

GZ: DSB-D123.499/0004-DSB/2019 from 24.10.2019□

[Note editor: 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 can be used for pseudonymization reasons□

be abbreviated and/or modified. Obvious spelling, grammar and□

Punctuation errors have been corrected.]□

NOTICE□

S P R U C H□

The data protection authority decides on the data protection complaint of Doris F\*\*\*,□

represented by \*\*\* Rechtsanwälte OG (complainant), dated September 20, 2018 against□

Peter D\*\*\* (Respondent) for violation of the right to secrecy as follows:□

- The complaint is rejected.□

Legal bases: § 1 paragraph 1, § 24 paragraphs 1 and 5 of the Data Protection Act (DSG),□

Federal Law Gazette I No. 165/1999 as amended; Art. 77 para. 1 and Art. 79 para. 1 of the data protection□

General Regulation (GDPR), OJ No. L 119 of 4 May 2016, p. 1; Section 204 of□

Code of Civil Procedure – ZPO, RGBI. No. 113/1895 as amended; § 1 Z 5 of the Enforcement Code -□

EO, RGBI. No. 79/1896 as amended.□

REASON□

A. Submissions of the parties and course of the proceedings□

1.) With the complaint initiating the procedure dated September 20, 2018, the□

Complainant a fact, according to which the respondent on Facebook the□

Appellant charged with theft and unlawful for that purpose□

made secret video recordings. It is requested that the unlawful□

eliminate condition.□

2.) With completion of the GZ: DSB-D123.499/0001-DSB/2018 from September 28, 2018□

asked the data protection authority to remedy various deficiencies in the complaint,□

in particular to name the right deemed to have been violated as well as the request□

determine the violation of rights.□

3.) In a submission dated October 15, 2018, the complainant stated that she was entitled to□

own image and in the right to privacy to be violated, as well as to request that□

determine infringement.□

4.) With a request for a statement dated January 23, 2019 on the GZ: DSB-□

D123.499/0002-DSB/2018 the data protection authority requested the respondent to□

to comment on the matter.□

5.) With a submission dated February 11, 2019, the respondent requested a "silent"□

(sic!) procedure.□

6.) With completion of February 12, 2019 for GZ: DSB-D123.499/0001-DSB/2019 urged□

the data protection authority issued a statement and reminded of the obligation to cooperate□

according to GDPR.□

7.) With a submission dated March 8, 2019, the respondent informed that LG V\*\*\*□

to have been convicted of this matter.□

8.) With completion of April 19, 2019, GZ: DSB-D123.499/0002-DSB/2019, requested the□

Data Protection Authority the complainant for notification of the pending□

court action made.□

9.) The complainant communicated with the submission of May 7, 2019 that the lawsuit□

the GZ \*4 Cg \*3\*/18u was pending.□

10.) With completion of September 13, 2019, GZ: DSB-D123.499/0003-DSB/2019,□

the data protection authority asked LG V\*\*\* for administrative assistance and for notification of the□

exact subject matter of the complaint.□

11.) With the submission of October 1, 2019, the settlement that ended the proceedings□

together with the relevant parts of the case file.□

B. Subject of Complaint□

12.) The subject of the complaint is the question of whether the respondent by making  
a secret video recording along with text that the complainant him  
stole, and by publishing this data on Facebook  
complainant violated the right to secrecy. If yes, it is closed  
check whether remedial measures by the data protection authority to establish the  
lawful condition are required.

#### C. Findings of Facts

13.) The complainant made a privacy complaint on September 20th  
applicable in 2018.

14.) Previously, the current complainant as a plaintiff at LG V\*\*\*  
an action against the now complainant for removal of the video and  
introduced omission. On March 4, 2019, the Respondent undertook  
As part of the oral hearing on the GZ \*4 Cg \*3\*/18u-9 before the LG V\*\*\*  
legally binding on the following:

[Editor's note: in the original at this point a graphic file with a section  
from the court records.]

#### COMPARISON:

1.) The defendant undertakes to refrain with immediate effect from Annex ./A  
Publish and/or distribute visible video.

2.) The defendant is guilty of the plaintiff to the attention of the plaintiff's representative  
14 days in legal costs of EUR 2,931.00 (cash expenses  
EUR 743.00; VAT EUR 364.00) to be paid.

#### Evidence assessment:

15.) Evidence was taken through the submissions of the parties to the proceedings as well  
served to establish that the case was already being prosecuted

Proceedings of LG V\*\*\*, the full content of which is known to both parties. the

Settlement is final.□

D. In legal terms it follows that:□

16.) The judicial settlement of the Regional Court V\*\*\* of March 4, 2019,□

GZ: \*4 C \*3\*/18u, as well as the present complaint is the same subject□

reason (identity of the thing).□

17.) Even if Art. 77 and Art. 79 GDPR give the impression that a parallel□

or successive proceedings before a supervisory authority and a court□

seems possible, it cannot be the purpose of the GDPR to first have a court with□

the question of the lawfulness of a particular processing of personal data□

to deal only with the same question after the completion of the instance of reply□

to a supervisory authority (cf. Nemitz in Ehmann/Selmayr<sup>2</sup>, data protection□

Basic Ordinance [2018] Art. 79 margin no. 8).□

18.) The complainant has the judicial final settlement□

already have an enforceable legal remedy to establish the lawful one□

condition (cf. § 1 Z 5 EO).□

A successive claim of the data protection authority in the same matter is coming□

not to be considered, especially since the complainant's need for legal protection through the□

comparison has been fully taken into account. A complaint is therefore no longer□

to accept□