

Athens, 04-07-2021 Prot. No.: 1023 DECISION 12/2021 (Department) The Personal Data Protection Authority met as a Department via video conference on 02-17-2021 at 10:00 a.m., 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, Constantinos Menoudakos, and the alternate members Grigorios Tsolias and Evangelos Papakonstantinou, as rapporteur, in place of the regular members Charalambos Anthopoulos and Konstantinos Lambrinoudakis respectively, who, although legally summoned in writing, did not appear attended due to disability. Regular member Spyridon Vlachopoulos, although legally summoned in writing, did not attend 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. The Authority took into account the following: With his complaint No. C/EIS/4943/12-07-2019, A argued to the Authority that since July 2018, "Ignatiadis Nikolaos and Co. E.E. ." (hereinafter also "Processing Officer") installed a camera inside the offices of 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) 1 business, which focused on his workplace . He even mentions an incident from which it appears that the camera in question was used for his control and not for security purposes. The complainant maintains that he raised his objections, first verbally after the installation of the camera and then in writing with his out-of-court letter of 02/22/2019. The complained-about company was informed of the complaint with the Authority's document No. C/EX/4943-1/09-08-2019, which briefly explained the applicable institutional framework. With this document, the company was asked to submit to the Authority its views both on the legality of the operation of the video surveillance system and on the exercise of the complainant's rights as a data subject. The company responded with its document No. C/EIS/6706/04-10-2019, stating, among other things, that the camera has been placed so as to have a general view of the space focusing on the entrance of its offices so that to know who enters its premises. He says the camera is installed for security purposes and not for employee surveillance, as the office handles accounting, money and bond payments, and the area is plagued by property crime. The owner of the company is in an office from which he does not have visual contact with the office entrance. He also mentions that, in the past, an associate of the office had been a victim of theft, but without providing evidence to that effect. As for the complainant, he maintains that he had not complained about the camera, which he was aware of, and only did so after his appeals to the Labor Inspectorate on other issues had been unsuccessful for him. characteristics concerning The Authority, with its latest document (prot. no. C/ΕΞ/6706-1/14-10-2019) requested from the company, clarification of its answer, regarding the basic technical aspects of the

video surveillance system. Specifically, it was requested: a) to determine in which area the control unit is placed, b) if there is a possibility of remote access and supervision via the Internet and for which users, c) and how it is ensured that access to the images of the cameras is limited only to the operation 2 to the appropriate authorized persons. Finally, in order to clarify the range of the camera, an image sample was requested, in electronic form and at the highest possible resolution based on the characteristics of the device, in order to determine the monitored area. The complained-about company responded to the Authority with its document No. G/EIS/7347/28-10-2019, while following the No. G/EX/7347-

1/15-11-2019 of the Authority's document provided a detailed image sample from the camera's internal memory and from its owner's mobile phone, with its document No. C/EIS/8057/21-11-2019 . With these documents, he states that the system does not have a recorder, but transmits an image exclusively to the mobile phone of the owner of the company, who is the only one who can see the images, through a code. Access is also ensured due to the fact that the legal representative of the company connects to the Internet from a separate Internet provider line. The camera has minimal recording capability to internal memory, which is not used. From the specifications of the equipment provided by the complained company, it appears that an innovator HD smart WiFi camera is used, while the memory card used has a capacity of 16Gb. According to the supplied manual of the camera, it is capable of capturing video in 720p resolution, has a built-in microphone and speaker, and has control software for both smart phones and PCs with Windows operating system. Following the above, the Authority proceeded to call the company for the departmental meeting, initially with its document No. C/EX/1806/09-03-2020 for 18-03-2020 and after postponing the meeting , for the 15-

07-2020, with its document No. C/EX/4486/29-06-2020. With the call, the company was informed that during the examination of the case the legality of the operation of the video surveillance system in its premises will be discussed and that it will have to provide any document documenting its compliance with the principles governing the legal processing of personal data. At the meeting of 15-07-2020, the complained-about company attended, through B 3 and the attorney Constantinos Vervesos, while after receiving a deadline, it submitted the memorandum numbered C/EIS/5313/29-07-2020. With this, the company confirms what it had stated with its previous documents. In summary, in relation to the video surveillance system, it states that the system was installed for security reasons as crime is high in the area (Acharnes Attica). The camera was placed on top of a wardrobe to control the entrance to the offices and not for the purpose of staff surveillance, and was never used for the latter purpose. The signal was transmitted to the mobile phone of the company's legal representative for the security of the facilities.

Due to a malfunction, the camera has been removed and is no longer working. The company considers that the complaint is false and was made in revenge by the complainant after his departure and the termination of the employment contract. The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote and left after the discussion of the case and before the conference and decision-making, following a thorough discussion, CONSIDERED ACCORDING TO THE LAW 1. According to art. 4 pc. 1 of the General Data Protection Regulation 2016/679 (hereinafter "GDPR"), audio and video data, if they refer to persons, constitute personal data. Furthermore, taking an image of a person, which is collected by a video surveillance system, which operates permanently, continuously or at regular intervals, in a closed or open area of gathering or passage of persons, constitutes processing of personal data in accordance with art. 4 pc. 2 of the GDPR. 2. Article 5 GDPR defines the processing principles governing the processing of personal data. Specifically, it is defined in paragraph 4 1 that personal data, among other things: "a) are processed lawfully and legitimately in a transparent manner in relation to the subject of the data ("legality, objectivity, transparency"), (...), c ) are appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization") (...), f) are processed in a way that guarantees the appropriate security of personal data, including the protection them from unauthorized or unlawful processing and accidental loss, destruction or damage, using appropriate technical or organizational measures ("integrity and confidentiality)." 3. Article 6 para. 1 GDPR provides, among other things, that: "Processing is lawful only if and as long as at least one of the following conditions applies: (...) f) processing is necessary for the purposes of legitimate interests pursued by the controller or a third party, unless these interests are overridden by the interest or the fundamental rights and freedoms of the data subject that require the protection of personal data (...)". Furthermore, according to the principle of accountability (Article 6 par. 2 GDPR) the controller bears the responsibility and is able to demonstrate compliance with the above principles. 4. The Authority has issued on the issue of the use of video surveillance systems for the purpose of protecting persons and goods the No. 1/2011 Directive of the Authority, the provisions of which must be applied to combination with the new provisions of the GDPR and Law 4624/2019, with which GDPR implementation measures are defined. It is pointed out in this regard that in specific case, Law 4624/2019 does not apply, as the one under consideration complaint concerns a period of time before its implementation. The European

The Data Protection Council issued guidelines No. 3/2019

lines<sup>1</sup> regarding the processing of personal data, through

video recording devices. This text provides step-by-step guidance on how

GDPR applies in relation to the use of cameras for various purposes. Basic

<sup>1</sup> [https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-32019-processing-personal-data-through-video\\_en](https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-32019-processing-personal-data-through-video_en)

5

condition for the legality of processing through a system

of video surveillance is the observance of the principle of proportionality, such as this

it is specified in articles 6 and 7 of the above Directive, but also in the Special Part

of this one. In particular, Article 7 of the Directive states that the system

video surveillance should not be used for surveillance

employees, except in special exceptional cases such as these

specified in the Directive. As an example it is stated that, in a typical space

company offices, video surveillance should be limited to premises

entry and exit, without monitoring specific office rooms or

corridors. Exceptions may be specific areas, such as cash registers or

areas with safes, electromechanical equipment, etc., provided that the

cameras focus on the asset they protect and not on their premises

employees.

Furthermore, according to article 19 par. 2 of the aforementioned Directive, which

specifies the principle of proportionality in shopping centers and stores,

cameras are allowed to be placed at the entry and exit points of

stores, cash registers and money storage areas, warehouses

goods, while, in accordance with article 19 par. 4 of the same Directive,

the operation of cameras in places of catering and recreation is prohibited, in

fitting rooms, toilets and areas where employees work

store and are not accessible to the public. Further, in article 11 thereof

Directive 1/2011 of the Authority states that the data controller must, between

others, to ensure the avoidance of reckless use of projection screens, and the

avoid dissemination of the material to unauthorized recipients.

5.

In this particular case, the use of the camera by the

complained company cannot be proven to adhere to its principle

proportionality. Specifically, from the documents of the case file and

especially the photos showing the range of the camera

it is found that an image of the entire space is taken, without the reception being limited

in the entrance area. Therefore, there is a violation of the minimization principle

of the data, as an image is obtained from employee premises, which are

6

office premises, in which, as a rule, no money transactions take place

transactions, but accounting work. Further, it turned out that there was

possibility of real-time monitoring of the camera by its manager

company via mobile phone, even when he was absent from its premises.

This surveillance is not an appropriate means for the protection of persons and

goods, as it is practically impossible for the owner to intervene either proactively,

or oppressive while increasing the risk of the material being used for another purpose;

such as for employee surveillance. This processing, with the possibility

supervision of the premises by the owner of the business, at all times, and

even without the existence of an incident that indicates an increased risk (e.g.

alarm), unduly infringes on the rights of monitored persons,

which include "vulnerable" persons such as employees,

therefore it is carried out in violation of article 6 par. 1 f of the GDPR. From the other elements and the technical characteristics of the camera show that they do not the ability to download audio existed, as alleged in the complaint, while it did not it turned out that there was logging, although there was a possibility for logging a few hours to a day, depending on the type of compression of the video images.

The Authority takes into account aggravatingly, that the data controller did not submit documentary evidence of the legality of the processing, while such data requested. In mitigation, he considers that it is very small company (as shown by the number of employees), that according to company statement the camera is no longer working, that it was proven to exist another type of dispute which does not concern personal data, that it is the first offense for the particular company and finally, the adverse one financial circumstance due to the Covid-19 pandemic.

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Based on the above, the Authority unanimously judges that according to the article 5 para. 1 c and Article 6 para. 1 f of the GDPR meet the conditions for enforcement at the expense of the data controller, based on article 58 par. 2 i) of the GDPR and taking into account the criteria of article 83 par. 2 of the GDPR, of the administrative sanction, referred to in the operative part of the present, which is deemed to be proportionate with the gravity of the offence.

7

#### FOR THOSE REASONS

The Authority imposes, on "Ignatiadis Nikolaos and Co. E.E." the effective, proportionate and dissuasive administrative fine appropriate to specific case according to its special circumstances, amounting to two

thousands of euros (2,000.00) euros, for the above-mentioned violations

article 5 par. 1 c' and article 6 par. 1 f' of Regulation (EU) 2016/679.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou