

Athens, 10-01-2023 Prot. No.: 80 Decision of the President of the Authority 1/2023 (Single Body) The President of the Authority, as a single body according to articles 17 par. 1 of Law 4624/2019 (Government Gazette A) 137), in the context of the powers provided for in articles 4 par. 3 para. a' and 10 par. 4 of the Authority's Operating Regulations (Government Gazette B'879/25.02.2022) and the powers provided for in article 15 par. 8 of Law 4624/2019 in conjunction with Article 58 para. 2 f of Regulation (EU) 2016/679 (GDPR), examined the case, which is mentioned below in the history of this decision. The Authority took into account the following: 1. With the no. prot. C/EIS/5323/28-03-2022 complaint to the Authority of A, supplemented by the no. prot. C/EIS/5324/28-03-2022 document, the complainant complains about a violation of the provisions of the legislation on the protection of personal data. In particular, according to the above complaint, the complainant has installed a camera in the window of his apartment, which is directed to the pilot area of the apartment building where the complainant lives.

According to 1 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) 2. 3. 1. asked the complainant for clarifications on the above complaint and the photos he provided the complainant, the complainant isolated snapshots from the video surveillance system recorder, in which the complainant is depicted and which he then sent to the complainant as photographs. The Authority, following its document numbered C/EXE/1543/27-06-2022, with which the complainants, received in response the numbered C/EIS/11781/15-11-

2022 document, with which the latter states that the aforementioned complaint is a result of the dispute that exists between him and the complainant regarding the parking spaces in the pilot house of the apartment building. in the photographs presented, no person appears, especially the face of the complainant. Subsequently, the President of the Authority, as a one-person body, examined the complaint and the above documents submitted by the complainant and the person complained of. In addition, it states that IT WAS CONSIDERED IN ACCORDANCE WITH THE LAW The image of a person which is collected through the use of a video surveillance system constitutes personal data, to the extent that it is possible to identify the specific natural person<sup>1</sup> directly or indirectly, while the taking or recording of the image which is stored and maintained in a streaming video recording mechanism, such as e.g. on system hard drive, constitutes automated data processing<sup>2</sup>. Based on the definition of article 4 para 1 of the General Data Protection Regulation (Regulation 2016/679 of 1 CJEU C-212/13 Rynes decision para. 22, CJEU C-345/17 Sergejs Buivids decision para. 31, CJEU C -708/18 decision TC v. M5A para. 35. 2 CJEU Rynes para. 23, 25, Sergejs Buivids para. 34, TC para. 34. 2 ("data subject"); European Parliament and Council, hereinafter GDPR) personal data is "any information relating to an identified or identifiable natural person; an identifiable natural person is

one whose identity can be ascertained, directly or indirectly, in particular by reference to an identifier such as name, identity number, location data, to an online identifier or to one or more factors that characterize the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person.' Therefore, identification of a person through visual material can be carried out based on his appearance or other specific elements<sup>3</sup>. The installation and operation of video surveillance systems with the capture or recording of images and/or sound through the collection, preservation, storage, access and transmission of personal data, even from a public place<sup>4</sup>, constitute, as individual acts of processing, interference with individual rights to respect of private life according to art. 9 of the Constitution, 7 of the Charter of Fundamental Rights of the European Union (CFA)<sup>5</sup> and 8 of the European Convention on Human Rights (ECHR) as well as the protection of personal data according to art. 9A of the Constitution, 8 ESDA and 8 XTHDEE<sup>6</sup>. The installation and operation of the relevant video surveillance system is legal, as long as, among other things, the conditions of Articles 5 (general principles) and 6 (legal basis) GDPR are met. The European Data Protection Board issued guidelines 3/2019<sup>7</sup> on 2. 3. 3 See ESPD CG 3/2019 on the processing of personal data through video devices – p. 7. 4 ECtHR Vukota-Bojic v Switzerland, 61838/10, 18.10.2016, § 52 ff., Lopez Ribalda v Spain (GC), 1874/13 & 8567/13, 17.10.2019, §§ 89, 93, Antovic & Mirkovic v Montenegro, 70838/13, 28.11.2017, § 42, Uzun v. Germany, 35623/05, 2.9.2010, §46, Peck v UK, 44647/98, 28.01.2003, §59. 5 CJEU Digital Rights Ireland para. 29. 6 CJEU Digital Rights Ireland para. 38. 7 See Guidelines no. 3/2019 ESPD on processing of personal data through video devices p. 7. 3 4. processing of personal data through video devices. This text provides detailed guidance on how the GDPR applies in relation to the use of cameras for various purposes. Furthermore, the provisions of Directive 1/2011 of the Authority regarding the issue of the use of video surveillance systems for the purpose of protecting persons and goods must be taken into account in conjunction with the above provisions of the GDPR. The relevant obligation to prove legality rests with the data controller in application of the principle of accountability in the context of compliance and documentation, which must take place before the installation and operation of the system (see also Decision 43/2019 of Authority). 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<sup>8</sup>, as happens in the case where the collected audio-visual material is posted on the internet or published in newspapers or the material is presented to competent authorities. 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). On the contrary, it is not considered an exclusively personal or domestic activity to capture and process images or sound with a video surveillance system installed in a private home, when the control field of the camera includes external public or shared areas<sup>8</sup> C-345/17 *Sergejs Buivids* decision of 14-02-2019 par. 43. 4 5. 6. the issue is more specifically areas or areas that belong to the properties of others, in which case the principles of personal data protection apply<sup>9</sup>. of the installation of a system Regarding video surveillance in residential complexes, guidance is provided by article 15 in the Special Part of the aforementioned no. 1/2011 of the Authority's Directive. 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) in accordance with the provisions of the relevant Regulation, and not by any tenant individually, and, if there is an agreement of two thirds of the tenants of the apartment building (for this opinion one vote is counted per inhabited apartment). Responsible for processing the video surveillance system is the association of co-owners that operates through the General Assembly of co-owners of the complex and the relevant regulation, where it exists<sup>10</sup>. As mentioned in particular in article 15, par. 4 of the aforementioned with no. 1/2011 of the Authority's Directive, 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 personal vehicles is permitted under the following conditions: 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 and d) The interested owner or tenant<sup>9</sup> DEE C-212/ 13 *Frantisek Rynes* decision of 11-12-2014 par. 13, 33.<sup>10</sup> With decision 95/2015 the Authority has interpreted the reference in article 15 par. of Directive 1/2011 that "The General Assembly of the complex is responsible for processing the video surveillance system " as G.S. of a housing complex is a body of the association of co-owners (which usually has no legal personality).

5

tenant to place at his own expense a relevant clearly visible notice sign in a prominent place in the parking area.

Therefore, in cases of installation of a video surveillance system by

private in shared or privately owned space overseeing other spaces such as the pilot apartment building, where use by them cannot be excluded other tenants, the use of the video surveillance system he supervises the common pilot area of the apartment building in which the complainant he parks his car without having ensured that the above conditions, as described in Directive 1/2011 thereof

First of all, it unduly infringes on the rights of persons who move in this area, as activities may be closely monitored connected to their personal lives. So, since the conditions mentioned above (of article 15 par. 4 of directive 1/2011 of the Authority) said processing is not legal, as it is violated article 6 par. 1 f of the GDPR.

In this case, as can be seen from the information in the file, h controversial camera that oversees space in the pilot of the apartment building had settled for of

complained of. The processing manager for this system is complainant, who is acting primarily for his own protection and the protection of his vehicle. In particular, the complainant has process and isolate footage from the camera, which it has also sends to the complainant and in which yes it is not distinguished clearly her face but there is a possibility of her identification, since the identity of the complainant can be ascertained indirectly, through others identifiers and factors, such as physical, physiological or its social identity, since identification of a person through of visual material can be realized based on its appearance but also

with other elements. After all, the accused has clearly carried out

of the car

of protection

the purpose

6

7.

8.

identification of the complainant, which is why she sent the photos to

her personal phone. Further, the complainant, despite the

accountability obligation that falls on him and derives from article 5 par. 2

GDPR, failed to prove the legality of installation and operation

of the video surveillance system as well as the video surveillance system

it appears to have been installed by individual decision without actually existing

provision in the regulation of the apartment building or consent of 2/3 of them

tenants. In view of the above, none of them can be applied

legal bases of article 6 of the GDPR, and in particular par. 1 f of the aforementioned

article, as the interests of the complainant do not prevail over

interests and their fundamental rights and freedoms

data subjects.

The respondent in his memorandum refers to the private disputes which

has with the complainant, but the relevant allegations elude her

competence of the Authority and in any case the possible pursuit of legal

purpose cannot remedy the violation of the principles of article 5

GDPR and the lack of legal basis according to article 6 thereof and to render

lawful the disputed processing through its installation and operation

video surveillance system, according to the no. 3 and 4 thoughts of her

present and in any case does not cover the one according to article 5 par. 2 of the GDPR

accountability.

9.

10. Based on the above, the Authority considers that there is a case to exercise the  
according to article 58 paragraph 2 paragraph f) of the GDPR and article 15 paragraph 4 paragraph c of  
Law 4624/2019 its corrective powers in relation to those established  
violations and to impose on the person complained of its prohibition  
of disputed processing through the video surveillance system. The decision  
it must be executed within fifteen (15) days from its receipt  
present, and the person complained about has an obligation to inform the  
Principle.

7

FOR THOSE REASONS

The beginning

Orders, in accordance with article 58 paragraph 2 paragraph f of the GDPR and article 15 paragraph 4  
c. of Law 4624/2019, B within fifteen (15) days of receipt of  
present:

i.

ii.

To stop processing through the camera that oversees its pilot  
apartment building,

To inform the Authority about the realization of the above  
actions.

THE PRESIDENT

THE SECRETARY

Konstantinos Menudakos

