

Athens, 15-12-2022 Prot. No.: 3302 Decision of the President of the Authority 4/2022 (Single Person Body) The President of the Authority, as a single person body according to articles 17 par. 1 of Law 4624/2019 (Government Gazette A) 137), in the context of the powers provided for in articles 4 par. 3 para. a' and 10 par. 4 of the Authority's Operating Regulations (Government Gazette B'879/25.02.2022) and the powers provided for in article 15 par. 8 of Law 4624/2019 in conjunction with Article 58 para. 2 f of Regulation (EU) 2016/679 (GDPR), examined the case, which is mentioned below in the history of this decision. The Authority took into account the following: 1. With the no. prot. C/EIS/7808/08-06-2022 complaint to the Authority of A against B and C, the complainant complains about a violation of the provisions of the personal data protection legislation. In particular, according to the complaint, the defendants had installed surveillance cameras in the pilot of the apartment building, without the consent of the co-owners. According to the nos. prot. C/EIS/8324/27-06-2022 additional documents of the complainant the facility in question 1 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) the the issue of the installation of a video surveillance system was carried out following the consent of the other co-owners, except the complainant, at the General Assembly of the apartment building which took place on 12.06.2017 and in which these co-owners stated that they wish to have access to the surveillance system of the cameras. Subsequently, on 04.06.2022, the co-owners of the apartment building, other than the complainants, requested through a notice to the management company, the removal of the cameras installed by the complainants, as they were not given the desired access to the surveillance system of the cameras. The above-mentioned complainants requested the convening of a General Assembly through their extrajudicial statement to discuss the video surveillance system again. During this new General Assembly held on 21.06.2022, it was decided to remove the system. The Authority, following its document numbered C/EX/1818/14-07-2022, in which it requested from the complainants clarifications on the complaint, received in response numbered C/EIS/9252/01 -08-2022 document, whereby the complainants allege that there is a single camera that is mounted on the pilot of the apartment building. According to the reply, the video surveillance system had been installed with the consent of all the owners except the complainant at the General Assembly of the apartment building held on 12.06.2017. The stay of the video surveillance system was also approved at the General Meetings held on 01.07.2019 and 19.03.2022 on the condition of access to the surveillance system of the cameras by the other co-owners. In said answering document, the complainants claim that they had never been denied access to the surveillance system of the cameras, but the other co-owners did not want to gain access because the camera was not wireless and needed technical support, the cost of which they asked to be borne by the 2 2. 3. 1. 2. 3. complainants. Finally, as

the dispute between the remaining co-owners and the complainants intensified, a new vote was held on 21.06.2022 and it was decided to remove the cameras. Subsequently, the President of the Authority, as a one-person body, examined the above-mentioned memoranda submitted by the complainant and the complainants. CONSIDERED IN ACCORDANCE WITH THE LAW Regarding the issue of the use of video surveillance systems for the purpose of protecting persons and goods, Directive 1/2011 of the Authority has been issued, the provisions of which must be applied in conjunction with the new provisions of the General Data Protection Regulation ( GDPR) and of Law 4624/2019. The image of a person which is collected through the use of a video surveillance system constitutes personal data, to the extent that the possibility of identifying the specific natural person<sup>1</sup> is provided directly or indirectly, while the capture or recording of the image which is stored and maintained in a continuous video recording mechanism , such as e.g. on system hard drive, constitutes automated data processing<sup>2</sup>. The installation and operation of video surveillance systems with the capture or recording of images and/or sound through the collection, preservation, storage, access and transmission of personal data, even from a public space<sup>3</sup>, constitute, as individual acts of processing, interference with the individual rights of respect for of private life according to art. 9 of 1 CJEU C-212/13 judgment Rynes para. 22, CJEU C-345/17 judgment Sergejs Buivids para. 31, CJEU C-708/18 judgment TK v. M5A para. 35. 2 CJEU Rynes para. 23, 25 , Sergejs Buivids para. 34, TC para. 34 3 ECtHR Vukota-Bojic v Switzerland, 61838/10, 18.10.2016, § 52 ff., Lopez Ribalda v Spain (GC), 1874/13 & 8567/13, 17.10. 2019, §§ 89, 93, Antovic & Mirkovic v Montenegro, 70838/13, 28.11.2017, § 42, Uzun v. Germany, 35623/05, 2.9.2010, §46, Peck v UK, 44647/98, 28.01.2003, §59 3 4. 5. of the Constitution, 7 ECHR<sup>4</sup> and 8 ECHR as well as the protection of personal data under art. . 9A of the Constitution, 8 ESDA and 8 XTHDEE<sup>5</sup>. The installation and operation of the relevant video surveillance system is legal, as long as, first of all, the conditions of articles 5 (general principles) and 6 (legal basis) GDPR are met cumulatively. The European Data Protection Board issued guidelines 3/2019<sup>6</sup> on the processing of personal data through video capture devices. This text provides detailed guidance on how the GDPR applies in relation to the use of cameras for various purposes. Furthermore, the provisions of Directive 1/2011 of the Authority regarding the issue of the use of video surveillance systems for the purpose of protecting persons and goods must be taken into account in conjunction with the above provisions of the GDPR. The relevant obligation to prove legality rests with the data controller in application of the principle of accountability in the context of compliance and documentation, which must take place before the installation and operation of the system (see also Decision 43/2019 of Authority). By exclusively personal or domestic activity is meant 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 have as its purpose or result the systematic transmission or dissemination of data to third parties<sup>7</sup>, as happens in the case where the collected audio-visual material is posted on the internet or published in newspapers or the material is presented to competent authorities. In particular, since the field of control of the cameras of a video surveillance system installed in a private house includes spaces only<sup>4</sup> DIE Digital Rights Ireland para. 29<sup>5</sup> DIE Digital Rights Ireland para. 38<sup>6</sup> See Guidelines no. 3/2019 ESPD on processing of personal data through video devices p. 7. 7 CJEU C-345/17 Sergejs Buivids decision of 14-02-2019 para. 43<sup>4</sup> issue and more specifically private ones, then the processing in question is considered a domestic activity (see no. 18 recital GDPR and article 3 par. 2 of Directive 1/2011 of the Authority). On the contrary, it is not considered an exclusively personal or domestic activity to capture and process images or sound with a video surveillance system installed in a private home, when the field of control of the camera includes external public or shared spaces or spaces belonging to the properties of others, in which case the principles of personal data protection are applied according to the jurisprudence of the Court of the European Union.<sup>8</sup> Regarding the installation of a video surveillance system in residential complexes, guidance is provided by article 15 in the Special Part of the aforementioned no. 1/2011 of the Authority's 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 an agreement of two thirds of the tenants of the apartment building (for this opinion one vote is counted per inhabited apartment). Responsible for processing the video surveillance 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 exists<sup>9</sup>. In particular, as stated in article 15, par. 4 of the said no. 1/2011 Directive of the Authority, installation of a camera by an individual owner or tenant<sup>6</sup>. 7. 8 CJEU C-212/13 Frantisek Rynes decision of 11-12-2014 par. 13, 33<sup>9</sup> With decision 95/2015 the Authority has interpreted the reference to article 15 paragraph of Directive 1/2011 that "Responsible for processing the video surveillance system is the General Assembly of the complex" as the G.S. of a residential complex is an instrument of the association of co-owners (which usually does not have legal personality)

in a shared parking area of the apartment building or the building for the personal vehicle surveillance is permitted under the following conditions: a) To be provided for in the regulation of the apartment building or to have a co-decision of the tenants obtained as defined in paragraph 1 of the article thereof, b) That there is no video surveillance system in the premises parking installed on behalf of the apartment building, c) The camera to focuses only on the monitored vehicle and d) The concerned owner or tenant to place at his own expense a relevant clearly visible notice sign in a prominent place in the parking area.

Therefore, in cases of installation of a video surveillance system by private in a shared space, such as the pilot of an apartment building, where it cannot block the use by the other tenants, the use of the system excessively offends the rights of persons moving in the space him, as activities may be closely monitored connected to their personal lives. So, without the conditions that mentioned above (of article 15 par. 4 of Directive 1/2011 of the Authority) the due to processing is not legal, as article 6 par. 1 of it is violated GDPR.

In this case, as can be seen from the information in the file, h controversial camera that oversees space in the pilot of the apartment building had settled for of complained of, while its establishment had been accepted by Geniki Meeting of the apartment building in various assemblies. Responsible processing for the system in question were jointly the complainants, the

who fully determined the end and the means while acting, primarily, for their own protection. By decision taken during its General Assembly 21.06.2022, the remaining co-owners withdrew their consent, not accepting now the infringement of their personal data from its operation camera. Further, the complainants despite the obligation of accountability which the purpose of protecting the car

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burdens them according to article 5 par. 2 GDPR they failed to prove the

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video surveillance, but on the contrary from their memorandum it appears that

the decision of the General Assembly of the apartment building for the immediate

removal of the cameras, the video surveillance system still

exists. Therefore, its legitimacy cannot now be established

operation of the system, as none of them can be applied

legal bases of article 6 para. of the GDPR, and in particular para. 1 in the said

article, as the interests of the complainants do not prevail over them

interests and the fundamental rights and freedoms of others

co-owners.

The defendants in their pleadings refer to private disputes that they have with the complainant, but the relevant allegations elude her authority of the Authority and in any case do not cover the obligation accountability and legitimacy for its installation and operation video surveillance system and, however, the possible existence of a legitimate purpose does not may remedy the violation of the principles of article 6 GDPR and to make the processing legal, in accordance with what is mentioned in no. 4 consideration of the present.

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11. Based on the above, the Authority considers that there is a case to exercise the according to article 58 par. 2 subsection f of the GDPR and article 15 par. 4 para. c of Law 4624/2019 its corrective powers in relation to those established violations and to impose the ban on the complainants processing through the video surveillance system. This decision must to be executed within fifteen (15) days from the receipt of this, the and those who are notified have an obligation to inform the Authority accordingly.

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FOR THOSE REASONS

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Orders, in accordance with Article 58 paragraph 2 paragraph f of the GDPR and Article 15 paragraph 4 c. of Law 4624/2019, B and C within fifteen (15) days from receipt of this to:

- i. To stop processing through the camera that oversees its pilot apartment building,
- ii. To inform the Authority about the realization of the above actions.

THE PRESIDENT

Konstantinos Menudakos

THE SECRETARY

Irini Papageorgopoulou