

Litigation Chamber

Decision on the merits 187/2022 of December 21

2022

File number: DOS-2020-01650

Subject: Complaint relating to the installation of surveillance cameras as part of a
neighborhood dispute

The Litigation Chamber of

the Data Protection Authority, made up of

Mr. Hielke Hijmans, Chairman, and Mr. Yves Pouillet and Mr. Christophe

Boeraeve, members, resuming the matter in this composition;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 relating to
the protection of natural persons with regard to the processing of personal data

personal data and on the free movement of such data, and repealing Directive 95/46/EC (Regulation
general on data protection), hereinafter GDPR;

Having regard to the Law of 3 December 2017 establishing the Data Protection Authority, (hereinafter
ACL);

Having regard to the Law of March 21, 2007 regulating the installation and use of surveillance cameras (hereafter
after the Cameras Act);

Having regard to the Rules of Procedure as approved by the House of Representatives on
December 20, 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

Made the following decision regarding:

The complainant :

Mr. X, Hereinafter "the complainant"

The defendants:

Mr Y1 and Mrs Y2,

Decision on the merits 187/2022 - 2/17

Represented by their counsel, Maître Marjorie Detourbe, lawyer, whose firm is established at 7130 Binche, rue Marie de Hungary, 15.

Hereinafter “the defendants”

I. Object of the complaint and procedural feedback

1.

On April 1, 2020, the complainant filed a complaint with the Data Protection Authority. data (APD). His complaint relates to the placement of cameras by the defendants.

2.

The plaintiff and the defendants are neighbours. The plaintiff alleges the placement by the defendants of exterior cameras filming in particular the fence between their two properties respectively established [...] and this, since February 3, 2020. More specifically, the complainant points to 3 cameras that he sees from his property and which, according to him, are directed towards his. One of them was filming the side passage from her property to above the hedge (today a palisade).

3.

The complainant indicates that he called the local police on February 4, 2020 to verify the conformity of this installation. He indicates in the terms of his complaint that the police did not minutes of this visit. During the hearing held on April 8 2022 before the Litigation Chamber (point 14 below), the plaintiff specified that only a screenshot of what the disputed camera was filming was shown to him by the police, screenshot on which its property was apparent and therefore filmed. THE defendants report that following this intervention, the disputed camera has been reoriented (point 14 below).

4.

On March 2, 2020, the plaintiff wrote to the defendants and asked them to be informed “of the date of approval of the declaration of commissioning as well as the elements constituents of their installation as set out in this mandatory declaration and prior to the commissioning of this equipment. He also indicates that he wants to exercise his right to consult the recorded images and keep a screenshot. Finally, he invites the defendants to redirect or even move the cameras installed to reduce the field of vision thereof to what is permitted, excluding any part of its property.

5.

The plaintiff indicates that this letter remained unanswered by the defendants.

6. The complainant's complaint was declared admissible on April 29, 2020 by the Service de Première Line (SPL) of the APD and transmitted to the Litigation Chamber.

7.

During its meeting of July 16, 2020, the Litigation Chamber decides that under article 95.1, 1° and article 98 of the LCA, the complaint can be dealt with on the merits.

Decision on the merits 187/2022 - 3/17

8.

On the same date, the parties are invited to present their arguments in the form conclusions within the deadlines set by the Litigation Chamber on the basis of articles 98 and 99 of the ACL , i.e. for August 26, 2020 (submissions in response) and October 8 2020 (submissions in reply) for the defendants on the one hand and for September 16 2020 for the complainant (submissions in response) on the other hand.

9.

The same day, the complainant immediately informed the Litigation Chamber that "he there is no visible modification of the disputed installation except that it is still indeed in service, always in the same configuration since its location offers

few possibilities of reorienting the angle of view elsewhere than on my property ". On December 15, 2020, the complainant inquired about the state of the investigation of his complaint and confirms the status quo of the situation in relation to the cameras placed by the defendants.

10. On January 14, 2021, noting that it did not have proof of the sending of the invitation to conclude addressed to the defendants at the same time as to the complainant (point 8 above), the Litigation Chamber grants, in doubt and for the purposes of respecting the rights of the defence, a final deadline for the defendants to put forward their arguments until February 10, 2021.

11.

On February 10, 2021, counsel for the defendants sent the Litigation Chamber a note written by its customers which explains the context in which the conflict related to the installation of cameras by the defendants intervenes. It appears from this note that the parties are in neighborhood dispute for many years for various reasons such as displacement of boundary stakes delimiting the properties, opposition to a project of renovation, the lack of maintenance of the trees located along the fence separating the land, the deterioration of this fence and the plaintiff's misrepresentations as to the attitude of the defendants. Some of these disputes have been submitted to arbitration by the judge of competent peace.

12. According to this letter, the defendants also request to be heard by the Litigation Chamber.

13. On February 14, 2022, the Litigation Chamber invites the parties to appear at the hearing set for April 8, 2022.

14. From the hearing of April 8, 2022, the following results:

- As for the complainant: he confirms the content of his complaint denouncing the placement of 3 cameras unduly directed towards his property and also denounces the absence of

pictogram visible from the street. It also emerges from his presentation that, as the already underlined the defendants in their note communicated to the Litigation Chamber on February 10, 2021 (point 11), this conflict related to the cameras is an extension of several disputes existing between itself and its neighbours.

Decision on the merits 187/2022 - 4/17

- As for the defendants: they state that they placed 61 cameras in total. Four cameras are located at each corner of the house so as to film the shed, the garden path, the terrace, ..., i.e. the places where the defendant goes outside his house.

The defendants' stated objective is to film their property and not that of their neighbor.

The defendants repeat that the installation of the cameras is part of the context of the existing neighborhood disturbances with the complainant and aim in this respect to dissuade this last of any invective, attitude and malicious remarks towards the defendant in particular. These cameras are also meant to ensure the security of their property.

Indeed, many thefts regularly take place in the district, facilitated by the proximity the fields ; all

the properties neighboring those of the defendants having been burglarized with the exception of that of the defendants thanks, in all likelihood according to the latter, to the protection by the cameras.

Defendants say the cameras were reported to police competent. On the other hand, they mention that there is no processing register.

The defendants add that only one of the 4 cameras could have posed a problem for the time but that the orientation of this one was modified following the passage of the police (Item 3). They show photos attesting to the reorientation of the camera judged contentious (photo of April 6, 2020 after the passage of the police).

As for the lack of response to the complainant's letter of March 2, 2020 (point 4), the defendants acknowledge that they have not responded. Of the

when this mail was

immediately following the intervention of the police services (point 3) and that following

this intervention, the disputed camera filming the lateral side had been reoriented without

that no further remarks were made by the police, the defendants

thought that with everything now in order, it was not/no longer necessary for them to react to the

Complainant's letter.

As for the pictograms, the defendants specify that two pictograms are installed

to the front windows of the property without being, as claimed by the complainant, visible from

public roads. The defendants say they are ready to move the said pictograms, to

reorient the cameras and block their orientation so that they do not film the

property of the plaintiff if such were to be the decision of the Litigation Chamber.

15. The parties did not make any observations with regard to the minutes of the hearing which

been communicated.

1 Two intelligent cameras are intended to be able to certify the delivery of parcels. They are not the subject of the complaint.

Decision on the merits 187/2022 - 5/17

II. Reasons for decision

2.1. As for the jurisdiction of the Litigation Chamber and the applicability of the GDPR and the

Camera law²

16. Section 4.1. first paragraph of the LCA provides that “the Data Protection Authority

is responsible for monitoring compliance with the fundamental principles of data protection

personal data within the framework of this law and laws containing

provisions relating to the protection of the processing of personal data”.

17. The explanatory memorandum to the LCA clearly specified the interpretation to be given to Article 4

LCA and this in the following terms: “Art. 4: The Data Protection Authority is

competent to carry out the missions and mandates to monitor compliance with the principles

fundamentals of protection of personal data as established in the

Regulation 2016/679. The Data Protection Authority acts with regard to the regulations which contain provisions relating to the processing of personal data of personal character such as, for example, the law establishing a national register, the law relating to the crossroads bank for social security, the law relating to the crossroads bank companies, etc. (...)”³. The Cameras Act is also part of this legislation.

18. The Court of Justice of the European Union (CJEU) has previously confirmed that the taking of images of people (by surveillance cameras) came under the notion of “personal data” within the meaning of the standards of European law in terms of data protection⁴. Surveillance using video recordings of people is an automated processing of personal data within the meaning of Article 2.1. of the GDPR⁵. Data processing in this context must therefore benefit from the GDPR protection.

19. The (surveillance) cameras which are the subject of the complaint were installed by the defendants on their private property. As the Litigation Chamber there

previously underlined, “for the application of the GDPR, it can be emphasized that the installation of surveillance cameras on a private domain and the use of these security cameras

² See. decision 138/2022 of the Litigation Chamber: <https://www.autoriteprotectiondonnees.be/publications/decision-as-to-fund-n-138-2022.pdf>

³ Explanatory memorandum to the Law of 3 December 2017 establishing the Data Protection Authority (LCA - APD), House of Representatives, DOC 54 2648/001, page 13 under article 4. See. e.g. House Decision 48/2021 Litigation on the application of article 4 LCA.

⁴ CJEU judgment of 11 December 2014, František Ryneš c. Úřad pro ochranu osobních údajů, C-212/13, ECLI:EU:C:2014:242;

(hereinafter: the Ryneš Appeal Judgement), para. 22.

5 Compar. the analysis in Ryneš of the replaced legal standard *mutatis mutandis*, para. 25.

6 See. *infra* point X: A private domain is a "closed place not accessible to the public" within the meaning of article 2, 3° of the Cameras Law.

The article is stated as follows: "closed place not accessible to the public: any building or place delimited by an enclosure, intended solely for the use of habitual users".

Decision on the merits 187/2022 - 6/17

surveillance filming people does not, by definition, mean that it is an activity

"strictly personal or household" within the meaning of article 2.2.c) of the GDPR". There

Chambre Litigation recalls here that the processing of data carried out for the purposes

strictly personal or domestic are indeed excluded from the scope

GDPR material.

20. In its Guidelines 03/2019⁷ relating to the processing of personal data

personnel by video devices, the European Data Protection Board

(EDPS) specifies that this "exemption in the context of a domestic activity" must be

read restrictively in the context of video surveillance. As a result,

as held by the CJEU, it must "be interpreted as referring only to

activities which are part of the private or family life of individuals (...)".

21. When the video surveillance system covers, for example, the public space or the

private domain of other people, even partially, and that it thus exceeds the sphere

privacy of persons who process data through this system, such processing

do not constitute "processing carried out exclusively for personal or

domestic"⁸ within the meaning of Article 2.2. c) of the aforementioned GDPR. By doing so, it is

It is indeed possible to produce images of natural persons and to identify them.⁹

22. In this case, the processing of data called into question by the plaintiff resulting from

the use by the defendants of (surveillance) cameras filming the property of the

complainant, the Litigation Chamber is empowered to exercise its jurisdiction and to rule on the alleged facts.

23.

It appears from the statements of the defendants that the disputed cameras (i.e. 3 of the 4 cameras placed at each corner of the defendants' property) are in particular intended to preserve the security of their property against theft.

24. As such, they are, in addition to the GDPR, subject to the specific provisions of the Law cameras whose scope (article 3, 1°) specifies that it applies to the installation and the use of surveillance cameras - in the places referred to in Article 2 - with the aim of purpose of preventing, observing or detecting offenses against persons or goods. With regard to the place concerned, the cameras are installed in a closed place not accessible to the public (defined as "any building or place delimited by an enclosure intended solely for the use of habitual users") within the meaning of article 2, 3° of the Camera law.

7 https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_201903_video_devices_en.pdf

8 Compar. with Ryneš Judgment, para. 32.

9 Compar. CJEU judgment of 24 November 2011, Asociación Nacional de Establecimientos Financieros de Credito en Federación

de Comercio Electrónico y Marketing Directo c. Administración des Estado, C-468-9/10, ECLI:EU:C:2011:777 (hereinafter: the judgment

National Association), para. 35.

Decision on the merits 187/2022 - 7/17

25. The purpose of protecting oneself from attitudes deemed inappropriate, invective or other insulting remarks from his neighbours, does not strictly speaking fall under the regime of the Law cameras since it is not, strictly speaking always, a question of preventing or detect violations. A broad conception of the protection of persons could

encompass such a purpose; a narrower meaning based on the notion of “offence”

which refers to criminal law would exclude it and would consider more than the placement of

Such cameras are intended to provide evidence in the context of civil actions. Nevertheless,

since the disputed cameras pursue in any event a purpose of

prevention against theft, the Cameras Act unquestionably applies.

26. The legal assessment that the Litigation Chamber will carry out will therefore be made

in the first place in the light of the provisions of the GDPR. In this respect, the question arises as to whether

to what extent the processing of personal data was lawful,

in accordance with, among other things, Articles 5 and 6 of the GDPR.

27. Moreover, as has just been demonstrated, the Cameras Law and the royal decrees which

supplement¹⁰ also impose additional obligations which are relevant

for several aspects of the data processing in this case. Bedroom

Litigation will also appreciate the respect. The Litigation Chamber emphasizes

however that the application of the GDPR, as a regulation of the European Union,

takes precedence over the aforementioned national legislation¹¹.

28. Given the nature of the place (qualified as just recalled as a “closed place not

accessible to the public”), Article 7 of the Cameras Law must more particularly be

respected. The Litigation Chamber recalls the content below:

- The controller notifies the decision to install one or more security cameras

surveillance in a closed place not accessible to the public to the police services. He does it at

no later than the day before the day of commissioning of the surveillance camera(s).

-

The controller keeps a register of processing activities

images from surveillance cameras implemented under his responsibility, unless he

is a natural person who installs and uses a surveillance camera at

personal or household purposes - which is not the case here as demonstrated

10 Royal Decree of 8 May 2018 relating to declarations of installation and use of surveillance cameras and the register surveillance camera image processing activities, M.B., May 23, 2018; Royal Decree of 10 February 2018 defining how to report the existence of camera surveillance, M.B., 21 February 2008; Royal Decree of 6 December 2018 determining the places where the data controller can direct his surveillance cameras towards the perimeter surrounding the location directly, keep images from surveillance cameras for three months and provide real-time access to images to police services, M.B., December 18, 2018.

11 See among others the CJEU judgment of 5 February 1963, NV Algemene Transport- en Expeditie Onderneming van Gend & Loos c.

Nederlandse Administratie der Belastingen, C-26-62, ECLI:EU:C:1963:1; CJEU, Judgment of July 15, 1964, Flaminio Costa v. E.N.E.L., C-6-64, ECLI:EU:C:1964:66; with regard to the legal protection of citizens on the basis of Union law and the principles of 'direct action' and 'primacy', see C. BARNARD, The Substantive Law of the EU: The Four Freedoms, Oxford (5th ed.), 2016, 17.

-
-
-
-
-
-

Decision on the merits 187/2022 - 8/17

at points 19-22 - inside a private dwelling. This register is presented in a written form, electronic or otherwise.

The data controller affixes at the entrance to the closed place not accessible to the public, a pictogram indicating the existence of camera surveillance. This pictogram is not affixed for the surveillance camera(s) installed and used by a natural person for personal or household purposes, inside a dwelling private which, as just mentioned, is not the case here.

The controller ensures that the surveillance camera(s) are not directed specifically to a place for which it does not process the data itself. In case of surveillance of an entrance to a closed place not accessible to the public, located opposite an open place or a closed place accessible to the public, the surveillance camera(s) is or are oriented in such a way as to limit the taking of images of this place to its strict minimum.

The viewing of these images in real time is only permitted for the purpose of allowing immediate intervention in the event of an infringement, damage, incivility or breach of public order.

The recording of images is only authorized for the purpose of gathering evidence of incivility, facts constituting an offense or generating damage, to seek and to identify the authors of the facts, the disturbers of public order, the witnesses or the victims. If these images cannot contribute to providing proof of an infringement, damage or incivility or cannot make it possible to identify an author of the facts, a disturber of public order, a witness or a victim, they cannot be stored for more than a month.

Anyone filmed has a right of access to the images. To this end, it addresses a requests the data controller, in accordance with the regulations relating to the protection of natural persons with regard to the processing of personal data personal (Article 15 of the GDPR). This request shall contain sufficient information detailed information to allow precise location of the images concerned.

The controller retains the images subject to the access request the time required to process it, without the retention period not exceeds the authorized deadlines (Articles 5, § 4, paragraph 5, 6, § 3, paragraph 3, 7, § 3, paragraph 3, and 7/3, § 4, paragraph 2, as the case of the Cameras Act). When the person filmed can claim the right to obtain a copy in accordance with Article 15(3) of the GDPR, the

controller may respond to the request for access by having the person filmed the images where he appears, without providing him with a copy of the data, in order to guarantee: 1° the rights and freedoms of others, as provided for in Article 15, paragraph 4, of the GDPR or 2° public security or the prevention and detection of criminal offences, as well as the investigation and prosecution thereof or the execution of penalties criminal justice, including protection against threats to public safety and prevention of such threats, pursuant to Article 23, paragraph 1, c) and d), of the GDPR.

2.2.

Regarding compliance with Articles 5 and 6 of the GDPR

29. A video-surveillance system such as that set up via the disputed cameras of the defendants falling under the provisions of the GDPR, the resulting data processing must always comply with the principles set out in its Article 5.

2.2.1. Article 5. 1 a) of the GDPR – principle of “lawfulness, fairness and transparency”

2.2.1. a) Principle of legality

30. The basic principle of Article 5.1.a) of the GDPR is that personal data can only be processed lawfully. This means that one of the bases of legality as listed in article 6.1. of the GDPR must be the basis for the processing of data (principle of legality).

31. The Litigation Division notes that in this case, the defendants declare that they are carrying out the processing of data via cameras for the achievement of personal interests, either the preservation of the security of their property and to guard against undesirable attitudes of the complainant. It is therefore up to the Litigation Chamber to verify whether the requirements of the basis of Article 6.1.f) of the GDPR are complied with. Section 6.1. (f) in effect authorizes the person responsible (in this case the defendants) to operate, subject to compliance with all the

other provisions of the applicable GDPR, “processing necessary for the purposes of legitimate interests which it pursues or which are pursued by a third party, unless the interests or fundamental rights and freedoms of the data subject prevail which require the protection of personal data, in particular when the person concerned is a child”.

32. According to the CJEU¹², this verification comprises 3 stages, the controller must demonstrate that:

¹² See also *Asociación Nacional* judgment, 24 November 2011, C-468/10.

Decision on the merits 187/2022 - 10/17

-
-
-

the interest(s) it pursues through the processing may be recognized as

legitimate (purpose test);

the processing envisaged is necessary for the realization of this or these interests (test of necessity);

the weighting of this or these interests in relation to the interests, freedoms and rights fundamentals of the persons concerned leans in favor of the person responsible for treatment or third party (weighting test).

As for the finality test

33. According to recital 47 of the GDPR, “the existence of a legitimate interest should be carefully assessed, including to determine whether a person data subject can reasonably expect, at the time and in the context of the collection personal data, that these are subject to processing at a given end”.

34. In this case, the defendants installed cameras as private persons and thus

already mentioned, describe that the placement of these cameras is intended to preserve the security of their property against theft and to deter their neighbour, the plaintiff, from inappropriate behaviors.

35. The European Data Protection Board (hereafter EDPS) has previously indicated that break-ins, vandalism and theft were examples of situations that can justify video surveillance as well as the protection of its integrity

13. In the present case, it is established for the Litigation Division that the processing of data for the purposes pursued by the defendants is based on legitimate interests.

As to the necessity test

36. The CJEU has pointed out in the context of camera surveillance systems that the condition of necessity should be considered in conjunction with the principle of “minimizing data” devoted to article 5.1.c) of the GDPR under the terms of which personal data personnel must be adequate, relevant and limited to what is necessary for the regard to the purposes for which they are processed. Section 7.2. paragraph 7 of the Act cameras contextualizes this obligation by requiring that the controller ensures that the surveillance camera(s) is (are) not directed specifically to a place for which he does not process the data himself.

37. The defendants do not dispute that at the material time, part of the property of the complainant was filmed by one of the cameras and that following the intervention of the services 13 EDPS Guidelines 3/2019 already cited, para. 1.

14 Asociación Nacional judgment, 24 November 2011, C-468/10, para. 48.

Decision on the merits 187/2022 - 11/17

policy, it has been reoriented (points 3 and 14). Such a situation therefore did not meet not the principle of minimization. The fact of filming (permanently) the garden (or a part of it) and (part of) the property of the plaintiff, neighbor of the defendants, cannot be considered neither "relevant" nor "necessary" to safeguard the aforementioned legitimate interests

of the defendants.

38. Admittedly, the camera has since been reoriented and the Litigation Chamber will take this into account.

in the assessment of the just sanction imposed in the present case. If such should not be

case, the Litigation Chamber also invites the defendants to direct

permanent the other cameras so as not to film the Complainant's property.

39. As to the question of whether the placement of 4 cameras is indeed necessary

to the achievement of the legitimate interests of the defendants, the Litigation Chamber is not

able to decide this question in the present case, for lack of sufficient information. She returns

therefore the defendants to the principle of "accountability" provided for in Articles 5.2. and 24 of

GDPR. It is their responsibility, throughout the duration of the data processing

(images) operated by their cameras, to be able to demonstrate the compliance of these

ci to the GDPR, including therefore with regard to the proportionality of the placement of the number of

cameras. The more these are numerous, the more numerous are also the treatments of

data made and the greater the potential intrusion into the privacy of the complainant.

The Litigation Chamber thus reminds the defendants, without this invitation not

constitutes a corrective measure or a sanction provided for in section 100 of the ACL, at their

obligations and thus to assess at regular intervals the relevance of maintaining as many

cameras, without prejudice to the requirement that they be permanently

oriented in such a way as not to film the plaintiff's property but exclusively the

their.

As for the weighting test

40. Even if the result of the above necessity test is sufficient to establish that the treatment of

personal data was in this case unlawful, one of the conditions (necessity test) of

Article 6.1.f) of the GDPR not being fulfilled, the Litigation Chamber also examines

whether the fundamental rights and freedoms of the persons concerned (either of the complainant in

case) prevail or not over the legitimate interests of the defendants.

41. This weighting depends on the specific circumstances of the specific case and the rights of the complainant concerned under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union relating to the protection of privacy and the protection of data¹⁵. In this sense, it is necessary to take into account the seriousness of the possible violation of rights and freedoms of the complainant as an essential element of the analysis¹⁶. In this regard, the

¹⁵ Asociación Nacional judgment, 24 November 2011, C-468/10; by. 52; EDPS Guidelines 3/2019, para. 32-35.

¹⁶ Asociación Nacional judgment, 24 November 2011, C-468/10, para. 56.

Decision on the merits 187/2022 - 12/17

Chambre Litieuse is of the opinion that the (permanent) recording of images of private property of neighbors is a serious violation of their rights and freedoms fundamentals. This is all the more the case when another data processing less invasive has proved possible, namely by orienting the camera in such a way that it only films defendants' property (which by their own admission is their sole purpose) excluding that of the plaintiff. The Litigation Chamber also points out that the persons concerned cannot objectively expect a camera to be placed in this way, so as to film (permanently) part of their private domain even though the declared purpose of placing the camera(s) is to secure the property of their neighbors to the exclusion of their own. The Litigation Chamber concludes that the disputed processing was not foreseeable for the complainant.

42. In conclusion, in this case there is a violation of Article 6.1.f) of the GDPR since the disputed camera a, before its reorientation following the intervention of the police (point 3), unlawfully processed images containing personal data (this which the defendants implicitly recognize by having modified the said orientation).

Even if the defendants pursue a legitimate interest within the meaning of this article 6.1.f) of the GDPR, the concrete processing complained of was not necessary for the realization of this Complainant's interest and fundamental rights and freedoms prevailed over that interest.

2.2.1. b) Principles of loyalty and transparency

43. The processing of personal data must also be fair (Article 5.1. a)

of the GDPR - principle of loyalty).

44. Finally, the purposes of the processing must be clear, as must the manner

whose data is processed (Article 5.1. a) - principle of transparency).

45. Pursuant to these principles, Article 8 of the Cameras Law prohibits any hidden use

of surveillance cameras: "Is considered as hidden use, any use

surveillance cameras that has not been previously authorized by the person filmed.

Entering a place where a pictogram indicates the existence of surveillance

by cameras is worth prior authorization".

46. As has been recalled, Article 7.2., paragraph 6 of the Cameras Law provides that the person responsible

of the treatment affixes a pictogram at the entrance of the closed place not accessible to the public

indicating the existence of camera surveillance. The pictogram therefore plays a role

informative and is mandatory for the transparency of data processing

personal. Its importance is fundamental and it must not only be placed,

but even more, placed in such a way that the people filmed are able to

take notice before entering the field filmed by said camera.

17 Regarding these 'objective expectations', see EDPS Guidelines 3/2019, para. 36.

Decision on the merits 187/2022 - 13/17

47. The Cameras Act provides for a uniform model of pictogram so that the person

concerned always clearly knows that it is being filmed. Article 3 of the Royal Decree of 10

February 2008 defining how to report the existence of camera surveillance

defines the requirements that this pictogram must meet. Thus the pictogram

must be affixed at the entrance to the closed place not accessible to the public. On this pictogram

must include certain information such as, in particular, the identity of the

data controller. In this way, the person concerned has directly

access to information relating to the processing and to the data controller.

48. In this case, the plaintiff does not denounce the absence of a pictogram or the absence of mandatory mentions¹⁸ but the fact that it is not sufficiently visible from the street, either before entering the defendants' property. These, for their part, indicate that they are ready to move this pictogram. The Litigation Chamber takes note of this and refers to points 60 and following relating to corrective measures and sanctions. Mistake sufficient evidence, it is not in a position to assess whether there is a breach as to the place of placement of pictograms.

2.2.2. Article 5, paragraph 1(c). GDPR – data minimization principle

49. According to the principle of data minimization provided for in Article 5.1.c) of the GDPR, personal data processed must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. It results that said data can only be processed if the purpose of the processing does not can reasonably be achieved by other means.

50. On this point, the Litigation Division refers to the demonstration it made to the points 36-37 above to find a violation of Article 5.1.c) of the GDPR: data not necessary for the pursuit of the purpose pursued by the defendants have in effect been processed.

2.3.

As to the lack of response from the defendants to the complainant's letter of March 2, 2020

51. Section 12.3. of the GDPR states that "the controller shall provide the data subject concerned information on the measures taken following a request made in application of Articles 15 to 22, as soon as possible and in any case within a one month from receipt of the request. If necessary, this period can be extended by two months, given the complexity and the number of requests. THE

¹⁸ The Litigation Chamber adds that Article 14 of the GDPR specifies the information that must be provided by the

data controller

Decision on the merits 187/2022 - 14/17

controller informs the data subject of this extension and of the

reasons for the postponement within one month of receipt of the request".

52. In the present case, the defendants do not dispute that they did not respond to the letter of March 2

2020 of the complainant under which the latter requested in particular to access the

filmed data and to obtain a copy (Article 15 of the GDPR) (point 4).

53. As mentioned in the Statement of Facts, the Respondents state that in view of the

assurances received as to the conformity of the new orientation of the disputed camera

and the absence of remarks for the surplus on the part of the police services, they believed in

in good faith that it was no longer necessary for them to reply to said letter (point 14).

54. This argument cannot be accepted by the Litigation Division. In fact, the exceptions

in Article 12.3 provided for in Article 12.5. of the GDPR do not apply in casu. It is not

indeed there is no question of a manifestly unfounded or excessive request on the part of the

complainant. The Litigation Division may however hear that, given the context, the

defendants might think they were no longer required to respond. There have been none the less

breach of Article 12.3. of the GDPR. The Litigation Chamber will however hold

context in assessing the appropriate sanction.

2.4.

As for the absence of a processing register

55. Article 30 of the GDPR provides that each controller maintains a register of the

processing activities carried out under its responsibility. This register includes all

the following information: a) the name and contact details of the controller

(and, where applicable, those of the joint responsible party, the representative and the delegate for the

data protection), b) the purposes of the processing, c) a description of the categories

data subjects and categories of personal data, d) the

categories of recipients to whom the personal data are or have been communicated, including recipients in third countries or organizations international, e) where applicable, transfers of data to a third country or to a international organization including the identification of this third country or this international organization and, in the case of transfers referred to in Article 49.1. second paragraph, the documents attesting to the existence of appropriate safeguards, f) insofar as possible, the deadlines for erasing the different categories of data and g) as far as possible, a general description of the security measures technical and organizational referred to in Article 32.1. of the GDPR¹⁹.

¹⁹ Commission for the Protection of Privacy, Recommendation 06/2017 of 14 June 2017 relating to the register of activities processing (article 30 of the GDPR):

https://www.autoriteprotectiondonnees.be/sites/privacycommission/files/documents/recommandation_06_2017.pdf

From 2017, i.e. during the period between the entry into force of the GDPR and its entry into force, the Commission de la Privacy Protection has published a recommendation explaining how the register should be completed.

Decision on the merits 187/2022 - 15/17

56. Section 30.5. of the GDPR provides for an exemption from registration provided that the processing operations concerned are not likely to entail a risk for the rights and freedoms of the persons concerned. The Litigation Chamber has already indicated more before the processing of images by surveillance cameras involved such risks (item 41). The exception provided for in Article 30.5. of the GDPR is therefore not applicable in the species²⁰.

57. Section 7.2. paragraph 5 of the Cameras Act also provides for an obligation to register specific to image processing by cameras. The exception in case of processing images made for strictly personal or domestic purposes can not find more to apply here. The content of the register is defined by the Royal Decree of 8 May 2018 relating the declarations of installation and use of surveillance cameras and the register

of surveillance camera image processing activities already mentioned. 21.

58. In the present case, the defendants acknowledge that they do not have such a register.

59.

There is therefore a breach on their part of Article 30 of the GDPR and Article 7.2. paragraph 5 of the Cameras Act.

III. Corrective measures and sanctions

60. Under Article 100 of the LCA, the Litigation Chamber has the power to:

1° dismiss the complaint without follow-up;

2° order the dismissal;

3° order a suspension of the pronouncement;

4° propose a transaction;

(5) issue warnings or reprimands;

6° order to comply with requests from the data subject to exercise his or her rights;

7° order that the person concerned be informed of the security problem;

8° order the freezing, limitation or temporary or permanent prohibition of processing;

9° order the processing to be brought into conformity;

10° order the rectification, restriction or erasure of the data and the notification of these to the recipients of the data;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

13° to impose administrative fines;

14° order the suspension of cross-border data flows to another State or a international body;

20 WORKING PARTY 29 POSITION PAPER on the derogations from the obligation to maintain records of processing activities

pursuant to Article 30(5) GDPR: <https://ec.europa.eu/newsroom/article29/items/624045>

21 Litigation Division, Decision on the merits 16/2020.

Decision on the merits 187/2022 - 16/17

15° forward the file to the public prosecutor's office in Brussels, who informs it of the follow-up data on file;

16° decide on a case-by-case basis to publish its decisions on the website of the Protection Authority Datas.

61. On the basis of the documents in the file, the Litigation Division finds that there is a violation of Articles 6.1.f), 5.1.c) and 12.3. of the GDPR as well as a breach of GDPR Article 30 and Article 7.2. paragraph 5 of the Cameras Act.

62. With regard to the breach of Article 6.1.f) and Article 5.1.c) of the GDPR, the Chamber Litigation issues a reprimand to the defendants on the basis of Article 100, 5° of the ACL for the past breach accompanied by a compliance order based on of article 100, 9° of the aimed at permanently redirecting, if such should not still be the case, the 4 cameras so as not to film the plaintiff's property.

63. Regarding the placement of pictograms, the Litigation Chamber addresses also to the defendants a compliance order on the basis of article 100, 9° of the LCA, enjoining the latter, if this should not yet be the case, to move the pictograms in such a way that they are visible from the public highway.

64. Regarding the breach of Article 12.3. of the GDPR, the Litigation Chamber addresses to the defendants a warning on the basis of article 100, 5° of the LCA, drawing their attention to their obligation under this provision.

65. Regarding the breach of Article 30 of the GDPR and Article 7.2. paragraph 5 of the Cameras Act, the Litigation Chamber also issues an order for the compliance to the defendants on the basis of article 100, 9° of the LCA.

66. In general, the operative part of the decision takes up the methods of communication

compliance to the Litigation Chamber.

IV. Publication and communication of the decision

67. Given the importance of transparency with regard to the decision-making process and the decisions of the Litigation Chamber, this decision will be published on the website of ODA. However, it is not necessary for this purpose that the identification data of the parties are directly mentioned.

Decision on the merits 187/2022 - 17/17

FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority (APD) decides, after deliberation:

- to issue a reprimand to the defendants for breaches of Articles 6.1 f) and 5.1.c) of the GDPR, pursuant to Article 100, 5° of the LCA;
- to issue a warning to the defendants as to the need to comply with Article 12.3. of the GDPR, pursuant to Article 100, 5° of the LCA;
- to order the defendants to bring the processing into conformity on the basis of article 100, 9° of the LCA and this within the period of 60 days from the notification of the this decision, aimed at:
 - o Permanently reorient the 4 cameras placed at the corners of their property in such a way that only it is filmed to the exclusion of that of the plaintiff
 - o Move the required pictograms so that they are visible from public roads
 - o Establish a register of processing activities in accordance with the requirements of GDPR Article 30 and Article 7.2. paragraph 5 of the Cameras Act.
- to order the defendants to inform the Data Protection Authority by e-mail (Litigation Division) of the follow-up given to this decision, within the same period,

via the e-mail address litigationchamber@apd-gba.be.

In accordance with Article 108, § 1 of the LCA, an appeal against this decision may be lodged, within thirty days of its notification, to the Court of Markets (court d'appel de Bruxelles), with the Data Protection Authority (DPA) as a party defendant.

Such an appeal may be introduced by means of an interlocutory request which must contain the information listed in article 1034ter of the Judicial Code. The interlocutory motion must be filed with the registry of the Market Court in accordance with article 1034quinquies of C. jud.2, or via the e-Deposit information system of the Ministry of Justice (article 32ter of the C. jud.).

(Sé).Hielke Hijmans

President of the Litigation Chamber