

GZ: DSB-D124.1078/0002-DSB/2019 from 10.10.2019□

[Note editor: Names and companies, legal forms and product names,□

Addresses (incl. URLs, IP and e-mail addresses), file numbers (and the like), etc.,□

as well as their initials and abbreviations can be used for pseudonymization reasons□

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

Punctuation errors have been corrected.]□

NOTICE□

S P R U C H□

The data protection authority decides on the data protection complaint 1. of Maria A***-□

B*** and 2nd of Hans A*** (complainant), both represented by counsel□

Mag. Peter C***, dated June 18, 2019, received on July 18, 2019 against 1. Ludwig N***□

and 2. Johanna N*** (Respondent) for violation of the right to secrecy□

as follows:□

1. The complaint is rejected.□

2. The application for the imposition of a fine on the Respondents is□

rejected.□

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

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

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

REASON□

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

1. With a submission dated June 18, 2019 (ha. received on July 18, 2019), the□

Complainant violated the right to secrecy and brought□

summarized, that they each own half of the GST-NR *3*5/4□

in EZ 7*1, GB *3*2 H***dorf, with the residential building built on it K***weg *2b.□

The respondents each own half of the property GST-NR *3*5/5,□

presented in EZ 3*31, GB *3*2 H***dorf with the residential building built on it□

K***weg *2c. The respondents had been at their house since November 2018□

installed a camera and have been using it for several months for parts of the□

monitor the complainants' property.□

In this regard, there is already a procedure before the BG L***stadt for GZ *3 C *25/19t□

pending where the plaintiffs are seeking an injunction with respect to that camera□

brought against the Respondents. A verdict in this case is pending□

not yet issued.□

The camera in question is under the gable of the garage roof of the residential building□

K***weg *2c, presented in EZ 3*31, GB *3*2 H***dorf, positioned. It is□

here a swiveling camera and was off the property of the complainant□

very clearly visible. Through the installed camera, which is clearly on the property□

the complainant was addressed or constant monitoring of the property□

the complainant suggests that the personality rights of the□

Complainant's respect for private life significantly affected.□

2. The Data Protection Authority granted by letter dated August 8, 2019,□

GZ: DSB-D124.1078/0001-DSB/2019, the request to file a lawsuit regarding□

GZ *3 C *25/19t to submit pending proceedings before the BG L***stadt and the□

to announce the time of filing the lawsuit.□

3. The complainants complied with the request within the time limit set□

Entry dated September 06, 2019. The time of filing the lawsuit was□

Announced January 21, 2019. The following documents were submitted□

enclosed:□

□ Complaint dated January 21, 2019□

□ Preparatory brief from 07.02.2019□

□ Minutes of 04/25/2019□

□ Settlement revocation dated April 30, 2019 □

□ Minutes of 03/04/2019 □

□ Judgment of the BG L***stadt from 05.07.2019, GZ: *3 C *25/19t □

In addition, the complainants admitted that the judgment of the □

BG L***stadt from July 5th, 2019, GZ: *3 C *25/19t known. □

The judgment includes the following points: □

"1. The defendants are guilty of failing to provide a permanently installed □

aiming the video camera at the plaintiffs' property. □

2. The defendants are obligated to pay the plaintiffs the EUR □

5,774.64 (including EUR 820.02 in VAT and EUR 854.50 in cash expenses) □

to reimburse certain procedural costs." □

B. Subject of Complaint □

Based on the submissions of the complainants, it must first be examined whether the □

Data protection authority based on the judgment of the District Court of L***stadt on July 5th □

2019, *3 C *25/19t, on the decision in the case at hand □

responsible is. □

C. Findings of Facts □

The data protection authority shall put the data recorded under point A on file □

documented factual basis of their decision. □

D. In legal terms it follows that: □

1. On the identity of the thing: □

The judgment of the L***stadt District Court of July 5, 2019, GZ: *3 C *25/19t, and the □

The present complaint is based on the same subject (identity of the □

Matter). □

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

successive proceedings before a supervisory authority and a court possible □

seems, it cannot be the purpose of the GDPR, first a court with the question□

the lawfulness of a particular processing of personal data□

deal only with the same question after the conclusion of the instance of answering□

to a supervisory authority (cf. Nemitz in Ehmann/Selmayr², data protection□

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

With the judgment of the L***stadt district court of July 5th, the complainants rule□

2019 already has a legally binding and enforceable legal remedy for production□

of the lawful state. A gradual use of□

Data protection authority in the same matter is out of the question, especially since□

The complainant's need for legal protection is already fully covered by the judgment□

was taken into account. A complaint is therefore no longer accepted.□

2. Regarding the application for the imposition of a fine:□

The complainants' express request for□

imposition of a fine on the respondents.□

It should be noted that a subjective right to initiate criminal proceedings□

against a certain person responsible not from Art. 77 Para. 1 DSGVO or § 24 Para. 1□

and 5 DSG is to be derived and, in addition, according to § 25 para. 1 VStG the principle of□

Official expediency applies (cf. Fister in Lewisch/Fister/Weilguni [editors], VStG comment² [2017]□

Section 25 margin number 1).□

Administrative penal proceedings can therefore only be initiated by a person concerned□

there is no entitlement to the initiation of such.□

Overall, therefore, the decision had to be made in accordance with the verdict.□