

Federal Administrative Court stops Video Surveillance Improvement Act

National regulations for privileging private video surveillance are not applicable due to violations of European law

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In its now published decision of March 27, 2019, the Federal Administrative Court made it clear that video surveillance by private bodies should only be measured against European data protection law. The underlying case concerned an order from the Brandenburg Commissioner for Data Protection and the right to inspect files on data protection-compliant alignment of video surveillance in a dental practice.

According to the Federal Administrative Court, the European General Data Protection Regulation (GDPR) regulates video surveillance by private individuals conclusively. Consequently, the national provision in Section 4 (1) sentence 1 BDSG is contrary to European law and ultimately inapplicable. As a result, private video cameras can only be operated on the legal basis of Article 6 (1) (f) GDPR. The subsequent weighing of interests cannot be modified by national law.

The insertion of Section 4 (1) BDSG as part of the Video Surveillance Improvement Act at the time was a reaction to a rampage in June 2016 in a Munich shopping center in which nine people were shot. The Federal Minister of the Interior, who was responsible at the time, intended to make operators of shopping centers and sports facilities and parking lots helpers in the original state task of ensuring security and order. He argued that the security of public places should be prioritized when weighing up the data protection interests of those affected. This priority clause could enable an expansion of video surveillance by private bodies and must be taken into account by supervisory authorities when examining data protection law.

The court now confirms the legal opinion of the data protection authorities, which already in 2017, during the discussion in the legislative process, urgently referred to the primacy of Union law.

Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information: "The plan to legitimize privately operated video surveillance in public places with the Video Surveillance Improvement Act for the purpose of countering terrorism and public safety was criticized during the legislative process at the time for data protection, constitutional and European law reasons. This has now been confirmed by the Federal Administrative Court. The task of video surveillance to protect public safety cannot be transferred to private operators, but remains a task of the state authorities authorized to exercise public authority. In accordance with the European General Data Protection Regulation, private operators can also take into account the protective interests of third parties when processing data in the future - but not within the framework of a

national priority and reinforcement clause to protect public security through private video surveillance systems. The entire process shows once again that the legal and political pursuit of security interests must always be carried out with a sense of proportion and must not ignore the rule of law requirements. In this respect, legal uncertainty has now arisen, especially on the part of the operators, which could have been avoided.”

[Download the decision of the Federal Administrative Court](#)

[Download the written statement of the HmbBfDI on the public hearing on March 6th, 2017 in the Interior Committee of the Bundestag \(PDF\)](#)

[press contact](#)

[rot13\("Znegva Fpurzz", "mxtspyvzulwihjbc"\);mmehcS nitraM](#)

Phone:

+49 40 428 54-4044

Email: [rot13\("cerffr@qngrafpuhgm.unzohet.qr", "qptyudnlqafjbrcs"\);ed.grubmah.ztuhcsnetad@esserp](#)