DECISION 10/2022 (Department) Athens, 22-02-2022 Prot. No.: 498 The Personal Data Protection Authority met in a composition of the Department via video conference on 02-09-2022 at 10:00, following the invitation of its President , in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Konstantinos Menoudakos, attended, the members Konstantinos Lambrinoudakis as rapporteur and Grigorios Tsolias and the alternate member Nikolaos Livos in place of the regular member Charalambos Anthopoulos, who although he had been legally invited in writing, was absent due to disability . The meeting was attended, by order of the President, by George Roussopoulos, expert scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. Complaint No. C/EIS/2500/12-04-2021 of A and B against their respective brother/son C regarding the installation of a video surveillance system in a residence was submitted to the Authority. According to the complaint, the complainant, who lives on the ground floor of a duplex, has installed cameras, one of them under the balcony of the complainants, with whom he is co-owner (undivided) of the property in question. The aforementioned cameras, as claimed by the complainants, receive image and sound and are connected to a recording device. Also, the control field of the cameras includes areas such as the shared central entrance of the building's stairwell, the building's pilothouse and the property's garden, while the purpose of the processing seems to be the protection of persons and property of the residence. In addition, according to the complaint, a right of opposition has been exercised against the complainant without response. It is further argued that the system has specific technical characteristics, from which it follows that it operates, in violation of the GDPR, as it receives an image from a non-domestic space while none of the conditions of Directive 1/2011 of the Authority are met. The Authority sent an information letter both to the complainant (prot. no. C/EXE/1171/29-04-2021) and to the complainant (prot. no. C/EXE/1179/06-05-2021). With his latest document No. C/EIS/4192/24-06-2021, the complainant submitted a photo of the technical specifications of the cameras of the video surveillance system from which, in combination with the photos of the original complaint, in which bright indicator lights with a specific color, it appears that the system is in operation. The specifications of the devices in question (HIKVISION NETWORK CAMERA Model: DS-2CD2021G1-IDW1) also show that their operation requires the existence of a wired or wireless network for data transmission to a central unit or via the Internet. Due to the location and targeting of the cameras, it appears that their range is highly likely to extend into public areas, and if the built-in audio capability is enabled, this includes public areas. As these elements were sufficient to support that there is processing within the scope of the GDPR, which concerns a video

surveillance system in operation, and that a relevant right of objection has been exercised to which the data controller has not responded, the Authority proceeded to send the No. prot. C/EXE/1612/29-06-2021 document to the complainant for clarifications in relation to the complaint. The complainant responded on 6/8/2021 (document with reference no. C/EIS/5410/25-08-2021) stating that "...as both 2 complainants know very well, but neglected to mention in their complaint, the 4 (all but the 2 complainants), i.e. 2/3 of the tenants, we stood from the beginning and we continue to stand absolutely in favor of the installation and operation of the system in question. Therefore, and based on the relevant directive (and the resulting relevant remarks from you in the previous letters), the installation and operation of the system is legal." With a newer document (with no. prot. C/EXE/1951/27-08-2021) the Authority pointed out to the complainant that it has in the past considered that for the formation of the consent of the tenants, one vote per inhabited (or used) is taken into account affected apartment, referring to opinion 5/20171 (see in particular paragraph number 12) as well as its informative website on video surveillance systems in houses and apartment buildings2. He also pointed out that since the answer shows that there is indeed a video surveillance system in operation, he must respond without delay to the complainants' requests, in accordance with article 21 paragraph 1 of the GDPR. Finally, he requested detailed information and every available document or element that proves the legality of the video surveillance system, taking into account the principle of accountability of article 5 par. 2 of the GDPR, and written information on the following: 1) The number of cameras, the their model and the spaces in which they are installed, attaching relevant photos showing the location of each camera and the space in which it is located. 2) To provide visual material from the monitoring screen of the video surveillance system in which all the areas monitored by each of the cameras are clearly displayed. 3) To determine the number of monitoring/viewing screens of the video surveillance system and the space or spaces in which they are located. 1. number and the locations of information signs as well as to provide a photo showing a posted information sign. Following communications from the complainant, with e-mail messages, in which he claims that, in order to make a decision to install a video surveillance system in a common area, the correct text is the text referred to in Directive 1/2011 "for the vote, each tenant has one vote" and that there is no record, therefore he cannot provide the rights of access and objection, after being informed about the Authority's powers of investigation and following a telephone communication, the complainant provided his views in detail in relation to the complaints (all communications received no .prot. G/EIS/5794/15-09-

2021). The complainant, who provides photographs from the field of capture of the cameras, lists, in summary, the following

information: a) The system consists of three (3) Hikvision DS-2CD2021G1-IDW1 type cameras, placed in a section of the pilot for the exclusive use of the rest tenants (i.e. excluding complainants). There are no video surveillance screens. No sound is recorded and there is no recorder, but the video surveillance system only receives a real-time image and only very occasionally as he himself is connected via a mobile phone to the camera (via the Internet). b) One (1) sign has been placed on the pillar before the entrance to the common area. The person entering the space sees the sign in front of him with the gate to enter, when he is still clearly outside the coverage of the camera. c) The property is a single (without establishment of horizontal ownership) undivided property of the complainants and the complainant. The tenants are six (6): the complainant's family of four who live in one apartment and the two complainants who live in the other. The property, for 4 practical reasons of smooth coexistence of all, has been demarcated, over 20 years, into sections for exclusive use (where others do not enter, pass or stay), and common areas. Premises for exclusive use are two residences, one main use space used primarily as an office (third apartment with office, living room, full bathroom, not mentioned in the complaint, for the exclusive use of the complainant), two auxiliary storage areas, and the entire ground floor level (front yard, back yard, pilothouse, except for the "corridor" between the front door and the central common entrance to the building's central stairwell). Common spaces are only the "corridor" and the central staircase of the building with its wide stairs. The south yard (front and back) and the south pilothouse, where the cameras are installed, are for the exclusive use of the other tenants except the complainants (who all agree to the cameras). Accordingly, the north yard (front and back) and the north pilothouse are for the exclusive use of the complainants. To prove the exclusivity of use, various elements are mentioned, such as the fencing of the pilot house, various constructions and modifications, the condition of the yard and the way it is used. d) In the past there was a video doorbell in the common entrance which broke down beyond repair. The complainants constantly deny the replacement. This causes difficulties for the complainant and a security risk. e) For the installation of the cameras, the provisions of the current legislation were followed, in good faith and with a sincere desire to comply with the law. f) The scope of the legislation includes only facilities where data is processed that is or is to be included in a filing system. Therefore, the facility in question is outside the scope of the GDPR, since there is no recorder, no recording is done, so obviously no archiving is done, nor is it going to be done. g) Cameras 2 and 3 and the right two-thirds of camera 1 5 only cover areas for the exclusive use of the complainant, where complainants do not enter/pass/stay, therefore their privacy is not affected and their consent is not required. Camera 1 covers the common entrance of the building in the left third of the received image. As for this part of the coverage, it replaces

the video doorbell installed from the original construction of the building, and indeed with the same functionality but without sound. Therefore, the left third of the coverage of camera 1 must be treated as, on the one hand, provided for by the regulation of the apartment building, although there is no regulation, on the other hand, as a forced solution to replace the pre-existing video doorbell, given the abusive refusal to maintain the property on the part of the complainants . h) His initial information from the Authority was that legality is governed by the provisions of Directive 1/2011 and the GDPR. The directive in question expressly provides for a decision to be taken with a required majority of 2/3 of the tenants, in which each tenant has one vote. In the context of good administration, for the evaluation of the majority the complainant has followed in good faith the way indicated in article 15 of the directive, namely 2/3 of the tenants. The installation has the required majority based on tenants (4 in favor, 2 against) and also based on apartments (2 in favor, 1 against). i) Before commissioning, repeated meetings were held in the presence of both complainants, during which they were thoroughly informed and all the questions they raised were answered verbally. They may not have agreed (by voting in a minority), but they are fully informed. j) The complainants report that a request was made to update and delete the data recorded and concerning them. No such request had been submitted prior to the complaint. There is no recorder, no recording, so obviously no archiving. There is no data to be delivered to them or to be deleted. k) At the request of the complainant's lawyer to A regarding the distribution process, he was referred to his lawyer, who explained that the complainants set as a condition for the disengagement of the distribution process 6 the non-distribution "disposal of ... everything ». In order to disengage the distribution, it was counter-proposed to sign an agreement under which the camera that the complainants say is watching them on their balcony would be disconnected until the distribution process was fully completed, and they would not object to this process, so that it could proceed with the fastest possible pace. The complainants refused, which the complainant believes proves the sham of the complaint. l) Burglars have already broken into the property twice. The first time during the absence of everyone, with significant material losses and a particularly strong psychological burden from the violation of the hearth. The second time (12/1/2020), the burglars were noticed. In both cases the police were called and arrested. The second invasion was the catalyst for the installation of the system, demonstrating the inadequacy of the existing one. During the period of the second invasion there were repeated cases of invasions in the surrounding buildings. m) Directive 1/2011 (articles 1 par. 1 and 5) provides for the possibility of some limitation of the protection of privacy if the intended purpose weighs more, in case of failure to achieve a majority in favor of the establishment. The very slight limitation of the complainants' privacy cannot be rated as more significant than the "burnt faces

of my children, ironed by burglars" and the supreme legal good of human life is clearly of greater value than the otherwise mild limitation of privacy. from a camera of occasional use without recording/archiving, which, in fact, predated the installation with the video door camera installed from the original construction of the building with the same functionality. At the meeting of the Authority's department on 7/12/2021, both the accused and the complainant were invited and attended via video conference, who, after receiving a deadline, presented their views in relation to the complaint in writing. With his memorandum No. G/EIS/8363/23-12-2021, C sticks to what he had supported in his documents while he supports, in summary, the following: 7 1) The complaint must be rejected and put the case on file, given that the facility does not fall within the scope of the provisions of the GDPR as there is no record and therefore no filing system. The other arguments concern the cases where this argument will not be accepted by the Authority. use 2) The -undisputed in his opinion- of the building should be taken into account and not the actual "notarial" agreed upon for years. The existence or not of a notarial deed establishing horizontal ownership determines the eventual negligence of the co-owners in compliance with e.g. planning requirements, but does not affect the validity of the restrictions given the existence of a private agreement. As long as they are denied access to a certain point, it does not make sense for the complainants to complain that the security system violates their privacy, while they are violating the domestic (exclusive use) space of the complainants. 2a) If the Authority examines on the basis of the property's "notarized" status, it considers that the complaint should be rejected and the case closed, given that it is purely for domestic use, since, as "one thing", the property is not divided in private and public areas and therefore the cameras monitor purely domestic areas. 2b) Otherwise, the complaint must be filed, given that the facility is perfectly legal as it had and has the required majority (however this is calculated, i.e. 2/3 of tenants or 2/3 of apartments). As far as the installation is concerned, there is no question of a majority of co-owners, given that it has been done entirely in an area of exclusive use, all co-owners/users of which agree to the installation, and the practice applied for 20 years in the context of the private use agreement , both by the complainant and the complainants, is to install and post whatever anyone wants in these spaces, without absolutely any consent or consultation with the rest. The complainant is re-attaching photos of the 8 installation areas of the system and the field of view of the three cameras. With their memorandum No. G/EIS/8306/21-12-2021, the complainants stick to what they have already presented before the Authority. They also state that there is an additional risk from possible recording of the material, as it is easy to record on the responsibility of the complainant and their assurance of non-recording is not enough for them. They point out again that the entire property is a single undivided ownership, without constitution and without regulation, of which the two

complainants have a 59.375% full ownership. Therefore, without the approval of the majority of the co-owners, the slightest intervention is not allowed, either for reasons of personal data protection or even for other reasons, by any co-owner and for anything. Pursuant to the applicable building permit, the space alleged by the complainant to have exclusive use is (a) a common pilot and garden area, and (b) the parking in the southern common pilot area corresponds to the southern maisonette apartment of the property with an entrance to 1st floor where the two complainants live, and in fact it is not an entire parking area. This space is jointly owned and shared space, it is not separated and not demarcated for any regulatory regulation by notarial deed. The reference to the existence of a third apartment is not included in any kind of notarial deed, nor does it correspond to what is included in the Building Permit or in any other official ownership document (e.g. declarations in the land register). On the contrary, the space is one of the two total warehouses of the basement level, monitoring the two apartments-maisonettes of the building, and they do not affect the majority of the tenants for approval of the system, the assessment of which, on the one hand, does not exist and on the other hand is absent due to the opposition of the majority of co-owners. the formation of properties as well as without The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who attended without 9 the right to vote and left after the discussion of the case and before the conference and decision-making , after a thorough discussion, IT WAS CONSIDERED IN ACCORDANCE WITH THE LAW 1. Regarding the issue of the use of video surveillance systems for the purpose of protecting persons and property, Directive 1/2011 has been issued, the provisions of which must be applied in conjunction with the new provisions of GDPR and Law 4624/2019. Furthermore, the European Data Protection Board issued guidelines 3/20193 on the processing of personal data through video recording devices. This text provides detailed guidance on how the GDPR applies in relation to the use of cameras for various purposes. 2. Exclusively personal or domestic activity means that which refers to the private field of action of a person or a family, i.e. that which does not fall under their professional and/or commercial activity and does not include the systematic transmission or dissemination of data to third parties, such as when a post is made on the Internet to an unspecified number of persons or publication in newspapers of the collected audio-visual material. In particular, if the field of control of the cameras of a video surveillance system installed in a private house includes only private spaces, then the processing in question is considered a domestic activity (see recital GDPR no. 18 and article 3 par. 2 of Directive 1/2011 of Authority). Relevant is the decision C□212/13 of the CJEU (František Ryneš v Úřad pro ochranu rosnych odáží,) which determined the concept of "exclusively" personal or domestic activity, in the light of Directive 95/46/EU,

meaning the which is also followed in the GDPR. In paragraph 34, it is stated that the application of the provisions of Directive 95/46/EC provides, possibly, the possibility to 3

https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-32019 -processing-personal-data-through-video_en 10 take into account the legitimate interests of the data controller, which consist in particular of protecting the property, health and life of the data controller and his family. 3. Consequently, in a video surveillance system installed in a private house, the taking and processing of images and/or sound is not considered an exclusively personal or domestic activity when the camera's field of control includes non-private spaces (public, shared or spaces belonging to third parties), with the result that the relevant processing falls within the scope of the legislation for the protection of personal data and that its legality is examined in combination with the application of the principles of personal data protection. In the cases of processing through such video surveillance systems, the legal basis that is usually applied is Article 6 paragraph 1 paragraph f of the GDPR "the processing is necessary for the purposes of the legal interests pursued by the controller or a third party, unless against the interests these are overridden by the interest or fundamental rights and freedoms of the data subject which require the protection of personal data, in particular if the data subject is a child". Furthermore, a basic condition for the legality of the processing is the observance of the principle of proportionality, the application of which is specified in articles 6 and 7 of Directive 1/2011 of the Authority, as well as in its Special Part. 4. Regarding the more specific issue of installing a video surveillance system in residential complexes, direction is provided by article 15, in the Special Part of the above Directive. As stated in this article, the installation of a video surveillance system in residential complexes for the safety of common areas and the persons moving in them can only be carried out by decision of the body responsible for the management of the complex (e.g. the General Assembly of apartment building) in accordance with the provisions of the relevant Regulation, and not by any tenant individually, and, if there is the consent of two thirds of the tenants of the apartment building. For this opinion, one vote must be counted per 11 inhabited apartment (or used - not empty - apartment, when it is not used as a residence) as has been clarified by the Authority and confirmed through opinion 5/2017. Responsible for processing the video surveillance system, i.e. competent to decide on the purpose and manner of use of the system, is the association of persons of the co-owners that operates through the G.S. co-owners of the complex and the relevant regulation, where it exists4. 5. With regard to the conditions for placing a camera at the entrance to an apartment solely for the purpose of protecting the persons who live or work in it, as well as the property of the tenants of the apartment, in Opinion No. 5/2017 of the Authority it is specified that the

range of the camera must be limited to the absolutely necessary space in front of the entrance door, taking the least possible image from a shared space (see paragraph 6 of Opinion 5/2017). If the recording of image data is carried out and the range of the camera for technical reasons, in particular due to the location of the entrances of the apartments, cannot be limited to the absolutely necessary space in front of the entrance of the apartment, the prior consent of the tenants of the floor who live in the affected areas is required apartments (one vote per affected apartment), otherwise 2/3 of them (see paragraph 12 of the above opinion). 6. The complainant accepts that the video surveillance system works and that its scope is not limited to strictly private areas. The spaces from which an image is taken are "urban planning" shared. The complainant claims that they are premises for exclusive use (with the exception of a part of an image from a camera which receives an image from a premises which he considers to be shared), but this is not supported by documentary evidence, on the contrary in all documents the premises are shown as shared. 4 With decision 95/2015, the Authority has interpreted the reference in article 15 paragraph of Directive 1/2011 that "The General Assembly of the complex is responsible for processing the video surveillance system" as the G.S. of a residential complex is a body of the association of persons of the co-owners (which usually has no legal personality) 12 Furthermore, it is not the authority of the Authority to examine the ownership status of a space, apart from the legal documents in relation to it. The characterization of an area as exclusive use should be proven before the competent bodies and not to the Authority. 7. The use of the system cannot be considered exclusively a personal/domestic activity as the image capture is not limited exclusively to the premises of a family, but includes common areas. For the application of the GDPR, it is irrelevant whether there is a filing system, as the processing through the video surveillance system is automated (Article 2 para. 1 GDPR). 8. As the spaces are shared, surveillance, assuming it is for the protection of the shared spaces, should be decided by the co-owners. As there is no regulation, there should at least be, by analogy, a majority of 50%+1 based on ownership percentages (the complainant owns about 40%). In fact, the criterion of votes per apartment does not need to be examined, as it concerns the agreement of the tenants, as a criterion that proves the necessity and proportionality of the system. 9. The complainant, as a controller as he has determined the purpose and means of the processing, uses the video surveillance system for the purpose of protecting the persons of his family and property of their residence. Although the complainant does not explicitly mention it, it appears that the legal basis of the establishment is Article 6 paragraph 1 paragraph f of the GDPR. For the application of this legal basis, it must be considered whether the operation of the video surveillance system is necessary for the purposes of the legal interests pursued by the data controller, unless these interests are overridden by the

interest or the fundamental rights and freedoms of third-party data subjects which impose the protection of personal data. The object of protection of persons and property invoked by the complainant can be achieved by other means (eg lighting, alarm, placing a camera only at the entrance to his apartment and indoors). 13 Furthermore, given that the monitored space is shared, its use by the other tenants cannot be excluded, especially as part of the monitored space includes the common entrance of the two apartments. Consequently, the rights of thepersons living in the other apartment of the building, as they may
to be monitored in activities closely related to the private
their life. So, the processing in question cannot be legal, as
article 6 par. 1 of the GDPR is violated. It is pointed out that as for
controller, as an apartment tenant, has a direct application n
opinion 5/2017 of the Authority. Therefore, he could only supervise
his private areas and small part of the entrance of his apartment but
not the main entrance, without agreement with the other tenants.

10. As can be seen from the photos, the information sign is non-permanent
construction. It also does not satisfy the requirements of the Authority's instructions5 and
of ESPD opinion 3/2019. Therefore no
are satisfied
conditions of article 13 of the GDPR in relation to the information that must
to be provided when personal data is collected by
data subjects.

11. The complainants state that they have exercised in a specific way the
right to object to the no. 21 of the GDPR, regarding the processing of
their personal data, requesting the system to be unrooted
security, both with oral communications and with communications of
lawyers of both sides. These communications are not contested, though
the exact content has not been submitted to the Authority. Although it is clear that

there was opposition from the complainants to the operation of the system, no

it appears that a special request to exercise a right has been made.

12. Based on the above, the Authority considers that, in view of its nature and purpose

processing, of the chronic existing disagreement of the two sides, of

of their kinship and the fact that the processing may have

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consequences for a specific few natural persons, more appropriate

measure is the application of Article 58 paragraph 2 paragraph f of the GDPR

corrective power to impose a ban on said processing,

that is, a ban on the operation of a video surveillance system which

receives image from common areas.

13. FOR THESE REASONS

The beginning

It imposes on the controller C a prohibition of the processing

personal data through a video surveillance system

which receives an image from common areas of the property in which

resides his family and the complainants, due to violation of the article

6 par. 1 and article 13 of the GDPR, in relation to what is mentioned in the considerations

9 and 10 hereof, in accordance with article 58 par. 2 item in the GDPR. THE

controller must inform the Authority in writing about the

implementation of the decision within a period of one week from

receiving the present.

The president

The Secretary

George Batzalexis

Irini Papageorgopoulou

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