ L 119, 4.5.2016, p. 1–88.

<sup>43</sup> *Ibid.*, preamble, paragraph 4.

<sup>44</sup> *Charter of Fundamental Rights of the European Union*, *supra note 40*.

<sup>45</sup> *Treaty on the Functioning of the European Union*, OJ C 326, 26.10.2012, p. 47–390.

expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity.<sup>46</sup>

Thus, the General Data Protection Regulation could also be applied in the context of the regulation of the use of UAS and its relation with the protection of the right to privacy. However, it is important to note that the General Data Protection Regulation shall not apply to the processing of personal data by a natural person in the course of a purely personal or household activity. So, if the claimant cannot prove that the activities of UAS operator exceeds the limits of personal or household activity, he/she will not be able to base the claim and arguments on this regulation.

These are the main and most important legal acts (or their projects) directly or indirectly governing (or the ones that shall be governing) the use of UAS at the international and EU levels.

## 2.2. THE MAIN RELEVANT LEGAL REGULATION(S) IN LITHUANIA

The legal act governing the use of drones (weighing up to 25 kilograms) in Lithuania is called "the rules for the use of unmanned aircrafts"<sup>47</sup> (hereinafter – the Rules)<sup>48</sup>. The act was approved by the Director of Civil Aviation Administration by order No. 4R-17 in 2014 and is mostly connected with the protection of people's physical safety and national safety. For example, the priority must be given to piloted aircrafts. Thus, it is forbidden to fly an UAS in a manner that could cause danger to landing and rising aircrafts (point 16 of the Rules). Flying UAS is, with certain exceptions, forbidden above the areas where such flights are restricted by the local municipality, above the military territories where such operations are limited by the Chief of Defence of the Republic of Lithuania, in uncontrolled airspace higher than 120 meters above land, closer than 50 meters to all kind of vehicles, buildings and outsiders, further than 1000 meters from the operator of the UAS or when the UAS is out of operator's sight, above cities, towns, densely populated areas and open spaces of people's gathering, in airfields of the aerodromes of the Republic of Lithuania (in vertical or horizontal planes) (Point 10 of the Rules). However, a person may apply to the Civil Aviation Administration for authorization to disregard the restrictions connected with height, distance and densely populated areas, open spaces of people's gathering, if he by appropriate means can justify the level of flight safety acceptable to the CAA (point 19 of the Rules).

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<sup>46</sup> *General Data Protection Regulation*, *supra* note 42, preamble, paragraph 4.

<sup>47</sup> *Bepiločių orlaivių naudojimo taisyklės (The rules for the use of unmanned aircrafts)*, *supra* note 8.

<sup>48</sup> To fly heavier unmanned aircrafts is allowed only with prior authorization of Civil Aviation Administration (*Bepiločių orlaivių naudojimo taisyklės (The rules for the use of unmanned aircrafts)*, *supra* note 8: 4).

The fact that the Rules are intended to set only physical safety requirements of the use of UAS can be proven by analysing the provisions of Chapter I. Point 5 of the Rules says that the requirements of the rules are not applied to rope-operated unmanned aerial vehicles if they do not fly higher than 45 meters above the land (it means that there is less possibility that rope-operated UAS could cause physical harm, as they are under the greater control). Also, point 7 forbids the management of the UAS under the influence of drugs, psychotropic substances, being ill or tired or if any other reasons influencing safety of UAS's flight, exist. Furthermore, point 9 of the rules talks about technical requirements of the UAS, their managers' duties before using them (to check all control elements, etc.).

However, obeying these rules does not prevent the manager of the UAS from breaching somebody's right to privacy by taking photos of someone's home or any other private space, like in the previous example.

Considering the topic of this article, and the fact that the previously mentioned acts are not oriented towards protection of the right to privacy, it is important to discuss what legal acts ensure the protection of people's right to privacy which could be breached by using UAS, at the national level in Lithuania.

Article 22 of the Constitution of the Republic of Lithuania provides the following:

The private life of an individual shall be inviolable. Personal correspondence, telephone conversations, telegraph messages, and other intercommunications shall be inviolable. Information concerning the private life of an individual may be collected only upon a justified court order and in accordance with the law. The law and the court shall protect individuals from arbitrary or unlawful interference in their private or family life, and from encroachment upon their honour and dignity.<sup>49</sup>

In the Law on Personal Data Legal Protection of the Republic of Lithuania (hereinafter – LPDLP), the principle of data protection is treated as a subcategory of the right to privacy: “The purpose of this law is to protect the right of privacy of a person to private life in the processing of personal data.”<sup>50</sup> As the General Data Protection Regulation is not yet in effect, the LPDLP is in accordance with Directive 95/46/EC, which, as previously mentioned, shall be repealed from 25 May 2018. After that date, the LPDLP shall be aligned with the provisions of General Data Protection Regulation.

The General Data Protection Regulation and LPDLP both provide for a very similar description of personal data. So, in general:

<sup>49</sup> *Lietuvos Respublikos Konstitucija (Constitution of the Republic of Lithuania)*, Official Gazette (1992, no. 220, 33-1014), art 22.

<sup>50</sup> *Asmens duomenų teisinės apsaugos įstatymas (Law on Personal Data Legal Protection)*, Official Gazette (latest amendment 2008, no. 22-804), art. 1(1).

'Personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person".<sup>51</sup>

Considering the earlier discussed technical abilities of the UAS, it can be said that unlawfully gathering any personal data with a help of UAS and for commercial purposes is also a breach of these two previously mentioned legal acts and, accordingly, privacy of the subject of personal data. The unlawfulness gathering of any personal data can be easily completed as the requirements of the two previously mentioned legal acts are too difficult to accomplish not only for a natural, but even for a legal person. However, this moves beyond the scope of this article.

Because the LPDLP is aligned with current EU regulation on personal data protection, it also does not apply to the processing of personal data by a natural person in the course of personal or household activity. It is hardly possible to prove that the images taken by the use of UAS shall be used for commercial, business purposes (for example, a part of wedding movie is used to promote operator's business). Therefore the protection provided by LPDLP is not actually effective if the UAS is used by a natural person.

It has to be noted that video surveillance is generally treated as legally permissible behaviour, but the latter law clearly and precisely sets the conditions under which the video surveillance is permitted, establishes imperative requirements for this action and defines peculiarities of liability for violations related to the organization of video surveillance.

The video surveillance in the LPDLP is described as the processing of video data related to a natural person only and when automatic video surveillance devices (cameras) are used without giving importance to the fact of whether such data is stored or not. The video surveillance under the provisions of LPDLP is reasonable only for public order, health, safety, assets, other peoples' rights and freedoms protection and the information that video surveillance is being in operation and by whom must be clearly and understandably provided. The LPDLP also provides prohibitions of wider scope video surveillance than necessary, video surveillance of dwelling place or its private territory or entrance to it, video surveillance in a shared property if there is no majority's consent and, of course, video surveillance in places where the presence of total privacy is expected and/or when such surveillance injures a person's dignity (toilets, changing rooms, etc.).

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<sup>51</sup> *General Data Protection Regulation, supra* note 42, art. 4(1).

As previously mentioned, privacy violations using drones are usually occasioned by video surveillance, data capture and publicity; therefore it is essential that the legal regulations (if not EU, at least national ones) contain precise requirements, which connect with not only the identification of UAS, but also which contain analogical requirements, as mentioned above (set in the LPDLP).

Article 2.23 of The Civil Code of the Republic of Lithuania also protects people's right to privacy and secrecy. Point 1 of the aforementioned article establishes the inviolability of the individual's privacy and stresses that a person's private life may be made public only with that person's consent. Point 2 of the same article concretizes what a violation of a person's private life is and lists actions, such as unlawful invasion of person's dwelling or other private premises as well as fenced private territory, observation of one's private life, unlawful search of the person or his property, intentional interception of person's telephone, post or other private communications, violation of the confidentiality of his personal notes and information, publication of the data on the state of his health in violation of the procedure prescribed by laws; and states that the given list is not finite. Furthermore, the same article establishes the assumptions of civil material liability by stating that such assumptions are illegal invasion of a person's dwelling without his consent, keeping the person's private life under observation or gathering of information about him in violation of law as well as other unlawful acts that infringe upon the right to privacy.<sup>52</sup>

The abovementioned extracts from the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania provide a description of how private life is understood in Lithuanian constitutional and civil law. A deeper explanation could be found in the following ruling of Constitutional Court of the Republic of Lithuania. The Court in its ruling of 21.10.1999 stated that individuals' right to privacy encompasses: private, family and house life, physical and psychological inviolability of individuals, their honour and reputation, the secrecy of personal facts and a prohibition on publicising received or acquired confidential information, etc. "In case the private life of an individual is interfered in an arbitrary and unlawful manner, then, alongside, his honour and dignity are encroached upon."<sup>53</sup> Furthermore, in another ruling the Constitutional Court of the Republic of Lithuania described the private life of an individual as his personal life – meaning, his way of life, marital status, living surroundings, relations with other persons, the views, convictions, habits of the individual, his physical and psychological state, his health, honour,

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<sup>52</sup> *Lietuvos Respublikos civilinis kodeksas (Civil Code of the Republic of Lithuania)*, Official Gazette (2000, no. 74-2262; 200 ), art 2.23, points 1,2,3.

<sup>53</sup> *Ruling of the Constitutional Court of the Republic of Lithuania of October 21, 1999, Case no. 14/98*, Official Gazette (1999, no. 90-2662), section V, paragraph 6.

dignity etc.<sup>54</sup> Thus, Constitutional Court of the Republic of Lithuania expanded and clarified the content of “private life” and specified the elements that are inherent in private life, in other words, the whole set of the elements allows us to form an image of person’s living environment and way of life. And these elements could be easily determined by using UAS.

Lithuanian case law connected with application of article 2.23 of the Civil Code of the Republic of Lithuania is not rich with cases connected to the breaches of privacy committed while using technologies. There are no cases brought under article 2.23 having to do with the illegal use of drones. Most of the cases are related to the illegal use of video surveillance cameras.<sup>55</sup> Analysis of the case law related to the latter issues discloses that the courts of Lithuania tend to apply the principle of proportionality when deciding whether to defend the right to privacy or other legitimate interest (for example, inviolability of property vs. public information) and the courts would defend that other interest only if the defendant proved that the necessity to defend other legitimate interests was of greater value than the breach of privacy<sup>56</sup> (the criterion of causality of a private life restriction). The lack of cases related to the damage caused by the misuse of UAS does not mean that such damage never occurs. On the contrary, it proves that current legal regulation is not effective. The reasons could be several: 1) The use of UAS for collection of personal data is quite new phenomenon, therefore individuals have not yet brought the claims to courts for violation of their privacy.; 2) inappropriateness of norms of Civil Code of the Republic of Lithuania (for example, article 2.23(2) states that breach of the right to privacy is unlawful invasion of person’s dwelling, other premises, private territory; this definition complicates application of the legal norm as details of private life with the help of UAS could be collected without invading the dwelling, other premises or private territory (flying the UAS higher than the private space above the land (article 4.40(2) of the Civil Code of the Republic of Lithuania states that the owner of a land parcel shall enjoy such rights to the space above his parcel as do not contradict the law and as necessary for the intended use of the parcel)); 3) as the requirements of appropriate marking of UAS are not fixed, as well as other technical requirements, allowing to determine flying trajectory, the injured party (natural person) cannot determine neither operator of the UAS (defendant in civil proceedings), nor facts, such as purpose of the data collection, intrusion into private space above the land.

<sup>54</sup> *Ruling of the Constitutional Court of the Republic of Lithuania of December 29, 2004, Case no. 8/02-16/02-25/02-9/03-10/03-11/03-36/03-37/03-06/04-09/04-20/04-26/04-30/04-31/04-32/04-34/04-41/, Official Gazette (2005, no. 1-7).*

<sup>55</sup> *V. A. V. v. L. V., Ruling of the Civil Division of Klaipeda Regional Court (2017, no. 2A-980-730/2017); V. N., Ruling of the Civil Division of Vilnius Regional Court (2017, no. e2A-58-661/2017); D. D., A. D. v. R. D., Ruling of Klaipeda Regional Court (2015, no. 2A-1472-826/2015).*

<sup>56</sup> *Č. S. v. I. L., Ruling of the Supreme Court of the Republic of Lithuania (2015, no. 3K-3-430-415/2015); S. Š., V. Š., Ruling of the Supreme Court of the Republic of Lithuania (2008, no. 3K-7-2/2008).*

As it has been seen, the right to privacy is quite sufficiently regulated at the EU and national levels (except for provisions of Civil code of the Republic of Lithuania), whereas regulation connected with UAS, taking into consideration its specificity, is not satisfactory. Current regulation on the use of UAS is not sufficient for insurance of article 2.23 of the Civil Code of the Republic of Lithuania because direct regulation on the use of UAS is related to the insurance of physical safety only, whereas privacy protection matters are left to the laws issued at the times when the UAS were not widely used.

### 3. LEGAL ASSUMPTIONS REGARDING LIABILITY FOR PRIVACY VIOLATIONS IN LITHUANIA

The European Court of Human Rights in its jurisprudence has stated that “the domestic law must <...>afford appropriate safeguards to prevent any such disclosure as may be inconsistent with the guarantees in Article 8 of the Convention.”<sup>57</sup> Thus, the European Union or national law should not only set the rules on the use of UAS, but also ensure that these rules are complied with and are effective. One of the tools discouraging people from breaching the rules is penalties or threatening duty to compensate for non-pecuniary damage.

Lithuanian national laws provide for three types of liability for the breaches of law related to the privacy and use of UAS: civil, administrative and criminal.

Civil liability for the breaches of one’s right to privacy (in the case of misuse of UAS would arise non-contractual (delictual) civil liability)<sup>58</sup> foreseen in the Civil Code of the Republic of Lithuania, requires proof of the following elements: unlawful actions (for example, breach of article 2.23 of the Civil Code of Republic of Lithuania or any other legal act guaranteeing the right to privacy),<sup>59</sup> causation (only damages related to unlawful actions can be compensated),<sup>60</sup> fault (article 6.248(1) of the Civil Code of Republic of Lithuania states: “Civil liability shall arise only upon the existence of the fault of the obligated person, except in the cases established by laws or a contract when civil liability arises without fault,” but strict liability (liability without the fault) does not exist in cases of breaches of privacy as it is not foreseen in article 2.23 of the Civil Code of the Republic of Lithuania), damage.<sup>61</sup> Thus, as the burden of proof

<sup>57</sup> *Peck v. the United Kingdom*, no. 44647/98, judgment of January 28, 2003, 78 p.

<sup>58</sup> Article 6.245 (4) of the Civil Code of Republic of Lithuania (*supra* note 52) states: “Non-contractual (delictual) liability is a pecuniary obligation which is not related with contractual relations, except in cases where it is established by laws that delictual liability shall also result from damage related with contractual relations.”

<sup>59</sup> *Civil Code of the Republic of Lithuania*, *supra* note 52, art. 6.246.

<sup>60</sup> *Ibid.*, art. 6.247.

<sup>61</sup> *Ibid.*, art. 6.248.



lays on the claimant, the party whose right to privacy had been breached would have to prove all four of the abovementioned elements of civil liability.

Analysing the given example, unlawful actions come out as a breach of article 2.23 of the Civil Code of the Republic of Lithuania. Causation (a link between unlawful actions and the damages) and damages (broken relationship, stress, etc. in terms of money) could also be proven. Meanwhile "fault, as a concept of civil liability, is understood as a subjective (actual) carelessness – the inability of a person to be properly careful, prudent and attentive in a particular situation" or may be expressed by intention.<sup>62</sup> Considering the fact that the film-maker was not careful enough with the recorded material to cut out the details of the third persons' private life, it could be treated that the claimant could theoretically defend her right to privacy by filing a civil action and claiming for damages.

However, the most questionable topic in defence of privacy under civil law norms is the lack of strict liability. If the infringer insisted that his fault in the given situation did not exist as he was not able to foresee the consequences that were caused by filming of the yard and the disclosure of the video (the people in the video were recorded acting in a decent manner, the faces could not be seen), he would probably avoid civil liability. Also, the infringer could insist that he never intended to make the video public but it became public because somebody gained access to his files and spread the video on the internet. Furthermore, the infringer could also assert that there was no invasion into victim's private territory as neither him, nor UAS invaded the victim's private territory, as the space above the land and belonging to the land owner was not physically entered.

Even though theoretically the injured person could call for the violator's civil liability, it does not mean that her claim would succeed, as too many elements of civil liability need to be proven.

Even though the Rules came into force on the first of May, 2014, administrative liability for the violation of these Rules has been established only since the first of June 2017 by the law No. XIII-402 and came into force on the tenth of June 2017. The imposition of a sanction, despite the fact that it was quite late, proves that the use of UAS is a new field that calls for a separate regulation and that the regulation does not always go in step with the relationships that require such regulation. Article 393(2) of the Code of Administrative Offences states that "violation of the rules for the use of unmanned aircrafts imposes a fine of one hundred to three hundred euros."<sup>63</sup>

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<sup>62</sup> Algis Norkūnas, "Kaltė, kaip civilinės atsakomybės pagrindas" (Fault as the Basis of Civil Responsibility), *Jurisprudencija* 28(20) (2002): 120.

<sup>63</sup> *Lietuvos Respublikos administracinių nusižengimų kodeksas (Code of Administrative Offences of the Republic of Lithuania)*, TAR (2015-07-10, no. 2015-11216), art. 393(1).

Administrative liability arises if the person responsible breaches any prohibition or imperative of the Rules (for example, the UAS operator is under influence of alcohol, distance requirements are not met, etc.), whereas civil liability arises if unlawful actions, causation, fault and damages are proven. Administrative liability for the film-maker would not arise if he did not breach any of the requirements set in the Rules (flight height was not higher than 120 meters, the UAS did not approach people, houses, vehicles closer than 50 meters, it did not fly above cities, towns, densely populated areas and open spaces of people's gathering, etc.). Thus, in the given example the operator could not be punishable by administrative procedure.

Section XXIV of the Criminal Code of the Republic of Lithuania sets the crimes related to inviolability of private life. Among the crimes mentioned there is an article 165 criminalizing trespass, which is defined as an illegal, open or secret or deceptively, forcibly or in any other way against the will of the owner or his representatives committed, intrusion into someone's house, flat or other apartment or their affiliations including the secured housing area.

Another crime provided for in Article 167 of the Criminal Code of the Republic of Lithuania is illegal collection of information about a person's private life.

Finally, article 168 of the Criminal code of the Republic of Lithuania criminalizes making available to the public, exploitation, or exploitation for the benefit of third parties information about someone's private life without his consent if this information was received for the accused person's service, profession or during the performance of temporary task, or by committing one of the crimes named above.

Regarding the possibility of the film-maker's criminal liability in the example given, the crimes referred to in articles 165 (trespass), 167 (illegal collection of information), 168 (making available to the public, exploitation or exploitation for the benefit of third parties information about someone's private life without his consent) of the Criminal Code of the Republic of Lithuania would not be applied for several reasons. Firstly, none of these crimes are classified as the crimes for negligent commitment of which the prosecution is allowed. Secondly, in order to arraign on earlier mentioned crime charges, direct intention to commit a crime must be proven.<sup>64</sup>

However, let us change the given example that the film-maker intentionally captured private yard, as he knew the people he was recording and wanted to gather details of the owner's private life. The question arises whether the film-maker can be incriminated with a commitment of trespass and other earlier mentioned crimes.

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<sup>64</sup> G.K., Order of the Criminal Division of Kaunas Regional Court (2015, no. 1A-582-238/2015); R.Š., Order of the Criminal Division of Kaunas Regional Court (2016, no. 1A-144-594/2016).

As previously mentioned, trespass is described as an illegal, open, or secret or deceptively, forcibly or in any other way against the will of the owner or his representatives committed, intrusion into someone's house, flat or other apartment or their affiliations including the secured housing area. Moreover, article 4.40 of the Civil Code of the Republic of Lithuania states that "the owner of a land parcel shall enjoy such rights to the space above his parcel as do not contradict the law and as necessary for the intended use of the parcel."<sup>65</sup> Thus, if the UAS flies higher than is necessary for the intended use of the parcel, we contend that article 165 could not be applied. However, if, in order to gather information, other functions of UAS are used (for example, indoor navigation function) and UAS gets into private territory, the crime could be qualified as a trespass.

Another unclear question: what is the secured housing area described in the article 165 of the Criminal Code of the republic of Lithuania? The Supreme court of the Republic of Lithuania in its rulings has explained that the protected area is a defined area of land or water, specially designed to permanently or temporarily protect material values, and secured by physical, mechanical, special electrical or electronic secured measures.<sup>66</sup> As some authors suggest, defined area means that the secured area is distinguished from other places, "for example marked with poles, fence, etc."<sup>67</sup> However, such explanation is applicable only interpreting the norms, defining theft or robbery. But as regards the crimes connected with privacy breaches, we contend that such a definition would not be applicable, because the secured housing area must be secured in such a way, that the security means clearly demonstrated owner's willingness for privacy. In other words, the subject of the right to privacy, as U.S. case law suggests, must have "a subjective expectation of privacy from all observations of her yard."<sup>68</sup> Thus, if the housing area is transparently fenced or defined only with poles, the subject of the right to privacy cannot be treated as having a reasonable expectation of privacy.

However, remembering the earlier mentioned situation, the film-maker, who intentionally recorded the private territory, could be prosecuted for the commitment of illegal collection of information if all conditions of criminal liability are met (article 167 of the Criminal Code of the Republic of Lithuania).

If the film-maker did not make the video publicly accessible, he could still be prosecuted for commitment of the crimes mentioned as the dispositions of articles

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<sup>65</sup> *Civil Code of the Republic of Lithuania*, supra note 52, art. 4.40.

<sup>66</sup> *Nutarimas 'Dėl teismų praktikos vagystės ir plėšimo baudžiamosiose bylose' (Ruling 'On the Case Law in Criminal Cases on the Theft and Robbery)*, Supreme Court of the Republic of Lithuania, 2005, no. 52.

<sup>67</sup> Andželika Vosyliūtė, "Įsibrovimo į patalpą, saugyklą ar saugomą teritoriją kaip vagystę kvalifikuojančio požymio samprata teisės moksle ir teismų praktikoje" (The concept of trespassing premises, storage or secured territory as elements of aggravated theft under the theory of law and practice), *Teisė* 66(1) (2008): 89.

<sup>68</sup> *California v. Ciraolo*, 476 U.S. 207 (1986).

167, 168 of the Criminal Code of the Republic of Lithuania, as the prosecution of a person for commitment of such crimes does not require the information to become public (making public of such information is only one of the alternative conditions of the disposition of the article 168).

Regarding governmental institutions' (organs of preliminary investigation) right to use UAS for obtaining information, article 160 of the Code of Criminal Procedure of the Republic of Lithuania obliges them to obtain prior the court's warrant with precise indication that it is allowed to record sounds, take photographs or to film.<sup>69</sup> In urgent cases it is allowed to carry out secret surveillance with prior permission of prosecutor or pre-trial investigation officer.<sup>70</sup> However, in such a case within three days the ruling, confirming the necessity of such urgent secret surveillance, of the investigating judge must be received. If not, all information must be destroyed.<sup>71</sup>

One author has said that "the dawn of the age of the drones and the potential it holds for bad as well as good provides a new challenge where the law needs to catch up in a quick and orderly fashion."<sup>72</sup> It seems that Lithuanian legislation is doing exactly that because after realising that the UAS have become a tool of reconnaissance, a new law, setting state border guard officials' right to use violence against UAS appearing in the border area, has come into effect since 1 January 2018.<sup>73</sup> This also confirms the specificity of UAS (that it is an object requiring for a special regulation). However, as has been seen, "while persistent, penetrating, or technologically sophisticated remote sensing by government or police is subject to the warrant requirements <...>, there are no such constraints on civil or commercial remote sensing;"<sup>74</sup> therefore the protection of individuals' privacy in such cases becomes complicated.

## CONCLUSIONS

The question raised at the beginning of this article was whether the regulation described was sufficient, and if yes, was it an obstacle for achieving better public security as it is understood in this article (public security in a broad sense, including socio-economic interests)?

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<sup>69</sup> *Lietuvos Respublikos baudžiamojo proceso kodeksas* (Code of Criminal Procedure of the Republic of Lithuania), Official Gazette (2002, no. 37-1341), art. 160(2).

<sup>70</sup> *Ibid.*, art. 160<sup>1</sup> (1).

<sup>71</sup> *Ibid.*, art. 160<sup>1</sup> (3).

<sup>72</sup> Des Butler, *supra* note 3: 434.

<sup>73</sup> *Valstybės sienos apsaugos tarnybos prie Lietuvos Respublikos vidaus reikalų ministerijos vado įsakymas Nr. 4-544 'Dėl Prievartos prieš bepiločius orlaivius panaudojimo tvarkos aprašo patvirtinimo' (Order of the Chief of State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania 'On the Approval of the Description of the Procedure for the Use of Violence against UAS')*, TAR (2017, no. 2017-19908).

<sup>74</sup> Joseph J. Vacek, "Remote Sensing of Private Data by Drones Is Mostly Unregulated: Reasonable Expectations of Privacy Are at Risk Absent Comprehensive Federal Legislation," *North Dakota Law Review* 90 (2014): 483.

After analysing the situation modelled here and reviewing laws connected with the use of UAS, it may be noted that substantial national and European Union law protection of people's right to privacy from the breaches committed during the use of UAS exists. However, as Lithuania does not have any case law connected with the privacy breaches committed while using UAS, the question arises: what chances does the claimant have to prove the breach of her right to privacy if the information collected is not made public, but the user of UAS collects it for personal unlawful reasons (for example, the claimant sees occasionally flying UAS above her yard and knows that the UAS user collects information about her private life)? The burden to prove the breach of article 2.23 of the Civil Code of the Republic of Lithuania lays on the claimant and if the illegally gathered information is not made public, the claimant would not have much chance of succeeding. Similarly, with criminal liability: the prosecutor would have to prove the UAS user's direct intention to gather information about a person's private life, whereas the suspect could avoid liability by insisting that he was using UAS just for recreational purposes (if there are no proofs on the contrary). The latency of the aforementioned crimes could be explained by the fact that it is difficult for a natural person to identify the UAS's operator, to determine whether he is gathering information of one's private life or committing breaches of other legal requirements of the use of UAS.

Thus, as the misuser of the UAS theoretically could find the ways to avoid both criminal and civil liability, the tool helping to prevent such misuse of UAS could be administrative liability, which, in order to be exercised, does not require proof of the harmful consequences of any breach of the Rules. The person could be punished with administrative penalty only by proving that he has breached the Rules.

However, taking as an example the situation in which a UAS occasionally flies over a private territory, none of the points of the Rules forbid such actions (of course, if 50 meters rule is followed, the UAS is not used in forbidden areas and other conditions named in point 10 of the Rules). Thus, it could be said that the owner of a private territory does not have legal means to protect herself from implied breach of her privacy.

Current regulation as applied in the Republic of Lithuania does not prohibit flying UAS over private territory if it is not located in a town or city, as airspace above private land does not continue to infinity. Thus, in the case of civil remote sensing, privacy protection becomes difficult to implement because of lack of privacy. Hence, it is important to adapt the Rules to prevent possible violation of the right to privacy, which would make it easier to defend people's privacy interests. If the Rules would be adjusted by including a prohibition to fly UAS over secured private residential areas (by clearly defining what "secured area" means), even if they are not located

in cities or towns or densely populated areas, also above places where a big expectation of privacy exists (for example, changing cabins at the beaches) and, accordingly, the penalty for the breach of the Rules would be increased, this would serve for better protection of people's right to privacy and more responsible use of UAS. Of course, inclusion of the main provisions of the LPDL in the Rules is essential too.

Even though the UAS trigger real and clear privacy concerns, at the same time they offer well appreciated benefits. When adjusting new and current laws to the increased popularity of the UAS, the new restrictions on UAV surveillance cannot be tailored narrowly because it is difficult to anticipate possible technical capabilities of the UAS in the future. And even if the UAS make a great contribution to public security, people's right to privacy should not be forgotten and, most importantly, the mechanisms created to defend it must be effective.

As the restrictions of the UAS cannot be too narrow in order not to lose access to the benefits of UAS, the national courts are the ones capable of applying the law in a manner ideally matching the current period, balancing between that time's technological level and the level of people's need for privacy. As the UAS become more popular in Lithuania and more easily accessible to civil users, and if the case law is still silent about privacy issues arising out of the use of the UAS, "we are floating in a state of limbo where privacy threats are real and we don't have proper tools to keep ourselves guarded from them."<sup>75</sup> Thus, attention must be paid to what practical problems and solutions will arise in national case law.

People have an undeniable right to buy and fly UAS. They are used not only by private, but by governmental subjects. Acquiring drones is governed by norms, regulated by legal relations of purchase and sale, but because of specificity of UAS, the acquirer must also undertake certain obligations, observe the rules of its usage, and know the basics of protection of the right to privacy. Correspondingly, the state has a duty to regulate these legal relations in a manner that does not deny the interests of UAS owners and third parties.

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