

Athens, 07-22-2022 Prot. No.: 1894/22-07-2022 DECISION 34/2022 The Personal Data Protection Authority met as a Department on Monday 07-04-2022 at the invitation of its President, in order to examine the case referred to in the history of the present. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Constantinos Menoudakos, and the alternate members Demosthenes Vougioukas, as rapporteur, and Maria Psalla, in place of the regular members Konstantinos Lambrinoudakis and Grigorios Tsolia, who, despite being legally summoned in writing, did not attend due to obstruction. The meeting was attended by Leonidas Roussos, as assistant rapporteur and by order of the President, Irini Papageorgopoulou as Secretary, an employee of the Authority's administrative affairs department. Authority took into account the following: With the complaint No. C/EIS/7371/27-10-2020, A complained about the installation and operation of a video surveillance system by B in the apartment building located on the street ... to X without the consent of all owners. From the complaint it appears that it is a video surveillance system installed by another apartment co-owner, the current manager, in a block of flats and more specifically outside the building near the entrance as well as in a pilot parking area for the purpose of protecting people and goods of the block, as well as the surveillance of the complainant's personal vehicle. As reported, in the month of May 2019, the complainant's partner asked the complainant and other roommates to sign a "draft paper circulated door-to-door" if they wished to be placed in the common area Kifisias St. 1-3, 11523 Athens, Tel.: 210-6475600, Fax: 210-6475628, [contact@dpa.gr](mailto:contact@dpa.gr), [www.dpa.gr](http://www.dpa.gr) -1- of pilot cameras. The complainant consented by signing on the condition that the conditions stipulated by the applicable law are met. However, in the month of June 2019, the complainant installed the above system, without taking a relevant decision from the General Assembly of the apartment building and placed the control unit inside her apartment, while she refuses to remove the system despite the complainant's repeated verbal admonitions and despite the out-of-court invitation he sent her on 10-16-2020, responding with her own out-of-court notice, from 10-19-2020, that the cameras are on her premises and that in order to remove them, he himself must call an extraordinary general meeting . The said extra-judicial statement of the complainant also describes an incident of his car being vandalized with corrosive oils, after which he asked the complainant for the recorded footage from the camera, which the latter refused to provide claiming that the cameras were not working. The above two, on both sides, out-of-court statements are attached to the complaint. According to the complainant's extra-judicial statement, she has collected 70% of the signatures of the tenants of the apartment building since July 2019, including the complainant, while in the last six months the complainant has been acting abusively and contrary to harmonious coexistence of the owners and contrary to the regulation, such as placing cat food in the

basement of the apartment building, an act about which she was informed during the General Assembly in September of the same year and about which there is a continuous confrontation with the complainant, and which according to the complainant is the reason for the complainant's opposition to the operation of the system in question. Subsequently, the Authority, with document number C/EXE/529/29-01-2021, invited the complainant to provide explanations regarding the complaint. As the document in question was not received, the Authority forwarded it with its document number C/EXE/1937/25-08-2021 to AT X for service. Following the relevant service, as well as after a relevant telephone communication from the Authority, the complainant with no. prot. C/EIS/7685/23-11-2021 its response forwarded to the Authority the above extrajudicial invitation-statement for and against the complainant. Taking into account the above answer, with the original number C/EXE/2770/06-12-

2021 document, the Authority informed the complainant about the current legal framework and asked her if there is a decision of the General Assembly for the installation of the system, as well as if the conditions for installing the camera that focuses on her -2- personal vehicle are met, informing her that in case the above is not observed, the installation is illegal and the video surveillance system must be removed or modified. The complainant repeated with the original number G/EIS/8390/24-12-2021 her answer regarding the pre-existing "dispute" with the complainant regarding the cat food that the latter places in the communal area of the apartment block, as and stated the consent of the owner of the parking space to which her own parking space adjoins and which is used by the "guest" complainant. Finally, he added that the recorder is located in the basement of the apartment building, and that in a general meeting it was decided, apart from the complainant, that until the other co-owners/tenants can afford to install cameras, the existing ones should remain as they are, and that if the complainant returns 70% of the residents' signatures, she will immediately remove the camera that monitors the entrance to the apartment building. With its document No. C/EXE/423/15-02-2022, the Authority requested the complainant to provide the minutes of the General Assembly in which it was decided to install the system in question, as well as to send it a sample image from the installed system, within a deadline. After the period had passed, the Authority contacted the complainant by phone, who told her that she was not going to deal with the case again and did not intend to respond to the Authority's latest document. He also informed that the complainant falsely stated the above regarding the General Assembly, where it was decided to remove the cameras, as illegally installed, as well as about the owner of the side parking space, who had not been informed and agreed to the installation of a divider, something which is also prohibited by urban planning. With the supplementary document No.

G/EIS/2558/21-02-2022, the complainant stated that the recorder is not located in the basement of the apartment building, according to the statement of a professional photographer who photographed the area without verifying its existence, while attaching the written declaration-certification as well as relevant photos. With documents No. C/EXE/113{5,6}/17-05-2022, the Authority called the complainant and the complainant before it at its meeting on Wednesday 25-05-2022, to provide further clarifications and to present their views thoroughly. Both attended and supported what they had previously stated in writing. -3- Besides, it became known that by decision of the General Assembly a new video surveillance system was installed in the common areas of the pilot house on behalf of the apartment building, while with the same decision it was decided to remove the complained system. The complainant removed the entrance camera, but refuses to remove the camera monitoring the parking space. Both were given a deadline to submit their pleadings, which they did with documents No. C/EIS/7736/06-06-2022 and C/EIS/8172/21-06-2022. In her memorandum, the complainant cites an incident of damage ("destruction") of her car in her parking area, with paints, which are still present on the floor, according to the photos she provided, which scared her from using the vehicle in question space, paying rent for the underground parking space that belongs to her children. It also states the accommodation of a third party during the incident of damage to the complainant's car, whose car was also affected by the same damage (corrosive oils). However, he did not give him a piece of material either, as the system was not in operation, as he claims. He also claims that the system's recorder is in the basement, providing relevant photos. Finally, he attaches the signatures he had collected for the installation of the system, where thirteen names and corresponding signatures appear on a paper entitled "For cameras on the ground floor" as well as the minutes of the General Assembly that decided to install the new system and remove it complainant. Accordingly, the complainant states in his memorandum that of the 13 names with the signatures above, two are invalid as tenants, to whom the apartment building regulation does not give the right to vote, and that one of the two has been living in the apartment building since the year 2021, while the other signature was also obtained at a later time in order to ensure the percentage of 2/3 of the apartments defined by legislation, on a total of 18 apartments. The monitoring screen is located in the complainant's apartment, while the complainant and her partner receive an image from the system and on their mobile phone, while even the recorder should be in a common area and not in a private one. As of 04-22-22, the apartment building has installed five cameras, which cover all the common areas and parking spaces "point by point". Finally, he adds that the complainant has not used the parking space in the pilothouse for a decade, renting it, and that the owner of the adjacent parking space where his car is parked does not

consent to the operation of a private camera. -4- The Authority, after examining all the elements of the file and referring to those distributed during the hearing, after hearing the rapporteur and the clarifications of the assistant rapporteur and after a thorough discussion, DECIDED IN ACCORDANCE WITH THE LAW 1. According to art. 4 pc. 7 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data and for the free movement of such data (hereinafter, the Regulation), which is in force since May 25, 2018, as controller is defined as "the natural or legal person, public authority, agency or other entity that, alone or jointly with others, determines the purposes and manner of processing personal data". 2. Regarding the issue of the use of video surveillance systems for the purpose of protecting persons and property, Directive 1/2011 applies, the provisions of which must be applied in conjunction with the new provisions of the GDPR and Law 4624/2019. . This applies in particular to the obligations of the controller included in chapter C' thereof (articles 10 to 13 of Directive 1/2011). For example, controllers no longer have an obligation to notify the Authority of the processing, but must ensure that the enhanced rights provided for by the GDPR are met. 3. The European Data Protection Board has issued guidelines No. 3/2019, regarding 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. 4. 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 have as its purpose or result the systematic transmission or dissemination of data to third parties, as happens in the case that the collected audio-visual material is posted on the internet or published in newspapers. 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). However, even if the video surveillance system is installed in a private home, it is not considered an exclusively personal or domestic activity to capture and process images or -5- sound when the field of control of the camera includes external public or shared spaces, in which case the principles apply protection of personal data. In cases of processing through such video surveillance systems, the legal basis that is usually applied is Article 6 para. 1 f) of the GDPR "the processing is necessary for the purposes of the legal interests pursued by the controller or a third party, unless these interests prevail 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". Therefore, a basic condition for the legality of the processing is the observance of the principle of proportionality, as specified in articles 6 and 7 of Directive 1/2011 of the

Authority, as well as in its Special Part. 5. As for the more specific issue of the installation of a video surveillance system in residential complexes, Article 15, in the Special Part of the above Directive, applies. 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), and not by any tenant individually, in accordance with the provisions of the relevant Regulation and, if there is the consent of two thirds of the tenants of the apartment building (one vote per tenant). The General Assembly (GA) of the complex is responsible for processing the video surveillance system. The Authority has ruled with decision 95/2015 (available on its website) that, in accordance with the interpretation of this provision, as the G.S. of a housing complex is an organ of the co-owners' association (which usually does not have legal personality), the controller is the co-owners' association that operates through the G.S. co-owners of the complex and the existing relevant regulation. It is also noted in the same article, among other things, that the cameras of the video surveillance system may not control access to private apartments, as well as that the control unit may not be located in an apartment but must be installed in a shared area with controlled access . According to par. 4 of the above article, the installation of a camera by an individual owner or tenant in a shared parking area of the apartment building or building for the surveillance of a personal vehicle is allowed under the following conditions: 6. -6- a) To be provided for in the Regulation of the apartment building or that there is a co-decision of the tenants taken as defined in paragraph 1 of this article. b) There should be no video surveillance system in the parking lots installed on behalf of the apartment building. c) The camera should only focus on the monitored vehicle. d) The interested owner or tenant to place at his own expense a relevant clearly visible information sign in a prominent place in the parking area 7. According to Decision 134/2015 of the Authority, in the event that the apartment building wishes to install a camera in order to protect the common areas areas, such as the entrance, then this should be done in accordance with what is mentioned in the above point of reasoning. If the co-owners wish through their General Assembly and with a co-decision of two thirds of the tenants, they can assign the processing of the video surveillance system to an individual owner. This owner is not a third party but the competent co-owner (therefore also co-responsible for the processing) according to the definition of Law 2472/1997 article 2, sec. g). The relevant assignment must be reflected in writing in a decision of the General Assembly. while it goes without saying that the co-owner bears correspondingly the obligations to maintain the confidentiality and security of the processing of Article 10 of Law 2472/1997 and the other obligations of Directive 1/2011. 8. In the case in question: a) The complainant installed a video

surveillance system to protect the common areas of a residential complex as well as the persons who circulate in them, without a decision of the competent management body of the complex in accordance with the provisions of the relevant regulation.

The complainant had gathered a set of signatures of the tenants which, however, cannot replace the obligation to take a relevant decision, in violation of article 1 par. 1 of Directive 1/2011 of the Authority. b) The complainant had and still has the monitoring screen of the system in her home and an image on her mobile phone as well as that of her husband, according to the complainants. Such a thing, however, was also not the product of a decision of the General Assembly, in violation of the written provisions and specifically of article 15 par. 2 of Directive 1/2011 of the Authority. c) While the complainant removed the entrance camera, she refuses to remove the camera in the parking area (which she sublets) after the decision of the General Assembly to install a new system and remove the old one. However, in the new -7- facility, all of the common areas of the apartment building, as well as the parking spaces, are covered by the surveillance of five cameras, making the processing in question unnecessary and violating article 15 par. 4 sec. b of Directive 1/2011 of the Authority. Based on the above, the Authority unanimously considers that the administrative sanction referred to in the executive order should be imposed on the complained controller, which is judged to be proportional to the gravity of the violation. FOR THESE REASONS THE AUTHORITY A. Orders the complainant, as within one (1) month from the receipt of this notice, to remove the said video surveillance system that it has installed and to inform the Authority about the implementation of the above actions.

B. In the event that such a thing does not happen, it imposes on the complainant the effective, proportionate and dissuasive administrative fine appropriate to specific case, according to its special circumstances, amounting to one thousand (1,000.00) euros.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou