

Litigation Chamber□

Decision on the merits 74/2020□

from November 24, 2020□

File number: DOS-2019-04412□

Subject: Complaint for taking illegal images of public roads and the private domain of third parties□
using surveillance cameras.□

The Litigation Chamber of the Data Protection Authority, made up of Mr.□

Hielke Hijmans, chairman, and Messrs. Dirk Van Der Kelen and Frank De Smet, members;□

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the□
protection of natural persons with regard to the processing of personal data and the□

free movement of such data, and repealing Directive 95/46/EC (General Regulation on the□
data protection, hereinafter the "GDPR");□

Having regard to the law of 3 December 2017 establishing the Data Protection Authority, hereinafter the□
ACL;□

Having regard to the internal regulations as approved by the House of Representatives on□
December 20, 2018 and published in the Belgian Official Gazette on January 15, 2019;□

Considering the documents in the file;□

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made the following decision regarding:□

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X1, hereinafter referred to as "the first complainant", and X2, hereinafter referred to as "the second plaintiff", both being natural persons domiciled in [...] and hereinafter referred to as jointly "the plaintiffs", and

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Y1, hereinafter referred to as "the first defendant", and Y2, hereinafter referred to as "the second defendant", both domiciled in [...] and hereinafter jointly referred to as "the defendants".

1. Facts and procedure

1. On August 26, 2019, the complainants filed a complaint with the Data Protection Authority.

2. The complaint can be summarized as follows. According to the complainants, three surveillance cameras defendants film plaintiffs' "entire estate". A single camera would film further "the whole street". In an environmental lawsuit between plaintiffs and defendants, more particularly in the context of a request for regularization of the plaintiffs, images from the defendants' surveillance cameras were brought to the attention of the complainants by a third party, a qualified engineer Z. According to the plaintiffs, these images were not only proof of the taking of illicit images of the track public and private property of third parties, but also of the illicit transfer of recordings of these images to unauthorized third parties.

The environmental procedure with the Environment Department, which arising from the dispute about the request for regularization is called hereinafter "the environmental procedure".

The graduate engineer Z appointed under the environmental procedure is called hereinafter "Traffic Expert".

3. The complaint further mentions that a complaint was lodged with the local police at about the same facts.

4. In accordance with Article 58 of the ACL, the Front Line Service of the Protection Authority of data declares the complaint admissible on September 6, 2019. Pursuant to Article 62, § 1 of

LCA, the complaint is then forwarded to the Litigation Chamber.□

5. By registered letter of September 24, 2019, the plaintiffs and the defendants are informed□

the decision of the Litigation Chamber to deal with the case on the merits, in accordance with□

Article 95, § 1, 1° of the LCA. In this registered letter, the parties are also□

informed of the deadlines for transmitting their conclusions, in accordance with Articles 98 and 99□

of the ACL.□

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Defendants' submissions in response□

6. Defendants state that the manner in which the surveillance cameras film "has been settled□

by the company that installed the cameras." [All passages quoted in this decision□

have been freely translated by the General Secretariat of the Data Protection Authority,□

in the absence of an official translation]. According to the defendants, the purpose was thus simply to□

to protect their property "and not to target the public domain or the property of the applicants."□

7. The defendants append to their conclusions screenshots of the video images taken by□

said surveillance cameras. The images are prior to the adaptations of the position□

surveillance cameras that the neighborhood policeman had requested.□

8. Surveillance cameras have a different name.□

9. First, there is a surveillance camera 'in front of the shed', which, according to the defendants, does not□

films only a limited part of the plaintiffs' property, but does not film the dwelling□

of the plaintiffs themselves.□

10. Secondly, the 'front façade' surveillance camera films the front garden, a part□

of the front façade and part of the public thoroughfare. On the image added by the defendants,□

more than a third of the image of the surveillance camera is taken up by the public road which□

located in front of the defendants' house. The defendants indicate that the position in particular□

of this surveillance camera was modified after the visit of a neighborhood agent, after□

what the camera image – based on the still image added by the defendants at least –□

shows, for more than half, only the front facade wall, only part□

limited to the garden in front and the portico of the defendants, and does not film the public road in□

no way. According to the defendants, following the adaptation of the position of this camera of□

surveillance after the visit of a neighborhood officer, the images taken in the dark are of□

de facto unusable, due to the reflection of the light from the 'night mechanism' of the camera of□

monitoring.□

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The defendants assert the following:□

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"the palisade which is placed in front of the camera on the street side prevents this camera from filming the street."□

Here too, after resetting the position of the surveillance camera, the latter□

would be de facto unusable at night, since more than half of what is in the image□

concerns the brick facade, which reflects the light of the nocturnal mechanism in the lens□

of the surveillance camera.□

12. The photo attached by the complainants to their complaint with the mention 'camera garages' is not,□

according to the defendants, an image from a surveillance camera, but indeed a photo taken with□

a smartphone.□

13. Defendants further assert that they "declared the installation and use of the system of surveillance cameras electronically via the eGuichet for declaring surveillance cameras surveillance made available by the Federal Public Service Home Affairs."

14. Respondents also claim that the designation of the controller, according to the cameras¹ law, has clearly taken place. According to the defendants, the images of cameras would be erased after a month. However, "the images that demonstrate the nuisance in terms of mobility have been kept and erased after being sent to the Expert in traffic matter." The Traffic Expert used the images as part of the analysis of the possible environmental nuisance (mobility and other) reported by the plaintiffs, within the framework of the environmental procedure. During the procedure environmental issue, the Traffic Expert posted the images, along with the report of its analysis, available to the parties and the Environment Department.

15. With regard to the images that have been made available by the Expert in terms of traffic as part of its environmental report on the mobility situation, the defendants claim that the images were also sent via a link "Sharepoint" at the College of Mayors and Aldermen of the municipality where the plaintiffs and defendants, as well as to the Department of the Environment as the authority competent on appeal.

Respondents assert the following in this regard: "at the technical and organizational level, the Sharepoint is under the management of the Competent Traffic Expert [...]"

And to add: "The images were deleted by [the defendants] after being given to expert."

Defendants further add that the Traffic Expert has in the meantime "put

¹ Law of 21 March 2007 regulating the installation and use of surveillance cameras, M.B. 31 May 2007, hereinafter "camera law"
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the offline Sharepoint, following the end of the administrative procedure [the procedure

environmental])."

16. As already indicated, the defendants assert that the image attached to the complaint and which constitutes according to the complainants an image from the 'garages' point of view was a photo taken with a smartphones. The photo was taken by the defendants, according to their own statements, in order to establish an infringement of environmental legislation: "a [...] is considered to be a [...] which can not be dragged on the street and sewer manhole, the photo showing that it is produced yet."

17. Finally, the Respondents assert that in another environmental dispute, the plaintiffs themselves took images (from cameras) and/or photos of the properties of the defendants, unlawfully and probably unlawfully.

Complainants' Reply Submissions

18. In these conclusions, the plaintiffs mention that in the meantime an image has again been transmitted (by the defendants in the present proceedings), this time to the Federal Agency for the safety of the food chain and to the "Cel Milieuhandhaving" (repression cell in terms of the environment). It is not specified what is meant by this last element.

19. The complainants indicate that there is indeed a 'garage' camera, and add to the conclusions photos of the defendants' home where a camera can be seen above a door garage, which is clearly not located where the other three cameras are.

20. Further, the plaintiffs allege that the 'street side' surveillance camera was indeed filming part of the plaintiffs' property. Regarding surveillance cameras 'front facade' and 'in front of the shed', the plaintiffs believe that there is also a violation of the legislation, as the images were used in the Expert's report traffic – following the environmental procedure – which focused on the mobility situation on the public highway and access to the plaintiffs' property for themselves or for possible visitors.

21. In addition, the complainants point out that the retention periods were not respected, given that some of the images used in the environmental procedure date from the November 11, 2018, and would have been transmitted to the traffic expert only months later. Complainants further point out that the Traffic Expert does not

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22. Finally, the plaintiffs are still addressing the environmental proceeding, but the statement of the facts is of no importance for the further processing of the complaint within the Data Protection Authority, and is therefore not included in this Decision.

Defendants' Reply Submissions

23. The submissions in reply of the defendants confirm on the one hand the content of the first conclusions in response, but also provide a number of new elements.

24. First of all, the defendants claim that five surveillance cameras were declared via the eGuichet su FPS Interior. According to the defendants, the other two surveillance cameras were not mentioned in the initial complaint and were therefore not dealt with in the findings in response. This is specifically a surveillance camera 'behind

shed' and a 'garage' surveillance camera.□

25. The 'garage' surveillance camera again films part of the front facade of the□

the home, just like the 'front façade' surveillance camera. The defendants add to□

their conclusions an image which, according to them, predates the adaptation of the position of□

surveillance cameras following a visit by the neighborhood agent, where the public road is filmed□

on a limited part (less than a third) of the surveillance camera image.□

26. Defendants do not transmit any footage from the 'behind the shed' surveillance camera,□

the fact that according to them, the position of this surveillance camera does not pose a problem, nor□

for the property of the plaintiffs, nor for the public highway.□

27. According to the defendants, only the images from the 'front façade' surveillance camera and the□

surveillance camera 'in front of the shed' were passed on to the Traffic Expert.□

These images were indeed relevant, according to the defendants, to identify certain situations□

of mobility, relevant for the environmental procedure.□

28. The defendants insist that the company which installed the surveillance cameras□

tried to configure these surveillance cameras in such a way that the property of the□

defendants be "maximum protection."□

29. The defendants also insist on the fact that the images, in particular from the cameras of□

monitoring that were passed on to the Traffic Expert were indeed□

important for his report and that this report was indeed used for the deliberation of□

the competent authority in the decision of the environmental procedure.□

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Hearing□

30. On November 12, 2019, the defendants had requested, through their lawyer, to be□

heard.□

31. By ministerial decree of June 30, 2020 on emergency measures to limit the□

spread of the COVID-19 coronavirus (M.B. 06/30/2020), as modified by the decree□

of August 22, 2020 (M.B. 22/08/2020), the federal authorities took several
binding measures complicating the organization of a hearing in the composition
usual.

The Litigation Chamber therefore proposed to the parties to organize the hearing, requested by
the defendant in its pleadings, by electronic means. Both parties have
consented and confirmed their attendance.

32. A hearing takes place on September 7, 2020, the plaintiffs and defendants being present, as well as
than a lawyer for the defendants.

33. In the minutes of the hearing, the clarifications and additions were repeated, these not being
a simple repetition of the elements which recur in the previous parts of the file (and
more particularly the submissions of the parties).

34. The defendants thus made the clarification that they considered the Expert in the matter
traffic as an actor who comes under the "judicial authorities" as referred to in the
cameras law.

35. Furthermore, the defendants assert that the price offer for the modification of the positioning
disputed surveillance cameras had clearly been requested before the
defendants have been informed of the existence of a complaint to the DPA.

36. As usual, the Litigation Chamber invited the two parties to join
remarks in the minutes of the hearing as an annex to these minutes, without implying
a reopening of the debates. Both parties reacted to this invitation, and the reactions and
related documents have been added to the file, as an appendix to the minutes.

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2. Motivation

2.1

The extent of the substantive proceedings before the Litigation Chamber

at. The provision of new defenses and exhibits by the parties after

the closing of the debates□

37. The Litigation Chamber notes that the two parties sent it additions and□

large-scale pieces in response to his invitation to send any comments□

in the minutes.□

38. The Litigation Chamber emphasizes that the aforementioned invitation was made clearly, in that□

meaning that the remarks could not imply any reopening of the debates. The invitation□

simply gives the parties the opportunity to make observations of fact with regard to this□

which was formulated in the minutes.□

39. Article 98, 3° of the LCA guarantees the parties the possibility "of adding to the file all□

documents that they deem useful". A smooth running of the procedure in the light of fair□

fairly by the Data Protection Authority within the meaning of Article 58, paragraph 4 of the□

GDPR, requires that at a certain time, namely after the end of the hearing, the proceedings are□

closed, without having to allow a new round of exchange of means of defence.□

40. Accepting new exhibits, with no defenses for the defendant, would violate□

the defendant's right to object.□

41. For these reasons, the Litigation Chamber rejects from the proceedings the exhibits that the two parties□

forwarded to him as "remarks" in the record of the hearing.□

b. Elements of the means of defense and parts located outside the□

scope of the procedure□

42. The Litigation Division notes that in the submissions in response, the defendants□

describe facts on the part of the complainants which would constitute breaches of the same□

provisions□

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of□

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complaint.□

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43. Without ruling on the merits of these allegations by the defendants, the Litigation Chamber□
will limit itself to ruling on the facts as advanced in the complaint. The Litigation Chamber is not□
indeed seized in this case only for the treatment of this complaint, in accordance with□

Article 92, 1° of the LCA.□

44. Furthermore, the Litigation Division points out that an ongoing procedure with the□
Litigation Chamber does not justify that in the procedure itself, the parties□
carry out unlawful processing of personal data (in the context of the provision□
documents or evidence), or otherwise disregard the protection of privacy, in particular,□
from the other party. The Litigation Chamber repeats, however, that in this case, it is not seized□
only for the processing of a complaint in accordance with Article 92, 1° of the LCA.□

45. It is of course open to any citizen, and therefore also to the defendants, to lodge a complaint□
with the Data Protection Authority regarding facts relating to (possible)□
violations of personal data protection regulations.□

2.2□

Competence of the Litigation Chamber (article 100 of the LCA)□

46. Although the factual events that preceded the environmental procedure, and therefore□
the procedure with the Data Protection Authority (hereinafter: DPA), are described in□
detail by plaintiffs and defendants, they are not immediately relevant to the analysis□
of the Litigation Chamber.□

47. The Litigation Division considers it important to set out some aspects of principle relating to□
camera surveillance in this decision.□

48. Article 4, § 1, first paragraph of the LCA provides that:□

"The Data Protection Authority is responsible for monitoring compliance with the□
fundamental principles of the protection of personal data, in the□

framework of this law and laws containing provisions relating to the protection

the processing of personal data."

Article 4, § 2, second paragraph of the LCA adds:

"The Data Protection Authority is the competent supervisory authority

where no other law provides otherwise."

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49. The legal assessment of this dossier will therefore be made primarily by means of the provisions of the

GDPR. In this regard, the question arises to what extent the processing of

personal data was lawful, in accordance with Articles 5 and 6 of the GDPR.

50. Furthermore, the Cameras Act – as a national law containing provisions on

protection of personal data – is also relevant for several

interpretive aspects for the handling of this complaint and, by extension, for the present

case.

51. The Litigation Chamber emphasizes, however, that the application of the GDPR, as a regulation

of the European Union, prevails over the aforementioned national legislation because of its action

directly and of its primacy in the European legal order².

52. This applies in particular also to circumstances in which an interpretation is

given to the legal notion of data protection of 'legitimate interest'³. It's in

the case the case, given that it is about treatments established because of the private interests

of

citizens

(see below, part 2.4.

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lawfulness of

processing).

53. The Court of Justice has previously confirmed that the taking of images of persons by surveillance cameras fell within the concept of "personal data" within the meaning of the standards of European data protection law.⁴ Surveillance using video recordings of people which are made (recorded) is processing of personal data within the meaning of Article 2(1) GDPR.⁵

The processing of personal data in this context must therefore also immediately benefit from the protection offered by the GDPR.

² See among others the CJEU judgment of February 5, 1963, *NV Algemene Transport- en Expeditie Onderneming van Gend & Dutch Administration of Belastingen*, C-26-62, ECLI:EU:C:1963:1; CJEU judgment of July 15, 1964, *Flaminio Costa v. E.N.E.L.*, C-6-64, ECLI:EU:C:1964:66; with regard to the legal protection of citizens on the basis of Union law and principles of 'direct action' and 'primacy', see C. BARNARD, *The Substantive Law of the EU: The Four Freedoms*, Oxford (5th ed.), 2016, 17.

³ Compar. CJEU judgment of 24 November 2011, *Asociación Nacional de Establecimientos Financieros de Crédito en Federación Commercial Electronics and Direct Marketing c. Administración des Estado*, C-468-9/10, ECLI:EU:C:2011:777 (hereinafter: the *Asociación Nacional*), at 39: "It follows that, with regard to the processing of personal data, Article 7, under f), of Directive 95/46 precludes any national legislation which, without the consent of the data subject, imposes, in addition to the two cumulative conditions mentioned in the previous point, additional requirements."; *ibid.*, through. 52: "It must be noted that Article 7(f) [...] is a sufficiently precise provision to be invoked by an individual and enforced by national courts [and sets out] an unconditional obligation."

⁴ CJEU judgment of 11 December 2014, *František Ryneš c. Úřad pro ochranu osobních údajů*, C-212/13, ECLI:EU:C:2014:242 (hereinafter: *Ryneš judgment*), para. 22.

⁵ Compar. the analysis in *Ryneš* of the replaced legal standard *mutatis mutandis*, para. 25.
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54. The surveillance cameras that are the subject of this complaint were installed by the defendants on private property (i.e. the property of the defendants). For the application of GDPR, we can point out that the installation of surveillance cameras on a private domain and

the use of these surveillance cameras filming people does not mean by

definition that it is a "strictly personal or domestic activity" within the meaning of

Article 2, second paragraph 2, point c) of the GDPR.⁶

55. When the video-surveillance system covers, for example, public space or the domain

deprived of other people, even in part, and thus goes beyond the private sphere of

persons who process data through this system, it cannot be considered that this is

of an activity carried out exclusively for personal or household purposes.⁷ In acting

this way, it is in fact possible to produce images of natural persons and to identify

these.⁸ This is the case here.

56. Finally, it can be seen that there is no risk of the Litigation Chamber engaging in a

parallel judgment (to that of any other instance) of the facts as to the use of

surveillance by cameras and thus violates the legal principle *ne bis in idem*, given that

the other proceedings mentioned in the file relate to related facts but which, on the one hand,

legal point of view, are clearly distinct and which do not come under the protection of

personal data. The Litigation Chamber can therefore fully assume its

skills and rule on the facts.

2.3. The data controller(s)

57. According to Article 4, point 7 of the GDPR, the controller is:

"the natural or legal person, public authority, agency or other body

who, alone or jointly with others, determines the purposes and means of the

processing ; when the purposes and means of this processing are determined by

Union law or the law of a Member State, the controller may

be designated or the specific criteria applicable to its designation may be

provided for by Union law or by the law of a Member State".

6 A private domain is a "closed place not accessible to the public" within the meaning of article 2, 3° of the camera law. This item

written as follows:

"closed place not accessible to the public: any building or place bounded by an enclosure intended for use by the public, where
can be provided to him."□

7 Compar. with Ryneš Judgment, para. 32.□

8 Compare. with Asociación Nacional judgment, para. 35.□

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58. It is fundamentally important that the central concepts of privacy and data protection□

data protection are interpreted in a uniform way in order to guarantee the security□

legal for citizens. The concept of "controller" in the sense respectively□

of the Cameras Act and the GDPR must therefore be interpreted in the same way.□

59. Several elements of the record indicate that the two defendants behaved like□

joint controllers within the meaning of Article 26 of the GDPR.□

2.3.1. The installation of surveillance cameras and the recording and storage of images of□

surveillance cameras with or without personal data□

60. In the present case, it can be seen that the defendants both took steps in□

the framework of the installation of surveillance cameras and the determination of the position of these□

cameras. The defendants are both domiciled in the dwelling where the cameras□

surveillance were installed, they both gave instructions to the company which□

installed the surveillance cameras and they jointly defended themselves against all□

elements of the file, without making any distinction between the two persons.□

61. It should be noted that within the meaning of Article 7 of the Cameras Law, the first defendant carried out□

the declaration in his name to the eGuichet of the FPS Interior, but that the name of the second□

defendant is mentioned elsewhere in this application. She is indeed the person□

contact to request access to the images. The e-mail address to contact the□

controller in the request to the eGuichet also mentions the first name□

of the second defendant.□

62. The Court of Justice has confirmed that for the identification of the controller(s),□

a factual assessment of the natural person(s) or the person(s)□

morals which determine "the purpose" and "the means" of the processing, the notion being defined as□

in a broad manner with a view to protecting the persons concerned.⁹ The Court also considered□

that a natural person who, for reasons concerning him, exercises influence over the□

processing of personal data and thus participates in determining the purpose□

and means of such processing may be considered a controller.¹⁰□

⁹ CJEU judgment of 13 May 2014, *Google Spain and Google*, C-131/12, ECLI:EU:C:2014:317, par. 34; CJEU judgment of June

Wirtschaftsakademie□

through. 28.□

ECLI:EU:C:2018:388,□

Schleswig-Holstein,□

C-210/16,□

Stop□

CJEU□

from□

July 10□

2018, *Jehovan todistajat*,□

C-25/17,□

ECLI:EU:C:2018:551,□

through. 65.□

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63. It is therefore not because under national law a person (the first□

respondent) has made a formal request as controller that□

this person is the (sole) controller within the meaning of European law.□

In this case, the second defendant also behaved as responsible for the□

processing within the meaning of European law.□

64. As part of the installation of surveillance cameras and the recording and□

preservation of the images taken by these cameras, where the second defendant also had□

a decisive influence¹¹, the joint responsibility of the defendants with regard to the treatment is□

therefore proven.□

2.3.2. Transmission of camera images and photos to the Traffic Expert□

65. It appears from the defenses of the defendants that the camera images were□

forwarded by the two defendants to the Traffic Expert in connection with the□

environmental procedure.¹² With respect to this transmission as treatment,□

the defendants qualify as joint controllers, pursuant to□

Article 26 of the GDPR, since the choice to transmit these images ('the purpose') as well as□

that the manner in which this was done ('the means') is the fault of the two defendants.□

2.3.3. The Traffic Expert's use of camera footage in a report□

expert and the provision of images of the disputed surveillance cameras via a link□

Sharepoint by This Traffic Expert□

66. As part of the environmental procedure, a Traffic Expert was appointed□

requested by the two defendants in order to draw up an expert report, more specifically on the subject□

the mobility situation in the direct environment of the plaintiffs' private estates, and□

therefore in the defendants' residential area, given that the property of the two□

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11 Regarding the role of "decisive influence", cf. CJEU judgment of July 29, 2019, Fashion ID v. Verbraucherzentrale□
NRW, C-40/17, ECLI:EU:C:2019:629, par. 70.□

12 Defendants' reply submissions of November 27, 2019 (Exhibit 10), middle of p. 5: "The defendants retained□
images about the dangerousness of the traffic situation which has been recognized by both the city [...] and the Department□
Environment and forwarded them to the [Traffic Expert] in order to be able to evaluate these aspects constituting a□
annoyance which affects the development of the territory and which concerns public order.□

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67. The circumstances described in the decision of the Environment Department in the procedure□
environmental as well as in the expert report itself attest to a certain□
independence of the Traffic Expert.□

68. In this sense, it is also not proven that the defendants transmitted any□
instructions to the Traffic Expert regarding the further dissemination of□
images with personal data that the defendants had transmitted to this□
expert. Moreover, according to the defendants, the Traffic Expert did not have□
mission is to identify the mobility situation using images. The defendants would have□
also asked the Traffic Expert to delete the images via the link□
Sharepoint.□

69. Be that as it may, the defendants cannot be held liable□
(joint) processing for the subsequent dissemination of camera images via a link by□
traffic expert, not only because there are no instructions□
concrete in this respect, but also because the defendants did not determine 'the means'□
by which the traffic expert had drawn up his expert report, including□

the choice to transmit in full with the report the images used containing

personal data (vehicles and images of different people).

These means have indeed been determined by the Traffic Expert.

70. The plaintiffs' complaint targets the defendants in this case. In order to preserve the flow

of a correct procedure as well as the necessary contradiction, the Litigation Chamber

decides not to involve the traffic expert in this case.

71. The Litigation Chamber underlines that the fact that a third party – which is not involved

in this procedure – is or would be the data controller for processing

later stages of a transfer initially under the responsibility of the defendants (or one of the

defendants) does not mean that the initial transfer is lawful. This aspect, applied

to the disputed facts, is dealt with by the Litigation Chamber below.

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2.4. The lawfulness of the processing (Article 6 of the GDPR)

2.4.1. Recording and storage as well as other use of images

containing personal data, from the cameras of

contentious monitoring

72. Based on the images available in the file, as well as indications by the complainants

and the defendants of the location of the surveillance cameras on maps and photos

aerial, it can be established that all the surveillance cameras have been fixed either to the

central building of the defendants' property (hereinafter: the dwelling), either to the building

secondary on the property of the defendants (hereafter: the surrender).

73. Moreover, it can be seen, on the basis of these same images and indications, that the dwelling

and the shed do not directly border the public road or the private domains of third parties, but

are surrounded by plots of

land of the defendants themselves.

74. In the case in question, the defendants installed five surveillance cameras as

as private persons, on their private domain. In parts 2.2. and 2.3. of this decision, the Litigation Chamber has already pointed out that a video surveillance system falls of the provisions of the GDPR, when the device used makes it possible to record data at personal character and to store them. In this sense, the processing of personal data staff must at all times comply with the principles of Article 5 of the GDPR concerning the processing of personal data and must meet one of the conditions of a lawful processing under Article 6 of the GDPR.

75. The complainants did not give their consent to the processing of data to personal character within the meaning of Article 6, paragraph 1, point a) of the GDPR, which does not nor do the defendants claim. No other conditions for the lawfulness of the processing of article 6, paragraph 1 of the GDPR is not possible in this context, except point f) of this provision.¹³

76. It should be pointed out in particular that Article 6(1)(e) GDPR cannot not apply in this case. None of the defendants had any obligation to carry out a mission of public interest and no mission relating to the exercise of

13 For an analysis of the possible grounds for processing in the context of video surveillance systems, see EDPB, Guidelines 3/2019 (version 2.0) as established on January 29, 2020, Guidelines 3/2019 on the treatment of personal data by video devices, available via: https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-32019-processing-personal-data-through-video_en (hereinafter: EDPB Guidelines 3/2019), 10 e.s.

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public authority was vested in the defendants. In other words: the defendants had no mission of public interest requiring the installation of surveillance cameras and to further process the images containing personal data, recorded by surveillance cameras.

77. In addition, it can also be pointed out that Article 6(1)(c) GDPR mutatis

mutandis does not apply, since there is no legal obligation for the
defendants to install the surveillance cameras and thus process personal data
staff.

78. The Court of Justice has confirmed in the sense that in the absence of any consent or
any other legal basis, it is necessary to analyze the ground of lawfulness 'legitimate interest' under
of article 6, paragraph 1, point f) of the GDPR.¹⁴

Specifically, the Court of Justice affirms the following regarding this ground of lawfulness under
of the former European Data Protection Directive
staff :

"In this regard, Article 7(f) of Directive 95/46 lays down three conditions
cumulative for the processing of personal data to be lawful,
namely, first, the pursuit of a legitimate interest by the person responsible for the
processing or by the third party(ies) to whom the data is communicated,
secondly, the necessity of the processing of personal data for the
achievement of the legitimate interest pursued and, thirdly, the condition relating to this
that the fundamental rights and freedoms of the person concerned by the protection
data does not prevail over the legitimate interest pursued (judgment of May 4, 2017,
Rīgas satiksme, C-13/16, EU:C:2017:336, paragraph 28)."¹⁵

79. Controllers must in other words demonstrate that:

1)

the interests they pursue with the processing can be recognized as legitimate
(the "finality test");

2)

the envisaged processing is necessary to achieve those interests (the "necessity test");
and

3)

the weighing of these interests against the fundamental interests, freedoms and rights□

data subjects weighs in favor of the controllers or a third party□

(the "weighting test").□

14 Compar. the analysis of the former Directive *mutatis mutandis* with the GDPR in the judgment *Asociación Nacional*, para. 40

15 *Ibid.*, para. 40.□

17□

1. The finality test□

80. The Litigation Division can find that the defendants had in concreto an interest□

legitimate to install surveillance cameras on their private domain in order to preserve the□

protection of property, health and life of the defendants and their family members or□

other third parties.□

81. The European Data Protection Board (hereafter: the EDPB, for European Data□

Protection Board) previously indicated that burglary, theft or vandalism was□

examples of situations motivating the use of video surveillance¹⁶. The legitimate interest in□

the head of the defendants must certainly be real and concern a current problem.¹⁷□

The damage to the property of the defendants during the period preceding the installation of the□

surveillance cameras already demonstrate in themselves that this is a current and existing interest□

(and therefore not only hypothetical).□

2. The necessity test□

82. The Court of Justice has pointed out in the context of camera surveillance systems that this□

condition had to be considered in conjunction with the principle of "data minimization"□

currently enshrined in Article 5, paragraph 1, c) of the GDPR.¹⁸ Personal data□

personnel must be adequate, relevant and limited to what is necessary for the purposes□

for which they are processed.□

83. The Litigation Chamber is now carrying out an analysis by surveillance camera□

in dispute in order to determine whether the processing of personal data by means of□

these cameras may or may not be considered necessary.□

a) Front camera□

84. First, in a still image from the 'front' camera in the Complaint, we see a□

parcel of land next to the garden in front of the defendants, constituting the 'garden in□

facade'. In a camera image that the complainants transmitted to the Chamber□

Contentious, we can see that the surveillance camera is positioned in such a way□

16 EDPB Guidelines 3/2019, para. 19.□

17 EDPB Guidelines 3/2019, para. 20.□

18 Asociacion Nacional Judgment, para. 48.□

that about a third of the public road (as an open place) is filmed. We can also□

see it in the still images in the Complaint and Defendants' Reply Submissions. And this□

at a time preceding the change of position of the surveillance cameras carried out by□

18□

the defendants.□

85. The Litigation Chamber finds that the fact of extensively filming public roads□

and constant cannot be considered "relevant", nor "necessary" to preserve□

the aforementioned legitimate interests of the defendants.□

86. Such a configuration of a surveillance camera can hardly comply with the principle□

data minimization. The defendants argue that turning the camera of□

surveillance generates a reflection on the image, "and that as a result, a large part of the□

surveillance by cameras misses its objective, especially at night [...] It appears from the images in□

question that the company [X]¹⁹ set the cameras in such a way that the ownership of the□

defendants is protected to the maximum." ²⁰□

87. The fact that surveillance cameras are adjusted in a way that can be considered□

as not necessary and in accordance with the principle of data minimization falls within the□

liability of the defendants as controllers. A consequence□

boring technique cannot therefore constitute here an 'escape' to obtain a

lawful processing. Nor is such a loophole provided for by any

legislator.

88. The manner in which company [X] installs the surveillance cameras, and if necessary the

installs incorrectly, is a contractual matter that does not hinder the application

of the GDPR nor the liability and the consequences relating thereto for those responsible for the

processing.

89. The fact that the surveillance cameras were adjusted after the neighborhood policeman's visit

does not alter the original offence. The Litigation Chamber does not pronounce

on the accuracy of the neighborhood officer's assertions; it only confronts the

provisions of the law (in this case the GDPR) to the actions of the controller.

90. In any event, with the incorrect installation of the front-facing camera, the first

defendant unquestionably processed the personal data in particular of the

19 That is, the company that installed all the surveillance cameras for the defendants.

20 Defendants' reply submissions, exhibit 10.

19

first complainant by recording, storing and transmitting this data to

personal nature to the Traffic Expert.

91. In addition, it may also be noted that Article 8/2 of the Cameras Law allows the King to

define places where surveillance cameras can be directed to the perimeter

surrounding

directly

a

place

determined.

92. The Royal Decree of 6 December 2018 determining the places where the controller

can direct its surveillance cameras towards the perimeter directly surrounding the place,□

keep images from surveillance cameras for three months and provide access in□

real time images to the police services (M.B. of December 18, 2018, hereinafter the decree□

Royal Extended Perimeter) provides in its article 2 the cases in which the cameras of□

surveillance can be directed to the perimeter surrounding the location.□

93. The Extended Perimeter Royal Decree does not in any way offer the defendants the possibility of directing□

their surveillance cameras to the perimeter (i.e. not the private domain of the□

defendants) surrounding the location of the cameras. The places defined in the Royal Decree concern□

usually places that pose a risk and where filming the extended perimeter□

serves public safety or the public interest (and, conversely, not purely private interests).□

94. In this sense, the extensive and constant filming of public roads, as is apparent□

images of the file that the defendants bring themselves, cannot be considered□

as necessary for the processing of personal data in the context of□

the use of surveillance cameras.□

b) Camera in front of the shed□

95. The camera 'in front of the shed' films, according to the defendants themselves, a "limited part of the□

property of the [complainants], specifically, we see the driveway and part of the large door□

automatic." And this at the moment before the modification of the positioning of the cameras□

surveillance by the defendants.□

96. The national legislator (in Article 7 of the Cameras Act) has provided, for surveillance cameras□

installed in "enclosed places not accessible to the public", a provision which subjects the taking□

images in an 'open place' or a 'closed place accessible to the public' under strict conditions,□

in accordance with the principle of data minimization. In this sense, one can assume that□

in an a fortiori reasoning, properties of private persons or private companies□

20□

born□

can□

in□

all□

state□

of□

cause□

not□

to be□

filmed.□

97. Article 8/2 of the Cameras Act cannot be applied here either, for the same reasons□

as set out above in the necessity analysis for the 'front facade' camera.□

98. The Litigation Division does not rule out, hic et nunc, that in certain – very exceptional – cases□

–, properties of third parties can be lawfully filmed within the meaning of Article 6,□

paragraph 1 of the GDPR. In particular, one can think of situations where the third party owner□

of the private domain gives its consent for the installation of a surveillance camera□

who is filming his property, if the person installing the surveillance camera cannot in any way□

effective□

protect□

her□

property,□

without□

film□

a□

other□

domain□

private.□

99. In the present case, there is no such consent; the complaint proves the contrary. In addition, none of the documents in the file seem to demonstrate the existence of any other compelling reason to film parts of the plaintiffs' property.

100. The camera 'in front of the shed' only films a very limited part of the property of the plaintiffs, according to the images transmitted by the defendants and which are prior to the date adapting the position of surveillance cameras. It is precisely for this reason that it may be doubted whether it would have been necessary for this limited part of the property of the complainants be filmed.

101. In this sense, the taking of images – although limited but on a constant basis – of the areas private plaintiffs, as evidenced by the images in the record that the defendants have provided themselves, where personal data is processed, cannot be considered necessary for the processing of personal data when the use of surveillance cameras

c) Other surveillance cameras

102. With regard to the other surveillance cameras, the complainants did not submit any exhibit in the complaint. The defendants' reply submissions, however, contain images prior to the position adjustment of the surveillance cameras, not allowing to determine that these surveillance cameras would have filmed places other than the estate deprived of the defendants themselves. These are 'street side', 'garage' surveillance cameras and 'behind shed'.

21

3. Weighting test

103. Although failure of the 'necessity test' is sufficient from the outset to establish that the processing of personal data by means of 'front facade' surveillance cameras and 'before surrender' is unlawful, the Litigation Chamber also examines whether the existence of rights and fundamental freedoms of the persons concerned by data protection (the

complainants)□

prevail□

or not□

on□

the□

interests□

legitimate□

from□

defendants.□

104. This weighting depends on the particular circumstances of a concrete case and the rights of the□

complainants concerned under Articles 7 and 8 of the Charter of Fundamental Rights of□

European Union on privacy and data protection.²¹□

105. In this sense, one can take into account the seriousness of the violation of the rights and freedoms of□

plaintiffs as an essential element of the analysis.²² In this regard, it can be emphasized that taking□

continuous images of public roads, i.e. 24 hours a day, 7 days a week,□

constitutes a serious violation of these fundamental rights. This applies equally to□

private domains of the complainants and all the more so when another less intrusive treatment is□

possible,□

seen□

the fit□

of□

the□

position□

from□

cameras□

of□

monitoring.□

106. In addition, there are many other people affected, such as the children of□

complainants, or drivers of vehicles passing on the public highway in front of the house□

defendants, including□

rights are also violated by□

the same occasion.□

107. It can also be pointed out that the persons concerned cannot objectively□

expect the two aforementioned surveillance cameras to be positioned in this way,□

by constantly filming part of the public highway and the private domain of the plaintiffs.²³□

This is particularly the case because the surveillance cameras have been installed in such a way□

does not comply with the provisions of national law (the camera law) relating to the installation of□

surveillance cameras.□

108. For all these reasons, the ‘front façade’ and ‘in front of the shed’ surveillance cameras□

also fail the weighting test.□

21 Asociacion Nacional Judgment, para. 52; EDPB Guidelines 3/2019, par. 32-35.□

22 Ibid., para. 56.□

23 Regarding these ‘objective expectations’, see EDPB Guidelines 3/2019, para. 36.□

22□

4. Closing□

109. The ‘front façade’ and ‘in front of the shed’ surveillance cameras unlawfully processed□

images containing personal data, which constitutes a violation of□

Article 6, paragraph 1 of the GDPR, as long as there are legitimate interests for the□

defendants within the meaning of point f) of this standard, but that the concrete treatments are not□

necessary to secure those interests, and that the fundamental rights and freedoms of□

complainants and other affected persons prevail over these interests.□

2.4.2. The transmission of camera images containing character data□

traffic expert staff□

110. As already established by the Litigation Chamber in part 2.3., for this transfer, the□
defendants are liable as joint controllers, given□
that they both intervene as a party in the environmental procedure, and according to□
their own words, together approached the Traffic Expert and transmitted□
the images in this frame (see above).□

111. During the hearing, counsel for the defendants argues that in the context of the procedure□
environmental, camera images could be transmitted to the Expert in terms of□
circulation, since this expert can be considered as part of the ‘authorities□
courts’ within the meaning of Article 9, paragraph 1, fourth paragraph, 1° of the Cameras Act.□

112. Article 9 of the Cameras Act does not apply in this situation.□

113. Contrary to defendants' assertion, the Traffic Expert does not□
part of the ‘judicial authorities’, given that he was appointed at the request of the defendants□
themselves, and also in the context of an administrative appeal procedure.□

114. The question remains – given in particular the non-applicability of Article 9 of the Cameras Act□
– if there is nevertheless a legitimate interest on the part of the defendants to transmit the□
images to the Traffic Expert with the aim of illustrating the mobility situation in□
the direct environment of the plaintiffs' property in the context of the procedure□
environmental.□

115. Since the Litigation Division has already concluded in part 2.4.1. that the pictures□
carried out with the ‘front façade’ and ‘in front of the shed’ surveillance cameras included□
unlawful processing of personal data, it immediately appears that these images do not□

23□

could not be passed on to the Traffic Expert. This transmission is in□
such an unlawful effect within the meaning of Article 6(1) GDPR.□

116. According to the mission that the Traffic Expert received from the defendants, the□

transmission also concerned precisely the images (and the processing of data to be of a personal nature relating thereto) taken from public roads, but also from private areas of the complainants.

117. The transmission by the defendants of the images taken by the surveillance cameras to the Traffic Expert does not constitute lawful processing within the meaning of Article 6, paragraph 1 of the GDPR, and therefore constitutes a violation of this legal provision.

2.4.3. Taking pictures of the public road when a (suspected) offense is committed or when a fault is committed otherwise and causes nuisance

118. An image is added in the complaint, which represents, from the private domain of the defendants, the public highway and the private domain of the plaintiffs, where the first plaintiff is visible while he is obviously carrying a [...].

119. Complainants believe that this is a screenshot of an image that was taken with one of the defendants' surveillance cameras, but the defendants dispute this. They claim that this image was taken with a smartphone from the residence on the private domain of the defendants by one of them. The technical framing by the defendants appears to be fair to this regard.

120. The question still remains whether the taking of such an image constitutes lawful processing within the meaning of Article 6(1) GDPR.

121. The defendants consider that the photo could have been taken since they consider that transporting a [...] potentially constitutes an (environmental) offence.

The defendants consider it necessary to collect evidence of an infringement (allegedly or not) in order to bring it to the attention of the competent services, authorities or legal authorities or to lodge a complaint with them. That's what the defendants in this case by reporting the facts to the Federal Agency for the Security of the food chain (AFSCA), which has also initiated an investigation.

122. As part of the guarantee of public and private security, the defendants had therefore

a legitimate interest within the meaning of Article 6(1)(f) GDPR to take the

Photo. They were indeed acting in good faith on the assumption that the transport of a [...]

did constitute an (environmental) offence, as illustrated by their reporting to

24

the FASFC.

123. Although the Litigation Chamber refers in this case to public security, it should be

point out that this does not mean that Article 6(1)(e) GDPR

would apply in this case. None of the defendants had any obligation

to carry out a mission in the public interest and a mission within the framework of the exercise of authority

nor was it entrusted to the defendants. In other words: the defendants

did not have the obligation to establish evidence relating to the environmental offense

(presumed) by taking a photo and therefore processing personal data

staff ; it would be otherwise if the judicial authorities or other authorities empowered to

this effect were collecting and processing evidence by means of images containing data to be

personal character.

124. The damage resulting from such an offense (environmental pollution) would affect

not only the company, but also directly the private interests of the defendants, being

given that they reside close to the complainants, while the first complainant carries the

[...]. In this sense, the taking of a photograph as processing of personal data

(of the first complainant) was also necessary to safeguard these legitimate interests of the complainant

because it can serve as evidence of the alleged offence.

125. Finally, we can also mention that the taking of this photo does not seem so intrusive

for the interests or fundamental rights and freedoms of the first complainant, whether these

prevail over the legitimate interests of the defendants who took the photo, given that the

defendants acted in good faith on the assumption that an offense had been committed.

The camera that took the image was also positioned in such a way that the image does not

only represents the (alleged) offense on the public highway. Taking the picture as

processing of personal data therefore also passes the weighting test.

126. For all these reasons, taking a single photo with a smartphone, as shown

in the complaint and where the first complainant is visible, as a direct reaction to the sight

of an alleged infringement (unlike the continuous recording of images by cameras of

surveillance of a part of the public highway or a private domain), constituted treatment

lawful within the meaning of Article 6(1)(f) GDPR, and none of the defendants has

committed an offense under this article with regard to this fact.

25

2.5. Data protection by design (Article 25 GDPR)

127. In the GDPR, the European legislator has provided for an article 25, including the concepts of 'data

protection by design' and 'data protection by default' ("DPbDD"), in French respectively

'data protection by design' and 'data protection by default'.

The Litigation Chamber will hereafter use the abbreviation DPbDD when it is simultaneously

of the two concepts.

128. Article 25 of the GDPR reads as follows:

"1. Considering the state of knowledge, the costs of implementation and the

nature, scope, context and purposes of the processing as well as the risks,

which vary in likelihood and severity, that the treatment presents for the

rights and freedoms of natural persons, the controller implements

work, both at the time of determining the means of processing and at the time

the processing itself, the appropriate technical and organizational measures,

such as pseudonymization, which are intended to implement the principles

relating to data protection, for example the minimization of data,

effectively and to provide the processing with the necessary safeguards in order to meet

to the requirements of this Regulation and to protect the rights of the person

concerned.□

2. The controller implements the technical measures and□

appropriate organizational arrangements to ensure that, by default, only data to be□

personal character which are necessary with regard to each specific purpose of the□

treatment are processed. This applies to the amount of character data□

personal collected, the extent of their processing, their retention period and□

to their accessibility. In particular, these measures ensure that, by default,□

personal data are not made accessible to a number□

of natural persons without the intervention of the natural person□

concerned.□

3. A certification mechanism approved under Article 42 may be used□

evidence of compliance with the requirements set out in paragraphs 1 and 2 of the□

this article." 24□

24 See also in this respect recital 78 of the GDPR.□

129. In accordance with Article 70(1)(e) of the GDPR, the EDPB issued lines□

26□

guidelines on the DPbDD.25□

130. Data protection by default refers, according to the guidelines, to the terminology□

used in computing, and refers to a pre-existing or pre-established value of a parameter□

adjustable within a software application.26□

131. For the situation of this file relating to the installation and positioning of the cameras□

monitoring, data protection must be analyzed from the design stage.□

132. The purpose of data protection by design, according to the EDPB, is to protect data□

rights of data subjects and to ensure that the protection of their personal data□

be specific ('integrated') to the treatment.27 What matters in this respect is that the□

'appropriate measures' that a data controller must take aim to ensure that the□

data protection principles are effectively incorporated so that

the risks of violation of the rights and freedoms of the persons concerned are limited.²⁸

133. It is important to mention in this respect that for the application of the provision

data protection by design, no actual processing should take place.

It is, however, the specific nature of installing surveillance cameras and taking

of images with these surveillance cameras which requires taking technical measures

and organizational with the particular aim of effectively applying the principles of

data protection and to ensure the protection of potential data subjects, if

processing of personal data was to take place.

134. In this sense, there will be at least one data controller, in particular for the installation

surveillance cameras and the implementation of data protection from the

conception of Article 25, paragraph 1 of the GDPR by this controller, that

the installation of these surveillance cameras generate or not a processing of data to

personal character. In this case, the two defendants are jointly responsible for the

processing within the meaning of Article 26 of the GDPR, as set out in section 2.3.

25 EDPB, Guidelines 4/2019 of 13 November 2019, on data protection by design and by default of the article

25

:

https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_201904_dataprotection_by_design_and_by_default.pdf

(hereafter: EDPB Guidelines 4/2019).

available

the address

GDPR,

from

at

²⁶EDPB Guidelines 4/2019, para. 39. See also *ibid.*, para. 40: "Hence, 'data protection by default' refers to the choices

made by a controller regarding any pre-existing configuration value or processing option that is assigned in a software application, computer program or device that the effect of adjusting, in particular but not limited to, the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility."

27 EDPB Guidelines 4/2019, para. 7.

28 EDPB Guidelines 4/2019, para. 14 e.s.

27

135. The legal provision on data protection by design, Article 25 of the GDPR, explicitly mentions the importance of taking effective measures to execute the principle of data minimization. The data controller must indeed verify if there is a need to process personal data.²⁹

136. By filming public roads and private areas, there is almost absolute certainty only personal data, and probably a lot of data to personal nature, will be treated. This also results from the fact that in the procedure environmental, the defendants used the images, in particular from the 'façade' camera avant' in order to film vehicles and their behavior. The same risk is valid for the taking of images of the private domain (like that of the plaintiffs), which is carried out with the camera 'in front of the shed'.

137. In part 2.4. of this decision, the Litigation Chamber noted that illicit processing took place due to the position of certain surveillance cameras. By their nature, such unlawful processing demonstrates in itself sufficient evidence that measures insufficient steps were taken by the defendants to make the necessary arrangements to comply with the data protection principles of the GDPR, thus constituting a violation of Article 25(1) GDPR.

138. It is extremely important that the taking of continuous images of such places (see point 136) be accompanied by the necessary prudence and reserve and be carried out in accordance with the legal provisions on this subject, which is not the case in this case.

139. For the above reasons, the defendants violated Article 25, paragraph 1 of the GDPR by installing 'front facade' and 'in front of shed' surveillance cameras.

2.6. Sanctions for offenses

140. The Litigation Chamber finds the following offenses committed by the defendants:

at.

Article 6(1) GDPR, since the processing of personal data of personal character, and more particularly the personal data of the first plaintiff in the case in question, using the surveillance camera

29 EDPB Guidelines 4/2019, para. 69.

28

'front facade'³⁰ and the surveillance camera 'in front of the shed'³¹, took place in such a way

illicit, personal data having been collected by filming public roads³²

and

from

properties

private³³

of

people

physical

third parties;

b.

Article 6, paragraph 1 of the GDPR, since the defendants have transmitted

unlawful manner of the images to the Traffic Expert, within the framework of the

environmental proceedings between plaintiffs and defendants, the data to be

personal nature of the first complainant having been processed in an unlawful manner,

after which these images containing personal data of the first complainant

have been made available via an online platform by the Expert in the field of

traffic;

vs.

article 25, paragraph 1 of the GDPR, since the defendants did not take

sufficient measurements when installing their surveillance cameras, and

in particular the 'front facade' and 'in front of the shed' cameras, in order to respect the principles

data protection, and in particular the minimization of data, with a view to the

protection of the rights of data subjects.

141. The Litigation Chamber notes that the current positioning of surveillance cameras

in question has upheld the offences, and therefore decides to simply impose a reprimand

and an administrative fine for these offenses (infra).

142. In view of Article 83 of the GDPR and the case law³⁴ of the Court of Markets, the

Litigation Division concretely motivates the imposition of an administrative sanction for

two violations of Article 6, paragraph 1 of the GDPR:

Duration

The fact that between the initial installation of the surveillance cameras and the modification of the

position of the surveillance cameras, personal data have been processed in

30 The name of the surveillance cameras is that used by the defendants in their submissions in reply to the

November 27, 2019, first noted at the bottom of page 6.

31 Same.

32 Compar. the public highway as an "open place" within the meaning of article 2, 1° of the law of March 21, 2007 regulating the
the use of surveillance cameras (M.B. May 21, 2007), hereinafter the cameras law.

33 Compar. private property as a 'closed place not accessible to the public' within the meaning of article 2, 3° of the camera law.

34 Court of Appeal of Brussels (Cour des Marchés section), X c. DPA, Judgment 2020/1471 of February 19, 2020.

29

illegally using the two aforementioned surveillance cameras implies that

the violations took place over many months.³⁵

With regard to the transfer of images from the two surveillance cameras to the Expert in

traffic, it appears that the images taken in November 2018 were used

by the defendants in the environmental proceedings. The phase of the procedure

environmental during which the Traffic Expert was appointed does not date

however, that of April 12, 2019, more than five months after the images were taken. The fact that the

images have been preserved for so long and have subsequently been further processed indicate here

also a retention period for images made unlawfully which is manifestly

excessive, whereas these images were above all made illegally.

Gravity

The provisions violated are part of the very essence of the General Protection Regulations

of the data, namely the lawfulness of the processing.

According to their own statements, the defendants called on a company specializing in

the installation of surveillance cameras – the defendants nevertheless remain themselves

responsible for the processing for which they define the purpose and the means pursuant to

Article 5, second paragraph and Article 24 of the GDPR.

Defendants and plaintiffs are involved in different litigation with various

public institutions, with the defendants arguing that the plaintiffs also committed

certain breaches of the protection of personal data – which does not justify

however in no way the own violations of laws and regulations, and

also does not imply a

impunity of

the part of

the supervisory authority.

The defendants have already changed the position of various surveillance cameras, after

intervention of the neighborhood officer, so that the current positioning of the cameras of

monitoring (including the two for which violations are noted) involves less

risks to the interests, freedoms and fundamental rights of natural persons

third parties that could be filmed.

35 According to the conclusions in reply of the defendants, p. 6, the surveillance cameras were installed "in the fall of 2018" –

the recording of surveillance cameras in the eGuichet of the FPS Interior dates from October 2018; the repositioning of

surveillance cameras was reported by the defendants to the neighborhood constable and November 2019, according to the plain

September 2019.

30

The Litigation Chamber also takes into account the fact that the defendants are

individuals who manifestly pursue no commercial interest in the processing

personal data.

Breaches of Article 6 of the GDPR give rise to the highest fines of Article 83,

paragraph 5 of the GDPR.

With regard to the positioning of surveillance cameras and the processing of

personal data with these cameras, the Litigation Chamber takes into account

what the defendants say about their compliance with national law

(i.e. law cameras) and opinions of the security company as a partner

contractual.

The defendants themselves claim that the cameras were installed in such a way that

"the property [of the defendants] is secured to the maximum." 36

However, it emerges from all the information in the file that it was not sufficiently kept

account of the implications of camera surveillance for the protection of data at

personal character of third parties concerned, i.e. the complainants.

Number of people concerned

With regard to the number of people concerned, the Litigation Chamber wishes

remember that the improper installation of surveillance cameras, and the processing of data

of a personal nature which ensues via the images of such cameras, infringes the rights

many people concerned when public roads or private areas are

taken from the pictures. Children may also be involved in this case, an element

to which the GDPR pays particular attention, in particular in its article 6, paragraph 1,

item f).

It is important to treat personal data with the utmost care

of such a large number of people involved (for the defendants, perhaps a number

unknown), and at the very least in a way that complies with the regulations on the protection

Datas.

36 Respondent submissions of the defendants of November 27, 2019, p. 3; underlining of the Litigation Chamber.

31

Sufficient deterrent effect

An administrative fine of EUR 1,500 constitutes for the Litigation Chamber an amount

sufficiently dissuasive to prevent further infringements, having regard to the reaction to the form

complaint of the defendants of November 17, 2020.

143. The Litigation Chamber draws attention to the fact that the other criteria of Article 83.2

of the GDPR are not, in this case, likely to lead to another administrative fine

than that defined by the Litigation Chamber in the context of this decision.

144. On October 27, 2020, the Litigation Chamber sent the defendants a form of

reaction against the proposed fine, informing them that the Litigation Chamber had

intends to impose a fine of EUR 2,000 on them. The elements that the defendant has

then put forward in the reaction form were taken into account by the Chamber

Contentious in its deliberation. In this respect, particular account shall be taken of the means

defendant's finances.

145. Given the importance of transparency regarding the decision-making process of the Chamber

Litigation and in accordance with Article 100, § 1, 16° of the LCA, this decision is

published on the website of the Data Protection Authority by deleting the data□

identification of the parties, since these are neither necessary nor relevant in the context of□

of the publication of this decision.□

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FOR THESE REASONS,□

the Litigation Chamber of the Data Protection Authority decides, after deliberation:□

at.□

pursuant to Article 58(2)(b) GDPR and Article 100(1),□

5° of the LCA, to reprimand the defendants for violation of Article 25, paragraph 1□

GDPR;□

b.□

pursuant to Article 83 of the GDPR and Articles 100, 13° and 101 of the LCA,□

to impose on the defendants an administrative fine of 1,500 euros for violation of□

GDPR Article 6. The defendants are jointly and severally liable for the payment of the said amount.□

Under article 108, § 1 of the LCA, this decision may be appealed within a period of□

thirty days, from the notification, to the Court of Markets, with the Authority for the Protection of□

given as defendant.□

(Sr.) Hielke Hijmans□

President of the Litigation Chamber□