Athens, 22-02-2023 Prot. No. 459 A P O F A S H 8 /2023 The Personal Data Protection Authority met at the invitation of its President at its store, on Wednesday, February 15, 2023 in the formation of a Department, in order to consider the case, which is mentioned below in the history of this decision. The President of the Authority, Konstantinos Menudakos and the alternate members Demosthenes Vougioukas were present, as was rapporteur and Maria Psalla. Present without the right to vote were Anastasia Tritaki, legal auditor - lawyer, as assistant rapporteur and Irini Papageorgopoulou, employee of the administrative affairs department, as secretary. The Authority took into account the following: With the no. prot. C/EIS/464/23-01-2023 application A requests the review of the Authority's Decision 10/2022, which was notified to him with the document no. prot. C/EX/498/22-02-2022 . With the complaint No. C/EIS/2500/12-04-2021, A and B brought before the Authority, among others, the following: Complainant C, who lives on the ground floor of a duplex, in which they live and the complainants, has installed cameras, one of them under the balcony of the complainants with whom he is a co-owner (undivided) of the property in question. The above cameras, as claimed by the complainants, receive image and sound and are connected to a recording device. Also, the control field of the cameras includes places, such as the shared central entrance of the building's stairwell, the building's pilothouse and the property's garden, while the purpose of the processing seems to be the protection of persons and property of the residence. They further argued that the system has specific technical characteristics, from which it follows that it operates, in violation of the GDPR, as it receives an image from a non-domestic space while none of the conditions of Directive 1/2011 of the Authority are met. Finally, that a right of opposition has been exercised to 1-3 Kifissias Avenue, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr complained of without response. The Authority, in the context of investigating the complainants, sent an information letter to both the complainant and the complainant and, following their responses and other communications, sent a request for clarification to the complainant. With his answer, the complainant brought to the attention of the Authority the following briefly mentioned: A) The system consists of three cameras, placed in a part of the pilot for the exclusive use of the other tenants (i.e. apart from the complainants) and there are no video surveillance screens, nor can recording audio, but the video surveillance system only receives real-time image and only very occasionally as he himself connects via mobile phone to the camera (via the Internet). Therefore, the facility in question is outside the scope of the GDPR, given that there is no recorder and no recording is done, so obviously no archiving is done. b) A sign has been placed on the pillar before the entrance to the common area and the person entering the area from the front door sees the sign in front of him, when he is still clearly outside the coverage of the camera. c) The property is a single

(without establishment of horizontal ownership) undivided property of the complainants and the complainant. The tenants are six (6): the complainant's family of four who live in one apartment and the two complainants who live in the other. The property, for practical reasons of smooth coexistence of all, has been demarcated, over 20 years, into sections for exclusive use (where others do not enter, pass or remain), and common areas. Premises for exclusive use are two residences, one main use space used primarily as an office (third apartment with office, living room, full bathroom, not mentioned in the complaint, for the exclusive use of the complainant), two auxiliary storage areas, and the entire ground floor level (front yard, back yard, pilothouse, except for the "corridor" between the front door and the central common entrance to the building's central stairwell). Shared spaces are only the "corridor" and the central staircase of the building with its wide stairs. The south yard (front and back) and the south pilothouse where the cameras are installed are for the exclusive use of the other tenants (except the complainants) who all agree to 2 cameras. Accordingly, the north yard (front and rear) and the north pilothouse are for the exclusive use of the complainants. In order to prove the exclusivity of use, various elements are mentioned, such as the fencing of the pilot house, various constructions and modifications, the condition of the yard and the way it is used, d) There used to be a video doorbell at the common entrance which was broken, beyond the possibility of repair, while the complainants deny constantly replacing, which causes difficulties for the complainant and a safety risk. of where to use spaces exclusive to the complainant, E) Cameras with elements 2 and 3 and the right two thirds of camera 1 only cover the complainants do not enter/pass/remain, therefore their privacy is not affected and their consent is not required. Camera 1 covers the common entrance of the building in the left third of the received image. As for this part of the coverage, it replaces the video doorbell installed from the original construction of the building, and indeed with the same functionality but without sound. Therefore, the left third of camera 1's coverage must be treated as being provided for by the tenement by-law, even though no by-law exists, and as a forced solution to replace the pre-existing video doorbell, given the complainants' abusive refusal to maintain the property. f) His initial information from the Authority was that legality is governed by the provisions of Directive 1/2011 and the GDPR. The directive in question expressly provides for a decision to be taken with a required majority of 2/3 of the tenants, in which each tenant has one vote. In the context of good administration, for the evaluation of the majority the complainant has followed in good faith the way indicated in article 15 of the directive, namely 2/3 of the tenants. The installation has the required majority based on tenants (4 in favor, 2 against) and also based on apartments (2 in favor, 1 against). g) Before commissioning, repeated meetings were held in the presence of both complainants, during which they were thoroughly

informed and all the questions they raised were answered verbally. They may not have agreed (voting in the minority), but they are fully aware, h) The complainants report that a request was made to update and delete the data, which have been recorded and concern them, but before the complaint no such request had been submitted, while as there is no register, no recording is made, 3 so no archiving, there is no data to be handed over to them or to be deleted, i) At the request of the complainant's lawyer to A for the distribution process, this was referred to his lawyer, who explained that the complainants set as a condition for the disentanglement of the distribution process the non-distribution "dissociation of ... everything". In order to disengage the distribution, the complainant counter-offered to sign an agreement under which the camera that the complainants say is watching them on their balcony would be disconnected until the distribution process was fully completed, and they would not obstruct that process, so that proceed at the fastest possible pace. The complainants refused, which the complainant believes proves the sham of the complaint. j) Burglars have already broken into the property twice. The first time during the absence of everyone, with significant material losses and a particularly strong psychological burden from the violation of the hearth. The second time..., the burglars were noticed. In both cases the police were called and arrested. The second invasion was the catalyst for the installation of the system, demonstrating the inadequacy of the existing one. During the period of the second invasion there were repeated cases of invasions in the surrounding buildings. k) Directive 1/2011 (articles 1 par. 1 and 5) provides for the possibility of some limitation of the protection of privacy if the intended purpose weighs more, in case of failure to achieve a majority in favor of the establishment. The very small restriction on the privacy of the complainants cannot be overestimated and the supreme legal good of human life is clearly of greater value than the anyway mild restriction on privacy by a non-recording/archiving casual camera, which , in fact, pre-existing the installation with a video door camera installed from the original construction of the building with the same functionality. The Authority invited the parties involved to a hearing before the Authority Department on 7/12/2021, who, after receiving a deadline, presented their views them in relation to the complaint in writing, bringing the following to the attention of the Authority: a) The complainants with their memorandum No. G/EIS/8306/21-12-2021 4 stuck to what they have already presented before the Authority and stated that there is an additional risk from a possible recording of the material, as it is easy to be registered under the responsibility of the person complained of and their assurance of non-registration is not sufficient for them. They pointed out again that the entire property is a single undivided property, without constitution and without regulation, for which the two complainants have full ownership of 59.375%, therefore, without the approval of the majority of the co-owners, the slightest intervention is not allowed either for reasons

privacy or even for other reasons, from any co-owner and for anything. Pursuant to the applicable building permit, the premises claimed by the complainant to be in exclusive use are (a) a common pilot and garden area, and (b) parking in the southern common pilot area corresponds to the southern maisonette apartment of the property with an entrance on the 1st floor where the two complainants live, and in fact it is not an entire parking area. This space is a jointly owned and shared space, it is not separated and not demarcated for any arrangement without the establishment of properties as well as regulation with a notarial deed. The reference to the existence of a third apartment is not included in any kind of notarial deed, nor does it correspond to what is included in the Building Permit or in any other official ownership document (e.g. declarations in the land register). On the contrary, the space is one of the two total warehouses of the basement level, monitoring the two apartments-maisonettes of the building, and they do not affect the majority of the tenants for the approval of the system, the evaluation of which on the one hand does not exist and on the other hand is absent due to the opposition of the majority of the co-owners, b) The complainant in his memorandum no. prot. C/EIS/8363/23-12-2021 argued that the complaint should be rejected and the case put on file, given that the establishment it does not fall within the scope of the provisions of the GDPR as there is no recording and therefore no filing system. If the Authority examines based on the "notarized" status of the property, it considers that the complaint should be rejected and the case closed, since it is a purely domestic use, since, as "one thing", the property is not divided into private and common areas and therefore the cameras monitor purely domestic areas, otherwise the complaint must be filed, given that the installation is absolutely legal as 5 had and has the required majority (however this is calculated, i.e. 2/3 of tenants or 2 /3 apartments). As far as the installation is concerned, there is no question of a majority of co-owners, given that it has been done entirely in an area of exclusive use, all co-owners/users of which agree to the installation, and the practice applied for 20 years in the context of the private use agreement , both by the complainant and the complainants, is to install and post whatever anyone wants in these spaces, without absolutely any consent or consultation with the rest. the following: Subsequently, the Authority issued Decision 10/2022 by which it ruled, among other things, a) that in a video surveillance system installed in a private house, the reception and processing of images or sound when the field of control of the camera includes non-private spaces (public, shared or spaces belonging to third parties), with the result that the relevant processing falls within the scope of the legislation for the protection of personal data and its legality is examined in combination with the application of principles of personal data protection, b) that in cases of processing through such video surveillance systems, the legal basis that is usually applied is Article 6, paragraph 1, paragraph f of the GDPR "the processing is necessary

for the purposes of the legal interests pursued by the controller processor 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, in particular if the data subject is a child" and that further, a basic condition for the legality of the processing is the observance of the principle of proportionality, the application of which is specified in articles 6 and 7 of Directive 1/2011 of the Authority, but also in its Special Part, c) that with regard to the more specific issue of the installation of a video surveillance system in residential complexes , direction is provided by article 15, in the Special Part of Directive 1/2011 of the Authority and that, as stated in this article, the installation of a video surveillance system in residential complexes for the safety of common areas and the persons who move in them can only be carried out with decision 6 of the body responsible for the management of the complex (e.g. of the General Assembly of the apartment building) in accordance with the provisions of the relevant Regulation, and not by any tenant individually, and, if there is the consent of two thirds of the tenants of the apartment building. For this opinion, one vote must be counted per inhabited apartment (or used - non-vacant - apartment, when it is not used as a residence) as specified by the Authority and confirmed through opinion 5/2017. Responsible for processing the video surveillance system, i.e. competent to decide on the purpose and manner of use of the system, is the association of persons of the co-owners that operates through the G.S. co-owners of the complex and the relevant regulation, where it exists, d) that with regard to the conditions for installing a camera at the entrance to an apartment solely and solely for the purpose of protecting the persons who live or work there, as well as the goods of the tenants of the apartment, in No. 5/2017 Opinion of the Authority specifies that the range of the camera must be limited to the absolutely necessary space in front of the entrance door, taking the least possible image from a common area (see paragraph 6 of Opinion 5/2017). If the recording of image data is carried out and the range of the camera for technical reasons, in particular due to the location of the apartment entrances, cannot be limited to the absolutely necessary space in front of the apartment entrance, the prior consent of the tenants of the floor who live in the affected areas is required apartments (one vote per affected apartment), otherwise 2/3 of them (see paragraph 12 of the above opinion). e) that in this case the complainant accepted that the video surveillance system works and that its scope is not limited to his strictly private areas. The spaces from which an image is taken are "urban planning" shared. The complainant claims that they are premises for exclusive use (with the exception of a part of an image from a camera which takes an image from a premises which it considers to be shared), but this is not supported by documentary evidence, on the contrary in all documents the premises are shown as shared, therefore the use of the system cannot be considered an

exclusively personal/domestic activity as image capture is not limited exclusively to the premises of a family, but includes communal areas, 7 f) that as the premises are communal, the surveillance should, if it is assumed to be for the protection of common areas, to be decided by the co-owners. As there is no regulation, there should at least be, by analogy, a majority of 50%+1 based on ownership percentages (the complainant owns about 40%). In fact, the criterion of votes per apartment does not need to be examined, as it concerns the agreement of the tenants, as a criterion that proves the necessity and proportionality of the system. g) that the complainant, as a controller as he has determined the purpose and means of the processing, uses the video surveillance system for the purpose of protecting the persons of his family and property of their residence. Although the complainant does not explicitly mention it, it appears that the legal basis of the establishment is Article 6, paragraph 1, paragraph f of the GDPR. For the application of this legal basis, it must be considered whether the operation of the video surveillance system is necessary for the purposes of the legal interests pursued by the data controller, unless these interests are overridden by the interest or the fundamental rights and freedoms of third-party data subjects which impose the protection of personal data. The purpose of protecting persons and property invoked by the complainant can be achieved by other means (e.g. lighting, alarm, placing a camera only at the entrance to his apartment and indoors).Furthermore, given that the monitored area is shared , its use by the other tenants cannot be excluded, especially as part of the monitored space includes the common entrance of the twoapartments. Consequently, the rights of persons who
they live in the other apartment of the building, as they may be watched in
activities closely related to their private lives. Therefore, this processing,
it cannot be legal, as it violates article 6 par. 1 of the GDPR. It is highlighted
that as regards the data controller, as an apartment tenant, it has direct application n
opinion 5/2017 of the Authority. Therefore, he could only supervise his privates
spaces and a small part of the entrance to his apartment but not the main entrance,
without agreement with the other tenants.
The Authority taking into account the nature and purpose of the processing, the years
existing disagreement between the two sides, their kinship and the fact that the

processing may have consequences for a specific few natural persons,

with its 10/2022 Decision, exercised the corrective authority according to article 58 par. 2 item.
f GDPR and imposed on the accused C a ban on data processing
of a personal nature through a video surveillance system which receives an image from
common areas of the property in which his family lives and the
complainants, and his obligation as above to inform the Authority in writing about the
implementation of the decision within a period of one week from its receipt
Decision.
Subsequently, with the document No. G/EIS/3058/02-03-2022, the accused
informed the Authority that it stopped processing personal data
through a video surveillance system, in accordance with the Authority's decision 10/2022, with
reservation of all his rights, while with the case number C/EXE/683/15-03-2022
document of the Authority, the complainants were also informed about its interruption
processing.
Following this, the complainant A submitted against the above with no. 10/2022 Decision
the one in question with no. Prot. C/EIS/464/23-01-2023 application (treatment), with which he requests
the amendment of the Decision, claiming, among other things, that with the no. 10/2022
Decision, the Authority did not proceed with the necessary enforcement, contrary to the claims of the applicant
"uninstall-removal" of the video-audio-surveillance system (3 video cameras
sound-surveillance and other equipment with motion detection radar, cabling, etc.)
for the violation of article 15 of Directive 1/2011 of
Authority, nor in the imposition of an administrative fine in the case of non-compliance with
the "uninstall-remove" command.

With the above request for treatment, the applicant claims, among other things:
a) that in article 15 of Directive 1/2011 of the Authority, but also in its reasoning
of contested Decision No. 10/2022, reference is made to the "facility" and
not in the operation of video surveillance systems,

b) that the effectiveness of the challenged Decision is not ensured, if

does not include the "uninstall-removal" of the system,

c) that there is a series of Decisions of the Authority (previous Decision 23/2021,

subsequent Decisions 34/2022, 50/2022 and 60/2022), in the operative part of which

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included is an order from the Authority to uninstall/remove the systems and

imposing an administrative fine in case of non-compliance,

d) that only the illegal placement (and not only the operation) is sufficient for

to create a sense of citizen surveillance and influence and to

insult their personality, as well as restrict their freedoms,

e) that with the existence of the video-audio-surveillance system processing is carried out

special categories given political beliefs and the exercise is prevented

of their civil liberties, as they may carry out activities related to

political beliefs in households, such as gatherings,

f) that for the above reasons the review and "completion" of the

No. 10/2022 of Decision, for reasons of application of the principle of equal treatment and observance

of the principle of proportionality.

The Authority, after examining the elements of the file, after hearing the rapporteur

and the observations of the assistant rapporteur, who was present without the right to vote,

after thorough discussion,

THOUGHT ACCORDING TO THE LAW

1. Because, according to article 24 par. 1 of Law 2690/1999 (KDDiad) "If from the relevant

provisions do not provide for the possibility of exercising, according to the next article, a specialist

administrative, or internal appeal, the interested party, for material restoration

or moral damage to his legitimate interests caused by individual administration

act can, for any reason, with his application, request, either from the administrative authority

which issued the act, its revocation or amendment (remedial request), or, by

the authority that is in charge of the one that issued the act, its cancellation (hierarchical

recourse)". Within the meaning of the provision, the remedy application is for the purpose of revocation

or modification of the challenged individual administrative act for legal or factual reasons

its defects attributable to the regime under which it was issued,

2. Because, with the above provisions of article 24 of the Civil Code, the right of everyone is established

"interested" manager, who has suffered material or moral damage from an individual

administrative act, to address the authority that issued said act before

resort to judicial protection (simple administrative appeal, otherwise an application

treatment). This is an "informal" administrative appeal as opposed to the formal ones

"special" and "unequivocal" appeals of article 25 KDDiad. The said appeal has

as a request for the revocation or modification of the above-mentioned individual administration

act, in order to restore the material or moral damage of the applicant, the

caused by the administrative act in those cases where the law does not provide

the possibility of exercising the above appeals of article 25 KDDiad1,

3. Because of the content of the application and the examination of relevant decisions of the Authority

results in the issuance of contradictory decisions as to whether, during its exercise

corrective authority of the Authority in case of unlawful data processing

of a personal nature through a video surveillance system, is ordered only

prohibition of processing through a video surveillance system (Decisions 10/2022,

4/2022 (Mon. Organ)) and/or its removal (indicative Decisions 23/2021, 34/2022,

50/2022),

4. Because the resolution of the present interpretative issue is judged as a more general issue

importance, to ensure the unity of the Authority's jurisprudence and security

law,

5. Because according to article 8 par. 1 sec. b' of the Regulation of Operation of the Authority (Official Gazette B' 879), the Department of the Authority may refer a case to the Plenary of the Authority, at responsibilities of which it belongs, among others, according to article 4 par. 1 item i' of Regulation of the Authority's Operation (Government Gazette B' 879), the examination of cases introduced by the President or referred by the Department due to the importance or the general their interest2,

FOR THOSE REASONS

The beginning

Refers the considered application for treatment in its entirety for consideration by the Plenary of the Authority, according to article 8 par. 1 sec. b' of the Regulation of Operation of the Authority (Government Gazette B' 879),

due to the importance and more general importance of the matter referred to in thinking.

1 See indicatively, the one with no. 73/2018 Decision of the Authority.

2 See also Decision 8/2011 of the Authority.

The President The Secretary

Konstantinos Menudakos Irini Papageorgopoulou