

GZ: D550.015/0003-DSB/2018 from 18.12.2018□

[Editor's note: Names and companies, legal forms and product names, addresses□

(incl. URLs, IP and e-mail addresses), file numbers (and the like), etc., as well as their initials□

and abbreviations may be abbreviated and/or changed for reasons of pseudonymization.□

Corrected obvious spelling, grammar, and punctuation errors.]□

admonition□

The XY club in 1XX0 Vienna (hereinafter: XY club), ZVR number XXX, has□

at least since□

at (from – to)□

in□

04/19/2018□

0-24 hours□

1XX0 Vienna, XXstrasse 37□

as the person responsible within the meaning of Art. 4 Z 7 of Regulation (EU) 2016/679 on protection□

of natural persons in the processing of personal data, to the free movement of data□

and repealing Directive 95/46/EC (General Data Protection Regulation, hereinafter:□

GDPR) OJ No. L 119 of 4 May 2016 S 1, until the cameras are removed□

Image processing (video surveillance) operated.□

1) The video surveillance in question was active at least in the period from April 19, 2018 to□

not marked (suitable) as of 04.11.2018.□

2) The video surveillance in question has at least from 05/25/2018 to□

04.11.2018 public space and was therefore not limited to areas which□

are at the sole discretion of the controller; the□

Image processing was therefore not appropriate for the purpose of the processing and not on□

limited to what is necessary.□

The XY association has the following legal provisions as the person responsible according to § 30 DSG□

injured:□

~ § 50d paragraph 1 DSG 2000, Federal Law Gazette I No. 165/1999 as amended by Federal Law Gazette I No. 83/2013 (for the

Period from 04/19/2018 to 05/24/2018)□

~ § 13 Para. 5 DSG, Federal Law Gazette I No. 165/1999 as amended (for the period from 25.05.2018 to□

to 04.11.2018)□

~ Art. 5 (1) lit. a and c and Art. 6 (1) GDPR (for the period from□

05/25/2018 to 11/04/2018)□

To 1):□

To 2):□

However, no penalty will be imposed and the XY club will receive a warning□

granted.□

Legal basis: § 45 paragraph 1 last sentence of the Administrative Penal Act 1991 - VStG, BGBl.□

No. 52 as amended.□

Reason:□

I. The following facts relevant to the decision are based on what has been carried out□

evidentiary procedure:□

I.1. The XY club has at the location 1XX0 Vienna, XXstraße 37, at least from 04.19.2018 to□

A video surveillance system was operated at a distance from the cameras.□

I.2. The cameras were at the front entrance facing the public□

Space (public road) addressed.□

I.3. In any case, the cameras were in the period from April 19, 2018 until the cameras were dismantled□

not (suitably) marked.□

1.4. The cameras were installed and operated by people who□

acted either alone or as part of an organ of the legal entity and a□

Leadership position within the legal entity due□

1. the authority to represent the legal entity,□

2. the power to make decisions on behalf of the legal person, or□

3. A power of control within the legal person□

possess or lack supervision or control by any of the named persons□

the installation and operation of the two cameras by a person working for the legal entity□

person allows.□

I.5. In a letter dated December 2nd, 2018, the data protection authority was informed that the□

cameras that are the subject of the proceedings have now been removed.□

Evidence: Administrative act of the Magistrate of the City of Vienna - Magistrate District Office for the□

***. District to do Number MBA XXX, notification of the Vienna State Police Headquarters on April 23, 2018□

do GZ XXX or GZ XXX, supplementary report of the city police command XXX dated□

04.11.2018 to GZ XXX including photo enclosure, excerpt from the official register of associations as well as□

Justification of the accused from December 2nd, 2018 (logged under GZ DSB-D550/XXX-□

DSB/2018).□

II.□

The determinations are made on the basis of the following assessment of evidence:□

II.1. The data protection authority lays down the content of the□

Municipal district office for the ***. District for reasons of responsibility with a letter dated□

07.06.2018 notification of the Vienna State Police Headquarters sent to the data protection authority□

dated April 23, 2018 and their supplementary report including photo enclosures dated November 4, 2018 and□

the justification of the accused from 02.12.2018 their factual findings□

perish.□

II.2. Based on the testimony of Mr. XXX, who spoke to the police officers in□

As part of the official act of April 19, 2018 as authorized representative of the association□

gave, the data protection authority comes to the conclusion that the installation and operation of the□

both cameras was carried out or caused by persons either alone or□

have acted as part of a body of the legal entity and hold a managerial position□

within the legal entity due□

1. the authority to represent the legal entity,□
2. the power to make decisions on behalf of the legal person, or□
3. A power of control within the legal person□

hold or that lack of supervision or control by any of the above□

Persons installing and operating the two cameras, through one for the legal□

Person active person, made possible.□

II.3. The findings are based on the statements made by the police officers on April 19, 2018□

at 5.40 p.m. on site - in synopsis with the supplementary□

On-site surveys on November 4th, 2018, during which it was determined that the□

Camera angles are set so that the cameras capture public space. At the□

The credibility of the findings is based in particular on the service and□

disciplinary responsibility of police officers and the photo enclosures of the□

Raised no doubts on November 4th, 2018. The unlawful operation of the subject□

Cameras were ultimately used by the accused as part of his submissions on December 2nd, 2018□

conceded; The accused did not comment on the lack of identification. on the□

Furthermore, no suitable identification was evident from the photographs. The accused has□

submitted that the club understood that the cameras at issue□

would not comply with the law and pointed out that the cameras with "immediate□

Effect" had been removed.□

III.□

Legally it follows:□

III.1. According to § 30 paragraph 1 and paragraph 2 in conjunction with § 62 paragraph 3 DSG, the data protection authority□

Impose fines or other administrative penalties on a legal person if□

Violations of provisions of the GDPR and § 1 or Article 2 1st main part□

Data Protection Act (DSG), committed by persons either alone or as part□

have acted in an organ of the legal person and hold a managerial position within the

legal person

1. the authority to represent the legal entity,
2. the power to make decisions on behalf of the legal person, or
3. A power of control within the legal person

hold.

Legal persons can be prosecuted for violations of the provisions of the GDPR and Section 1

or Article 2 1st main part DSG also be held responsible if lack

Supervision or control by one of the above persons of inspection of these

violations by a person working for the legal entity, provided that the act does not

constitutes a criminal act within the jurisdiction of the courts.

III.2. Pursuant to § 62 Para. 1 Z 4 DSG, anyone who

image processing contrary to the provisions of the 3rd section of the main part (§§ 12

and 13 DSG).

III.3. According to § 69 para. 5 DSG, violations of the DSG 2000 that occurred at the time of the

entry into force of the DSG were not made pending, according to the legal situation

Assess the entry into force of the DSG. A criminal offense that occurred before the entry into force of the

DSG has been implemented, is to be assessed according to the legal situation that applies to the perpetrator in their

overall impact is more favorable; this also applies to legal proceedings.

III.4. Article 83 paragraph 5 lit. a GDPR stipulates that in the event of violations of the provisions of the

Art 5 and 6 GDPR fines of up to 20,000,000 euros or in the case of a company

of up to 4% of its total worldwide annual sales of the previous year

financial year, whichever of the amounts is higher.

III.5. According to Section 45 (1) last sentence of the VStG, the authority can inform the accused

to issue a warning to the illegality of his conduct if this

appears necessary to prevent him from committing criminal acts of the same kind.

Regarding point 1:□

III.6. According to § 50d paragraph 1 DSG 2000, a person responsible for video surveillance has this□

suitable to mark. In any case, the person responsible has been clearly identified from the marking□

to emerge, unless this is clear to the persons concerned according to the circumstances of the□

If already known. The labeling must be done locally in such a way that everyone potentially□

Affected person who approaches the monitored area, if possible has the possibility of□

Avoid video surveillance. The wording of § 13 Para. 5 DSG is similar: "The□

Those responsible for taking pictures must label them appropriately. From the□

In any case, the person responsible must be clearly identified in the labeling, unless this is the case□

is already known to the persons concerned, given the circumstances of the case."□

Consequently, the for the period from 04/19/2018 to 11/04/2018 determined□

Failure to fulfill this obligation constitutes a violation of Section 50d (1) DSG 2000 or Section 13 (5) DSG□

represent.□

Regarding point 2:□

III.7. Based on the period between May 25, 2018 (entry into force of the GDPR and the□

associated facts) and 04.11.2018 covered the recording area of□

physical cameras public space and was thus not limited to areas□

which are at the exclusive disposal of the person responsible; the□

Image processing was therefore not appropriate for the purpose of the processing and not to the□

necessary amount limited. Before 05/25/2018, the DSG 2000 did not have its own□

Facts intended for filming public space.□

Consequently, the operation of image recording in the period from 05/25/2018 to 11/04/2018 violates□

against the principles standardized in Art. 5 GDPR, especially since the person responsible for□

Achieving the purpose it pursues - namely the preventive protection of people□

or things - operate the camera in a way by adjusting the angle of view□

could have, thereby avoiding the inclusion of the surrounding public traffic areas□

would have been.□

IV□

The following should be noted for sentencing:□

IV.1. Pursuant to § 45 Para. 1 Z 4 VStG, the authority can object to the initiation or continuation of a□

Refrain from criminal proceedings and order the cessation if the meaning of the criminal law□

protected legal interest and the intensity of its impairment by the act and the□

fault of the accused is low.□

IV.2. Instead of ordering the cessation, the authority can, in the case of Z 4□

issue a warning with reference to the illegality of his behavior,□

if this appears necessary to prevent him from committing criminal acts of the same kind□

to hold□

IV.3. Referring to the statements made above under point II. or the above□

under item III.6. and III.7. resulting legal considerations, as well as the previous ones□

data protection integrity of the accused goes to the recognizing authority□

assuming that it was indeed a one-off misconduct; this, especially□

the accused the illegal condition by removing the camera (at the latest on□

02.12.2018) subsequently eliminated.□

It was therefore possible to refrain from imposing a fine. At the same time will□

but on the unlawfulness of the lawful behavior for the crime period up to November 4th, 2018□

pointed out to the accused of other criminal acts of the same kind□

to hold□