Drones, Real Estate Video Surveillance, and Neighbourhood Right to Privacy – The Potential Area of Normative Impact from the Perspective of the Polish Law

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Abstract
The use of new technologies covers more and more areas of social life, including securing and protecting property, especially real estate. For these purposes cameras mounted on drones may be used, allowing the possibility to record videos containing an overview of the monitored property (real estate). However, this type of property protection may also be connected with the violation of rights of neighboring property owners which are monitored indirectly. These issues are presented in this paper, where the author discusses, inter alia, what risks are associated with the implementation of neighborhood video surveillance done with drones and its consequences. Based on the indicated research area, the author wonders in particular on the provisions of the constitutional right to privacy and personal rights defined in the private law legislation, including its international dimension connected with ECHR and GDPR. The presentation contains observations made from the point of view of the Polish law, where—as in many other legal jurisdictions—these issues have not yet been resolved legislatively, and where the search for an optimal model for resolving similar problems is still underway. For this reason, the author tries to outline the potential area of normative impact of the phenomenon of real estate monitoring by drones, which may become helpful in the forthcoming legislative projects concerning the normalization of this phenomenon.

Keywords Drones · Neighborhood video surveillance · Real estate video surveillance · Right to privacy · Human rights · Polish law

1 Introduction

Nowadays no one needs to be convinced that modern technologies may be used to protect property and people. Every day we use the benefits of various types of alarms, devices using biometrics, GPS transmitters, monitoring etc. The latter is used by the states, cities,1 various enterprises, but also more and more often by private users. The rapid progress that is made in the field of modern technologies allows for the use of a variety of technological tools for private purposes. In this area, one of the most frequently used means of property protection by new technologies, especially in the context of real estate, is video surveillance (monitoring). It allows events at specific locations to be observed accurately using CCTV cameras. The images from the cameras are sent to a receiving centre (and generally recorded), where the area or object can be tracked. This makes it possible, above all, to detect events that pose a threat or the possibility of damage. Developments in technologies now allow not only static observations (e.g., cameras on buildings) but also dynamic observations. The latter are increasingly often and boldly carried out by drones—unmanned aerial vehicles.2

1 More on the common use of video surveillance in Polish cities. Monitoring in Polish cities and in the eyes of the public.https://panoptikon.org/sites/default/files/publikacje/panoptikon_cctv_seminarium_10-10-2012_2.pdf (2012). Accesses 12 January 2022.

2 Wasilewski K.: Odpowiedzialność operatora BSP za wykonywane loty. In: M. Felinykowski (eds.) Wykorzystanie bezzałogowych platform powietrznych w operacjach na rzecz bezpieczeństwa publicznego, pp. 33. CNBOP-PIB, Józefów (2019); J.Merkisz, Nykaza A.: Perspektywy rozwoju i wykorzystania bezzałogowych statków powietrznych w służbach ratowniczych. Autobusy 6, pp. 293 (2016).
2 The missing legal grounds for drone usage

As indicated above, the issue of drone real estate monitoring is an area of influence of various legal regulations, as well as an area of influence of various factual relations. However, there is no doubt that the very phenomenon of using drones for monitoring is becoming more and more popular, and from the very nature of this phenomenon, on the occasion of real estate, the scope of influence of monitoring encroaches on the property rights of other landowners. As it can be seen, and as it is evident from the observation of practice, drones observing real estate, even if directed at the area of a particular real estate, also affect neighbouring properties. This is the whole problem of this type of monitoring, especially in the context of the already outlined problem of the right to privacy of neighbours of monitored properties.

It should be noted at the outset that in Poland, as in many other countries, despite long-term works and the demands of the legal community, no law on monitoring has been drafted and enacted. This lack has been recognised and several initiatives have emerged to change this, including the Polish Ombudsman and the Polish Supreme Chamber of Control. No additional legislation has emerged to date to address drone use, including on one's own real estate. Therefore, its application is based, on the one hand, on the exercise of a subjective property right by the owner of the real estate, and on the other hand, it is subject to legal limitations protecting others, arising primarily from the constitutional right to privacy, the provisions of the Polish Civil Code, which must be done in the spirit of the ECHR and the GDPR.

Therefore, since there is no statutory prohibition to install and use monitoring, according to many, everyone within private property is entitled to use it, including the use of unmanned aerial vehicles—drones. Such a thesis is based on the Article 64 of the Constitution of the Republic of Poland stating that “Everyone has the right to property, other property rights and the right of inheritance”, expanded by the provisions of the Article 140 of the Polish Civil Code, which content includes the powers of the owner, saying that “within the limits set by statute and the rules of social coexistence, the owner may, to the exclusion of others, use the property

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3 Konert A.: Bezzadgowe statki powietrzne. Nowa era w prawie lotniczym. Zagadnienia cywilnoprawne. pp. XXXI. C.H. Beck, Warszawa (2020); more about that, E. Jasiuk, Mateusz Osiecki, Safe use of unmanned aerial vehicles—the perspective of international and European law [in:] A. Konert, The role of law in the presented presentation model, Warsaw 2021, vol. 81–92.

4 European Convention on Human Rights, https://www.echr.coe.int/documents/convention_eng.pdf (31.01.2022).

5 Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27.04.2016 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) (Official Journal of the EU L of 2016, 119, p. 1).

6 Rzecznik dopomina się o ustawowe uregulowanie monitoringu wizyjnego w szpitalach.https://hip.brpo.gov.pl/pl/content/rzecznik‑dopomina‑si % C4% 99‑o‑ustawowe‑uregulowanie‑monitoringu‑wizyjnego‑w‑szpitalach (2018). Accesses 12 January 2022.

7 The lack of statutory regulation on monitoring was pointed out by the NIK as early as in 2014, indicating that Poland lacks laws that would sufficiently protect citizens’ personal data obtained through monitoring. NIK o miejskim monitoringu wizyjnym (2014), https://www.nik.gov.pl/aktualnosci/nik‑o‑miejskim‑monitoringu‑wizyjnym. html. Accesses 12 January 2022.
in accordance with the socio-economic purpose of his right, in particular to collect benefits and other income from the property”.

These provisions define the basic rights of the owner, and as A. Machnikowska writes, the ownership right is a subjective right shaped by the powers of the owner, which enables him to do with his property everything that is not contrary to the law or his obligations and the limits of the property itself, as set out in the Article 140 of the Polish Civil Code. However, attention should be paid to the fact that the attributes of the ownership right specified in the Article 140 of the Polish Civil Code only delimit the framework of this right and define its essence, however they do not specify the variety of rights arising from the content of this regulation. It should be remembered that ownership is a subjective right allowing for the fullest and at the same time broadest—in the academic circles one can even find the term “almost unlimited”—use of property. In view of the above, it should be assumed that the use of monitoring within the framework of the ownership right to real estate by means of drones is permitted. Although it should be noted that this permission is limited by the rights of third parties. This, in turn, is important for the protection of privacy of these persons because the devices used for monitoring—drones, devices recording and capturing images and/or sound—can violate the right to privacy of third parties, including neighbors of the monitored real estate. In practice, as already indicated, there may be a situation in which drone monitoring used by the real estate owner may cover not only the area belonging to his property but also the area belonging to neighbouring properties which border on the monitored property. This situation, in turn, may lead to a violation of privacy rights and personal rights of neighbors. The missing legal grounds for drone usage do not resolve the problem. Rather, they give rise to the need to seek a standard of protection for the right to privacy and the possible possibilities of interference with that right.

3 The right to privacy in the light of the Polish regulations

For further consideration, it is important to clarify the term right to privacy. It has to be recalled, that the right to privacy is usually a right protected on the constitutional level. The same is in Poland, where the provisos of the Constitution of the Republic of Poland guarantee such protection to citizens. The right to privacy is stipulated in the provision of the Article 47 of the Constitution stating that “Everyone has the right to protection of his private life, family life, dignity and good name and to decide about his personal life”. Complementing the above obligation to respect and protect privacy and the prohibition of interference with this right, is the provision of the Article 51 of the Constitution, containing the informational autonomy.

In the indicated norm two situations have been distinguished and regulated, the first—the right of the individual to legal protection and the second—the right to decide. The first situation is correlated with the obligation of the state to regulate the normative sphere in such a way as to create a specific barrier to the protection of issues related to it, that is, “private life, family life, dignity and good name”. The second situation, in turn, boils down to freedom because it leads to the exclusion of outsiders from the sphere of the individual's personal life, especially in the matter of making “decisions”.

Therefore, what is this constitutional right to privacy? In Poland, the constitutional regulation has not led to the development of a uniform definition of the right to privacy.

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8 Machnikowska A.: Komentarz do art. 140 K.C. In: M. Ząbucki (eds.) Kodeks. Cywilny. Komentarz, pp. 371. C.H. Beck, Warszawa (2019).
9 Jedlecka W.: Jedlecka, Z. problematyki własności zwierząt. In: U. Kalina –Prasnic (eds.) Własność w prawie i gospodarce, pp. 152. E-Wydawnictwo. Prawnicza i Ekonomiczna Biblioteka Informacyjnego, pp. 197-204. C.H. Beck, Warszawa (2017).
10 Zeidler K.: Ograniczenia prawa własności w świetle sporu liberalizmu z komunitaryzmem. Gdańskie Studia Prawnicze t. XXVI, pp. 500 (2016).
11 I wrote more extensively on this topic in, Konwencyjne prawo do prywatności a działanie algorytmów weryfikujących preferencje wyborcze z twarzy. In: D. Jagiello S. Kursa, F. Parente (eds.) Wpływ informatyzacji na system prawa. Wybrane zagadnienia, pp. 173-175. Diffin, Warszawa (2021); The constitutional right to privacy and the operation of algorithms verifying electoral preferences from the face. Iuris Acta 4, (2022). For more on the origins of the right to privacy, Warren S. D., Brandeis L. D.: The Right to Privacy. Harvard Law Review V. IV No 5, pp. 193-220 (1890) https://www.jstor.org/stable/1321160?seq=1#metadata_info_tab_contents. Accesses 12 January 2022; Kakarenko K., Sobczak J., Odpowiedzialność za przestępstwa popełnione w sieci a kwestia prywatności. In: Chałubińska-Jentkiewicz K., Kakarenko K., Sobczak J. (ed.) Prawo do prywatności jako reguła społeczeństwa informacyjnego, pp. 2-3. C.H. Beck, Warszawa (2017).
12 Karpik M.: Konstytucyjne prawo do ochrony prywatności i jego ograniczenie ze względu na bezpieczeństwa państwa. Przykład informacji niejawnych. In: Chałubińska-Jentkiewicz K., Kakarenko K., Sobczak J. (eds.) Prawo do prywatności jako reguła społeczeństwa informacyjnego, pp. 197-204. C. H. Beck, Warszawa (2017).
13 Sarnecki P: Komentarz do art., 47. In: Garlicki L., Zubik M. (eds.) Konstytucja Rzeczypospolitej Polskiej. Komentarz T. III, pp. 248-249, C. H. Beck, Warszawa (2016).
It is identified with the guarantee of freedom, equality, but it is also seen as a tool to protect one’s identity and dignity against discrimination, unauthorized interference in the private sphere of the individual, abuse or reductionism. This lack of uniform definition of the right to privacy results from the fact that privacy is defined in many ways. In a narrow sense it is a state in which the individual decides on the scope and extent of the information that is made available or communicated to others. However, in a broad context, it is a state in which the individual makes concrete decisions concerning his person, excluding the interference of third parties. Hence, in the doctrine we can find definitions that speak about the authority of the individual to decide and control the disclosure of information about themselves.

The considerations presented so far allow to define the subject of privacy protection in various aspects of human life, which include protection of integrity and inviolability of this good in particular through protection of life, health, human dignity, but what is more, this protection also includes the expectation of the individual that without his/her consent other persons will not acquire knowledge of the spheres of activity of the individual, which he/she does not want to disclose to them. The essence of this right consists in the fact that the individual himself determines when, how and to what extent information about him is made available to others. Moreover, the dimension of access to this information is also important. The sphere of private life will thus be covered by circumstances in relation to which the primacy of the individual’s interest over the public interest should be assumed. Consequently, in the case of the right to privacy there is a presumption of primacy of the right of the individual to be left alone over the public interest or the interest of other entities.

On the basis of the foregoing, it can be confidently said that privacy is a good of special constitutional value and the right to privacy can be regarded as a general clause on the basis of which the individual finds protection both in his relations with other individuals and with the state. Privacy is a sphere that should not be exposed to external interference, and the individual himself as a result of his autonomy has the right to set limits on the availability of his personal life to others.

The subjective scope of the right to privacy covers everyone, so it shall concern natural persons—Polish citizens and foreigners, but also, in accordance with the case law of the Supreme Court, legal persons in the field of honour and good name.

It is important to add that the right to privacy is not a right that enjoys absolute constitutional protection. In Article 31(3) of the Constitution, the legislature has set out the conditions under which this right may be restricted. It is important, however, that such limitations may be established only by statute and only when they are necessary in a democratic state of law for the security, public order or protection of the environment, health and public morals or freedoms and rights of other persons, but on the condition that they may not violate the essence of the rights and freedoms.

The above considerations allow to conclude that based on the text of the Constitution of the Republic of Poland, everyone is entitled to have privacy and everyone is entitled to protect it. Therefore, a possible infringement of the right to privacy would occur in a situation where drones used for the monitoring of a real estate would lead to the infringement of the sphere of autonomy of an individual related to private life, family life, dignity or good name of

14 Karpiuk M.: Konstytucyjne..., op. cit., pp. 199; “Ochrona prywatności i autonomii informacyjnej jest konsekwencją ochrony przyrodzonej i niezbędnej godności człowieka (art. 30 Konstytucji), Wyrok TK 30. 07.2014, K 23/11, Dz. U. Z 2014, pos. 1055.
15 Łakomiec K. Prawo do ochrony prywatności w kontekście informacji o stanie zdrowia Autoreferat rozprawy doktorskiej, napisanej pod kierunkiem prof. dr. hab. Marka Zubika, pp. 4. https://www.wpia.uw.edu.pl/uploads/media/5d98c8180784e/autor referat.pdf?v=1. Accesses 12 January 2022.
16 Ruzcicilo J. Prawo do prywatności i ochrona danych osobowych..., op. cit., pp. 153. https://repozitorium.uni.wroc.pl/Content/52920/PDF/09_Jakub_Ruzcicilo.pdf; Sarnecki P.: Komentarz..., op. cit., pp. 248.
17 Badziuniowska-Maslowska K. Wizerunek dziecka w Internecie a zagrożenia prawa do prywatności. In: Chałubińska-Jentkiewicz K., Kakarenko K., Sobczak J. (eds.) Prawo do prywatności..., op. cit., pp. 54.
18 Łakomiec K. Prawo do prywatności..., op. cit., pp. 45.
19 Taczkowska-Olszewska J.: Autonomia informacyjna... op. cit., pp. 45.
20 Rzucidło J.: Prawo do prywatności i ochrona danych osobowych... op. cit., pp. 153. https://repozitorium.uni.wroc.pl/Content/52920/PDF/09_Jakub_Ruzcicilo.pdf; Sarnecki P.: Komentarz..., op. cit., pp. 248.
21 Uliasz J.: Konstytucyjna ochrona prywatności w świetle międzynarodowych standardów, pp. 26. Wydawnictwo Uniwersytetu Rzeszowskiego, Rzeszów (2018).
22 Karpiuk M.: Konstytucyjne... op. cit., pp. 2–3. Wincezorek P.: Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997, pp. 116. Liber, Warszawa (2008).
23 Case SC from 17 July 2008, II CSK 111/08, Legalis 133166; Ruzcicilo J. Prawo do prywatności i ochrona danych osobowych..., op. cit., pp. 160.
24 Florczak-Wątor M.: Komentarz do art. 47 Konstytucji RP. In: Tuleja P. (eds.) Konstytucja Rzeczypospolitej Polskiej, Komentarz, pp. 169–170. Wolters Kluwer, Warszawa (2019).
25 Garlicki L.: Polskie..., op. cit., pp. 120; Karpiuk M.: Prawo do prywatności w warunkach nowych technologii. In: Chałubińska-Jentkiewicz K., Karpiuk M. (eds.) Prawo nowych technologii. Wybrane zagadnienia, pp. 321–322. Wolters Kluwer, Warszawa (2015).
neighbouring entities. For it is the individual himself who has the right to decide how wide a range of private family information he will make available to others. Monitoring of the neighbor with the use of drones, but also without them, will deprive the individual of these rights. It will be the exposing of their life. Therefore, it will deprive individuals of the right to decide for themselves to whom and what private family information to give. In this regard, monitoring of the neighboring real estate may deprive the individual of the possibility of excluding outsiders—the owner of the property where the monitoring is installed from the sphere of personal life of the monitored person. Potentially, therefore, the monitoring of real estate by drones encroaches into the constitutionally protected sphere of the right to privacy.

It is worth noting here that in addition to the constitutional right to privacy, under the Polish law, drones improperly used for monitoring expose the property owner who uses them to civil liability. This liability is primarily related to the possible infringement of personal rights (personal interests) protected under the Article 23 and 24 of the Polish Civil Code. According to the first of these provisions, “Personal interests of a human being, such as, in particular, health, freedom, dignity, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the dwelling, scientific, artistic, inventive and rationalization creativity, remain under the protection of civil law regardless of the protection provided by other laws”. In turn, in Article 24 of the Polish Civil Code it is stated “§ 1. The one whose personal interest is endangered by another’s action may demand that this action be abandoned, unless it is not unlawful. In case of an infringement, he can also demand that the person who committed the infringement performs actions necessary to remove its effects, particularly that he makes a statement of appropriate content and form. On the principles provided for in the Code, he can also demand monetary compensation or payment of an appropriate sum of money to a designated social purpose. § 2 If as a result of violation of a personal interest, a pecuniary damage has been caused, the injured party may demand compensation for it on general principles”.

The quoted reference to personal rights (personal interests) requires an explanation of this term. In legal sciences, personal rights are defined by, on the one hand, their identification with individual values of the emotional universe of the mental state of a human being, and on the other hand, they are defined as intangible values connected with the personality of a human being in the society. At the same time, the catalog mentioned in the Article 23 of the Polish Civil Code is only an exemplary catalog, which means that it is not a closed catalog, and inclusion of a given good in it is determined by three features, i.e., close connection with the subject to which it belongs, non-material value and objective character.

In the case under discussion, however, a possible infringement could relate at least to the two types of interests: freedom and inviolability of the dwelling. Monitoring with the use of drones, by definition, is to monitor, so to give the administrator of the drone the opportunity for continuous observation of the objects or entities. Naturally, on the part of the monitored person it may cause lack of freedom of movement (e.g. lack of freedom of dress for fear of being noticed), as well as arouse anxiety and destroy the sense of security and undisturbed enjoyment of one’s real estate, which this type of property should provide. The judgment from Poland of the Court of Appeal in Krakow of 28 May 2014, in which it was stated that mounting cameras on one’s own property in such a way as to allow monitoring of the neighbor’s property violates the neighbor’s right to privacy and home turf, the violation of which interferes with the provisions of the Polish Civil Code governing the protection of personal interests, can be regarded as a good example. It follows from this that, potentially, the monitoring of real estate by drones encroaches into the sphere protected by the Polish Civil Code, the sphere of personal rights (personal interests).

4 Strasbourg standards

The right to privacy is also protected by international solutions, especially in the field of human rights. Currently, in this area, the most important acts of protection of the right to privacy in Europe is the European Convention on Human Rights, to which Poland is a party. The right to privacy has been regulated in the Article 8 of the Convention. It states in the paragraph 1 that „Everyone has the right to respect to his private and family life, his home and his correspondence “. It can be said with full confidence that this provision is intended to protect the individual against arbitrary actions by public authorities, consequently, it must be assumed that this right is primarily of an individual nature.

The personal scope of this right includes „every person “, which follows from the Article 1 of the Convention, stating

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26 Regan J.: Komentarz do art. 23 K.C.. In: M. Zalucki (eds.) Kodeks. Cywilny… op. cit., pp. 41–43.
27 More on the inviolability of the dwelling in relation to personal goods, Wyrok SN 6 March 2009, dokument Legalis.
28 I ACa 184/14, Monitoring a prywatność sąsiada (2018). https://zarradca.pl/artykuly/monitoring-a-prywatnosc-sasiada. Accessed 31.01.2022.
29 Case Kroon and others vs Holland, 27 October 1994, A. 297-C, par. 31.
30 Keeganvs Ireland, 26 May 1994, A. 290, par. 44.
that, \textit{The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms set forth in the Chapter I of this Convention}. At the same time, the literature often draws attention to an error in the official translation of the Convention. This error is contained in the phrase that the High Contracting Parties shall guarantee to every person, the rights and freedoms contained in the Convention, while in legal sciences it is emphasized that it is not so much about a person as about every person. In this sense, the right to privacy is not limited only to natural persons, and therefore its personal scope is broader than it appears from the official translation.

This does not change the fact, however, that in the first place the subjects of the rights and freedoms guaranteed by the Convention are natural persons, including stateless persons and foreigners under the jurisdiction of a given state. It is worth noting that jurisdiction extends not only to its proper territory, but may also apply to certain actions whose effects are visible outside its proper territory, so that this jurisdiction will, for example, also extend to occupied territories.

Interestingly, in order to determine the circle of entities to which the Conventional catalogue of rights and freedoms is applicable, Article 34 of the Convention, concerning the entities entitled to bring an individual complaint to the European Court of Human Rights (ECtHR), is also helpful. In the light of the provisions of this article, \textit{"the Court may receive complaints from any person, non-governmental organization or group of individuals who considers that they have been the victims of a violation by one of the High Contracting Parties of rights contained in this Convention or its Protocols. The High Contracting Parties undertake not to interfere in any way with the effective exercise of this right"}. Consequently, it must be assumed that this standing is a result of the personal scope of the Convention. It must be supplemented, however, by the fact that legal persons may plead a violation only of those Conventional rights and freedoms which are related to the nature of those entities.

The material scope of the Article 8 of the Convention includes the notions of \textit{private life\textquoteright}, \textit{family life\textquoteright}, \textit{home\textquoteright} and \textit{correspondence\textquoteright}. These notions are relevant to the problem discussed above. Theoretically, this concept is not questionable, but as the ECtHR’s case law shows, it is not always that clear. It has to be recalled, that in relation to the first concept – \textit{private life\textquoteright} – the ECtHR found that it is so broad that it is impossible to define it exhaustively.

However, in principle, it includes not only the right to life, but also, to a certain extent, the right to establish and maintain relationships with others, especially in the emotional sphere, in order to develop and realise one’s own personality. At the core of this concept it is considered a certain sphere of individual autonomy, protected from public and private interference from outside. It also includes certain aspects of an individual’s life such as his or her identity understood as identity, mental and physical integrity, which consists, among others, of reputation, honor, and the collection and sharing of personal data. At the same time, the autonomy mentioned above gives the individual the right to decide about himself—to decide for himself. And not only in small matters, but in all matters concerning the individual, not excluding the right to choose the place and time of death, because the ECtHR in its case law emphasizes that the ability of an individual to decide for oneself includes directing one’s own life and making choices that may be morally and physically harmful or even dangerous, which results from the obligation to respect human dignity and freedom.

The above allows to conclude that, as in the case of the Polish Constitution, the right to privacy under the European Convention may be relevant in assessing the legality of the use of drone video surveillance. In the case of improperly installed neighborhood monitoring, which will allow the administrator to view the daily life of the neighbor, one might be tempted to argue that such monitoring will violate the neighbor’s right to self-determination about the scope of the information that the individual wants to share about himself with others (with the administrator of the drone). The monitoring will expose the individual to the ability to regulate that scope, because usually it is being made by the cameras and recorded, and thus available for playback to the administrator at any time. In addition, the individual monitored by the owner of the neighboring property will be deprived of the right to a kind of freedom of life, a sense of security, which may also lead to a violation of the Article 8 of the Convention. It follows from this that, potentially, the monitoring of real estate by drones encroaches into the sphere protected by the ECHR.

\textsuperscript{31} Garlicki L.: Komentarz do art. 1 ETPCz. In: Garlicki L. (eds.) Konwencja o Ochronie Praw Człowieka i Podstawowych Wołności, Komentarz do art. 1–18, t. I, pp. 34. C. H. Beck, Warszawa (2010).

\textsuperscript{32} Ibidem.

\textsuperscript{33} Uliasz J.: Konstytucyjna… op. cit., pp. 52.

\textsuperscript{34} Ibidem, 52–53.

\textsuperscript{35} Case Costello – Roberts vs United Kingdom 25.03.1993, A. 247-C, par. 36.

\textsuperscript{36} Raport Van Oosterwijck vs Belgium 1.3.1979, B. 36, par. 50.

\textsuperscript{37} Case X. and Y. vs Holland 26.3.1983, A. 91 par. 22.

\textsuperscript{38} Garlicki L.: Komentarz…, op. cit., pp. 493.

\textsuperscript{39} Case Pretty vs United Kingdom, 29.4.2002, Case no 2346/02, par. 14, 62, 65.
5 GDPR and its possible impact

In the background of this problem: the question of the scope of use of monitoring in the context of personal data protection, the popular model of securing data against loss, leakage and unauthorised access, or preventing unauthorised persons from processing the data. This is why the use of real estate monitoring also forces the research to turn to the General Data Protection Regulation. It has to be recalled that within the scope of this act, at least two legal norms remain of interest, i.e., the Article 2(2)(c) and the Article 6 of the GDPR. Article 2(2)(c) of the Regulation says that the Regulation does not apply to the processing of personal data by an individual in the course of a purely personal or domestic activity. This wording of the provision allows one to conclude that the GDPR will not apply to real estate monitoring for security reasons. This thesis is additionally confirmed by the Article 6 of the Regulation, where it says about the lawfulness of personal data processing. According to this provision, the processing of personal data is lawful if at least one of the conditions referred to in the article is met, including, if the processing is necessary for the purposes of legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child—Article 6(f) of the Regulation. The cited provision in the case law is interpreted to mean that insofar as the use of monitoring is intended to protect the legitimate interests of “the controller, which include in particular, (…), the protection of the property, health and life of that controller, as well as of the controller's family,” it is excluded from liability under the GDPR, as indicated by the Court of Justice of the EU, in the judgment of of 11 December 2014, František Ryneš / Úřad, C-212/13.40

Therefore, on the basis of the doctrine and case law so far considered, it can be assumed that the use of drone video surveillance by the owner of the property, in relation to the owner of the neighbouring property, remains exempt from the obligations arising from the GDPR provided that this use is aimed at the already quoted above “protection of the legitimate interests” of the controller, which in particular include, (…),”the protection of the property, health and life of that controller, as well as of his family”. It is therefore possible to defend the view that, for real estate property protection purposes, monitoring in the light of the GDPR is permissible.

6 Few words of conclusion

To recapitulate the above, it can be said that monitoring of real estate performed by drones may violate the right to privacy and personal rights (personal interests) of persons living in neighboring properties. This is the view taken by one of the Polish courts in the judgment of 17 August 2016.41 This court stated that the installation of a monitoring system recording the image of a neighboring property and its owners constitutes a violation of personal goods in the form of the right to image and the right to privacy, which was combined with financial gratification for the injured parties. Similar, but more profound opinions were voiced by the Regional Court in Słupsk42 and the Regional Court in Wrocław,43 which held that infringement of the right to undisturbed mental and emotional peace in one's place of residence may be caused by the lack of certainty whether the installed camera is a real one or just a dummy. On the other hand, recording images of neighbors and private life in nearby premises may be regarded as infringement of personal rights.

It is worth knowing, however, that this is not the only solution to the issue in question. One of the most recent rulings on this issue, the judgment of the Polish Supreme Court of 5 May 2021,44 stated that the mere infringement of the right to privacy does not automatically give the right to financial compensation for harm caused thereby. Thus, it upheld the judgment of the court of second instance indicating that monitoring is so common that it is difficult to say that permanent recording of images from open space by cameras visible at first glance leads to interference in the comfort of life. The Supreme Court noted that the mere fact that a neighbor’s camera also covers a portion of other real estate is not unambiguously prohibited. The important thing is that the monitoring of someone else’s property is not intrusive. If such a monitoring takes place “on the occasion” of monitoring own real estate, it shall not be prohibited. The key issue, according to this point of view, is that the monitoring should not be realized for the sole purpose of watching the neighbors.

With this in mind and with the case law presented above, it should be stated that the use of drones to monitor real estate should be very cautious. This caution is dictated, on the one hand, by the possibility of violation of the constitutional right to privacy, personal rights (personal interests) arising from the private law regulations, and on the other hand, by the international standards. However, regardless

40 C-212/13.
41 Court of Appeal in Warsaw, VI ACa 839/15.
42 I C 331/15.
43 I C 1984/14.
44 I NSNc 156/20.
of the rank of the norm, its violation may usually be connected with compensation for the harm suffered or damages, although as the practice shows the jurisprudence is not uniform on this issue. Nevertheless, due to the increasing number of cases in this area, it may be assumed that the nearest future will lead to the deepening of doubts in this area. Therefore, it is already worth starting a large-scale discussion on the possible need for statutory regulation of the use of drones for monitoring purposes, and the standards indicated above should be taken into account as reference points for future legal regulation in this area. In Poland, as well as in other countries, the issue of drone use will continue to pose new doubts.

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