

Can One Person be Criminally Liable for Photographing another in the UAE?

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Can one person be criminally liable for photographing another person in the UAE? They may be, depending on the circumstances. In this article, we will consider when such a liability may arise.

UAE Federal Decree No. 5 of 2012 regarding the Combating of Cybercrimes ("the Cybercrimes Law") forbids any infringement of the right to privacy. Article 21(2) of the Cybercrimes Law states that photographing others or creating, transferring, disclosing, copying or saving electronic photos of others will constitute an invasion of their right to privacy. The penalty for violating Article 21(2) are significant: imprisonment for a period of at least six months and/or a fine of between 150,000-500,000 AED.

So does simply photographing someone else without his or her consent put one at risk of incurring such serious penalties? The answer to that question turns on the elements that constitute the criminal liability when someone uses their camera to photograph someone else without consent. Are there further external elements that must exist before criminal liability arises or will such criminal liability automatically apply once someone photographs another, irrespective of the circumstances?

A useful case in the Abu Dhabi courts recently shed light on this matter.

Two people were driving their cars in Abu Dhabi. A fight arose between them over right of way at the entrance to a particular road. One person insisted he had right of way, and used his mobile phone camera to photograph the other person in order to record the position of his car on the road pending the arrival of the Abu Dhabi police. The second person ('the Claimant') subsequently filed a criminal complaint against the first ('the Defendant'), including allegations relating to the taking of the photo, on the basis that it constituted an invasion of his right to privacy.

The Court of First Instance considered Article 21(2) and found the Defendant guilty. It ordered him to pay 250,000AED as a fine, confiscated the mobile phone, and ordered that the Defendant be deported from the UAE.

The Defendant appealed. The Court of Appeal amended the judgment of the Court of First Instance, reducing the fine to 50,000 AED and to cancelling both the confiscation and deportation orders.

The Abu Dhabi Public Prosecutor and the Defendant made subsequent appeals to the Federal Supreme Court ("FSC"). The Public Prosecutor asked the FSC to apply Article 21(2) literally and not to reduce the penalty as specified in the judgment of the Court of Appeal. For his part, the Defendant asked the FSC to find that the elements of the crime of invasion of the right of privacy set out in Article 21(2) were not met.

The FSC issued its judgment (judgments 544 & 556 of 2017), in which it explained that criminal liability related to the invasion of the right of privacy, by photographing someone without his or her consent, will not exist, unless the Defendant intentionally took the photo in order to invade the right of privacy of the victim without the latter's consent. The FSC considered that the Defendant photographed the Claimant to evidence the position of the Claimant's car on the road, pending the arrival of the Abu Dhabi Police. The FSC did not find from the surrounding circumstances that the Defendant intended to invade the right of the privacy of the Claimant. Thus, the FSC decided to withhold the judgment issued by the Appeal Court and

accordingly decided that the Defendant was innocent of the alleged crime.

Conclusion

While it is not permissible for anyone to photograph any other person without his or her consent, they ought not to incur criminal liability (and the associated serious penalties) if the criminal court of competent jurisdiction finds that the alleged criminal actor did not intend to invade the privacy of the alleged victim. However, this will depend on the sole discretion of the court, so caution is advised in all cases.

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