

Athens, 26-08-2020 Prot. No.: G/EX/5772/26-08-2020 PERSONAL DATA PROTECTION AUTHORITY DATE 30/2020 The Personal Data Protection Authority (hereinafter, the Authority) met , at the invitation of its President, in a regular meeting in the composition of a department via video conference on Wednesday 08-04-2020 in order to examine the case referred to in the history of the present. Konstantinos Menudakos, President of the Authority and the alternate members Evangelos Papakonstantinou, Grigorios Tsolias, as rapporteur and Emmanuel Dimogerontakis, were present. They did not attend due to disability, although regular members Konstantinos Lambrinoudakis, Charalambos Anthopoulos and Eleni Martsoukou were legally summoned in writing. The meeting was attended, by order of the President, Efrosyne Siougle, specialist scientist - IT auditor, as assistant rapporteur and Irini Papageorgopoulou, employee of the Administrative Department of the Authority, as secretary. The Authority took into account the following: With the complaint No. C/EIS/1126/11-02-2019, A, B, C and D I.K.E. (hereinafter, complainants) complained to the Authority about the 24-hour monitoring of their property as well as the road to their property with illegal audio-visual means and in particular through a rotating video surveillance system camera by E (hereinafter, complainant), owner of adjoining property. Specifically, in the complaint under consideration, the 1 following are mentioned briefly: The second and third of the complainants own a plot of land at the location ... in F. The property in question was leased from the owners to the company D.I.K.E., which is represented legally from the first of the complainants, and makes use of it by taking all actions for the completion of the pending construction works on it. The complainant, in his neighboring property, has installed two cameras, which work continuously. The first camera (numbered 1) is located at the gate of the complainant's property and illegally captures an image from a side street. The second camera (numbered 2) was installed on ... in the south-west corner of the property owned by the complainant, on the roof (overhead) with the ability to rotate and focus. Camera number 2, which is directly opposite and facing the complainants' property, is illegally capturing footage from their property. (Complainants submitted eleven (11) relevant photographs). In this way, the right to protect the personal data and privacy of the first three of the complainants as well as the employees of the fourth of the complainants company, of which the first of the complainants is a legal representative, is violated. The said cameras and their recordings are intended to be used illegally by the complainant in the context of his dispute with the complainants, which the complainant has caused unnecessarily and with illegal motives in order to cause financial and moral damage to the complainants. In particular, the complainants submitted to the Authority, among other things, two photographs (titled "Camera shot no. 2 - Photo 1" and "Camera shot no. 2 - Photo 2"), which come from the video surveillance system of the complainant, depict the complainants'

property and record the workers on it. These photographs were presented by the complainant before a competent authority in the context of his dispute with the complainants. Also, due information is not provided by posting the signs despite the fact that the field of control of cameras 1 and 2 includes areas outside the property of the complainant. In addition, by ... extrajudicial nuisance, protest and summons, which 2 was served on the complainant on ..., the complainants requested the complainant to immediately restore the insult he has committed to the persons of the first three of the complainants and to the employees of the fourth from of the complainants company by changing the shooting angle of the camera number 1 and removing the camera number 2. Also, with the same extrajudicial nuisance, protest and invitation they requested the provision of relevant information by posting the necessary signs for the camera number 1 as well as not to repeat actions similar to the above in the future. The complainant had not taken any relevant action until (Complainants submitted twelve (12) relevant photographs). The complainant took one action, which consists of placing one (1) information sign for camera number 1 without taking any other action for cameras number 1 and 2. (The complainants provided one (1) relevant photo). The Authority, in the context of examining the complaint in question, forwarded, with no. prot C/EX/1126-1/15-03-2019 her document, a copy of this complaint to the complainant and invited him to express his views on the complainants in writing. The complainant responded with documents No. C/EIS/2961/18-04-2019, C/EIS/2962/18-04-2019 and C/EIS/2963/18-04-2019 the following in brief referred to: Following judicial action by the complainant, a temporary injunction was issued ordering the suspension of the approval and building permit of the neighboring property of the complainants. Also, the request for suspension was accepted by virtue of the decision numbered ... of the Piraeus Administrative Court of Appeal, in which it is stated that "the completion of the works on the disputed building will result in the alteration of the character of the area and the degradation of the environment". The complainant decided, ..., to install two cameras in his house in F, which is located in a deserted location, due to the increasing crime on the island in recent years and to better guard it. The interruption of construction work on the above building played a role in his decision, as it will now be deserted and unguarded and there was a serious risk of third parties entering through it into his 3 property, especially due to the earthworks of the land in which the complainants had made, which facilitated access to his home. One camera was placed next to the main door and faces the entrance to his property. This camera was installed for deterrent reasons more as it has not yet been put into operation and does not record. Complainant points out that there is no road in front of the entrance to his property as stated by the complainants, but there is an easement. The second camera is located on the roof of his residence and its existence is extremely essential to the security of his property. It has been placed at

this specific point in order to control the boundary of his property towards the building of the complainants, as that is the most feared point for a possible violation of the security of his property. The complainant provided the photographs referred to by the complainants (photographs titled "Camera Capture No. 2 - Photo 1" and "Camera Capture No. 2 - Photo 2") to the competent Town Planning Department and the Piraeus Administrative Appeals Court which has been regarding the evidence of the illegal construction works carried out by the complainants on their property. When the complainant installed the camera, no construction work was being carried out and was not allowed to be carried out on the adjacent building. Because the complainants property is contiguous to their property line, a small portion of it was visible on camera. The building of the complainants was blurred in the disputed photographs that they submitted to the Authority with the complaint under review (due to the distance and the degree of focus) and it was therefore not possible to distinguish persons or bodies and therefore to personalize the data subjects and offend them. In support of the aforementioned legal claim, the complainant presented the document no. ... decision of the Single-member Court of First Instance X. As soon as the complainants informed him of the alleged disturbance caused by the existence of the above camera, the complainant instructed the competent technician to make the necessary arrangements so that it is not possible to view any part in any way of their property. The 4th complainant did this despite the fact that due to the particular change in camera tilt it is not possible to control the entire boundary of his property. Subsequently, the Authority with documents No. G/EX/1126-3/05-11-2019 and G/EX/1126-2/05-11-2019 invited the complainant and the complainants, respectively, to appear in meeting of its department Beginning on Thursday 14.11.2019 at 10:00 a.m. in order to discuss the complaint under consideration. Following the postponement of the meeting of 14.11.2019, due to the absence of Stylianos Garipis, attorney-in-fact of the complainant (see his request no. prot. C/EIS/7783/12-11-2019), the Authority's department met on 25.11. 2019. At the meeting of the Authority on 25.11.2019, Stylianos Garipis ... attended, as the complainant's attorney, who presented the views of the complainant and gave clarifications after relevant questions from the members of the department. Complainant A and the attorney of the complainants, Dimitrios Anastasopoulos, also attended this meeting. The complainant and the complainants were given a deadline and submitted the memorandum documents No. C/EIS/8535/06-12-2019 and C/EIS/8523/06-12-2019 respectively. The complainants in their memorandum No. G/EIS/8523/06-12-2019 mention the following, briefly mentioned: 1) Adequate information about the cameras is not provided by posting information signs despite the fact that the control field of the cameras includes areas outside the property of the complained. 2) The image captures from these cameras are intentionally taking place in order to be used illegally before

competent authorities by the complainant in their litigation to cause financial and moral damage to the complainants. 3) Both cameras numbered 1 and 2 continue to operate continuously up to the date of submission of the said memorandum. (Complainants submitted two (2) photographs for camera number 2 and seven (7) photographs for both cameras). 5 4) In any case for the period after the submission of the complaint in question on ..., the operation of both cameras is proven by the written response of Police Department F from ..., in which it is confirmed that a mounted patrol of Police Department F traveled sixteen (16) times at the property of the complainants for a building inspection from ... to As a rule, the transitions in question were carried out following a telephone complaint by the complainant or the attorney of Stylianos Garipis, who through the recordings of the above cameras, which were in operation, supported the presence of persons on the property of the complainants. 5) In the response from Police Department F, it is stated that "(...) cameras which were placed on a neighboring plot of land allegedly owned by E, where it was found that there were two cameras placed as follows, one at the entrance of the plot which was facing a public road and one at the corner of the house they were in (...)". From this certificate it is proven that there is indeed a public road at the spot, even though the complainant denies it. 6) The illegal operation of cameras number 1 and 2 is also confirmed by what was said by the attorney of the complainant during the discussion of the complaint under consideration before the Authority on 25-11-2019. The defendant's attorney stated the following during the above meeting: i. He admitted the existence of the two cameras saying that he advised the complainant to install the cameras to monitor his property. ii. With reference to the complaint about the use of the cameras by the accused illegally in the context of their dispute with him, he stated that before the installation of the cameras there was no dispute between them regarding urban planning matters, essentially admitting that the above cameras were installed due to the mutual litigation and to exclusively serve its needs. iii. With reference to the complaint about the use of cameras to monitor the employees of the fourth of the complainants, he stated that he too has taken pictures of employees with his mobile phone. 6 iv. For consideration of the adoption of milder measures, prior to the commissioning of the two cameras, he confirmed that there is no integrated alarm system installed at the complainant's property. v. For the operation of camera number 1 and the illegal taking of a picture from a side street, he urged the complainants not to pass through the disputed street. vi. He did not dispute the complaint about the operation of a camera with the ability to rotate and focus, instead he was asked by the Authority to produce the operating manual of the cameras, so that the relevant judgment could be formed. With his memorandum No. G/EIS/8535/06-12-2019, the complainant mentions the following, briefly stated: 1) As developed during the discussion of the complaint under

consideration, from the text of the complaint itself its abusive nature emerges because it includes two crucial legal characteristics for the relationship between the complainant and the complainants: a) road and b) residence. 2) There is no road in front of the complainants' plot, as they claim, but a corridor of the absolute and exclusive ownership of the complainant, through which he has allowed the owners of the house adjoining the complainants to pass for reasons of social decency. There is no road, not even a passage, and as one of the complainants confessed, the road that has been recorded in their title deeds and the Land Registry goes through the other side of their plot of land but has remained on "papers". 3) Their plot of land was never inhabited by the complainants or anyone else. There was never a house on their plot of land. 4) The complainant installed cameras in his house in F for the security of his property for the following reasons: he happens to be one of the biggest ... in Greece known for his business activity and financial prosperity, his house is outside the plan in a desolate location, crime in F has skyrocketed in recent years especially from illegal, undocumented residents and the complainants employed dozens of illegal workers to erect an illegal 7 building. 5) In the open group of the social networking medium facebook with ... members ... photos from the security cameras of the residents of F are posted who see the public streets with the burglars of their homes. This is everyday life in F, even in winter and the installation of cameras is the only means used by the residents as any other protection (eg with an alarm) has proven to be insufficient. 6) The complainant provides and cites the technical specifications of the security cameras that he has installed at two points of his residence, one targeting the corridor of his exclusive property through which the complainants illegally pass and the other towards the side of the complainants' property . As the complainant's attorney stated before the Authority, no recording is made from this camera but it is simply used for intimidation, while after the extra-judicial invitation of the complainants, the camera that was facing their property has stopped facing that direction. 7) The accused is now entrusted with the guarding of his home to his attorney Stylianos Garipis, whenever he stays there. It is evident from the report of Police Department F that the attorney of the complainant has been found inside the unfenced plot of the complainants photographing the illegal works due to the failure of the security cameras to capture any image from the complainants plot. 8) Regarding the installation of the cameras, the complainant states that he was advised by his attorney, as he stated before the Authority, who is of the opinion that the installation of cameras does not constitute an illegal act as long as it does not allow the discrimination of persons or bodies through it the personalization of the data subjects and their infringement, according to the decision no. This is exactly what happens in the case of the complainant as in none of the photographs submitted by the complainants the faces of the depicted

are not discernible nor are their characteristics individualized with the result that it is impossible for anyone to identify the depicted persons. 9) The claim of the complainants that the complainant has placed a camera only towards their plot of land and not behind or to the left of his residence is untrue because his intention is to monitor them, while the truth is that behind and to the left of his residence there are rocky heights ten meters, so it is not possible to enter his residence from these points. (The complainant provided two (2) relevant photographs). 10) The complainant has put the cameras out of order and keeps them only for deterrence purposes until the Authority judges the legality or otherwise of their existence, while, in any case, the information sign about the existence of cameras is posted outside the entrance of the house of. The Authority, from the hearing process, from the elements of the case file, as well as from the memoranda submitted and after hearing the rapporteur and the assistant rapporteur, who left after the discussion of the case and before the conference and decision-making, after a thorough discussion, taking into account in particular: 1. The provisions of the Constitution, and in particular those of articles 2 par. 1, 5 par. 1, 9, 9A and 25 2. The provisions of the European Convention on Human Rights of 04.11.1950 sanctioned with the n.d. 53 of 19.9.1974, as it applies today and in particular those of article 8 3. The provisions of the Operation of the Treaty of the European Union and in particular those of article 16 4. The provisions of the Charter of Fundamental Rights of the European Union (2012/C 326/02) and in particular those of articles 7, 8 and 52 5. The provisions of the Council of Europe Convention for the Protection of Individuals with regard to the Automated Processing of Personal Data of 28.1.1981 ("Convention 108"), ratified by law. 2068/1992, as it applies today and in particular those of articles 5 and 6 6. The provisions of the General Data Protection Regulation (GDPR) under no. 679/2016 and the national legislation in general for the protection of personal data 9 7. Under no. 1/2011 Directive of the Personal Data Protection Authority for the use of video surveillance systems for the protection of persons and goods 8. The Guidelines of the European Data Protection Board [EDPB] no. 3/2019 "on processing of personal data through video devices" of 29-01-2019 (version 2) 9. Under no. 4/2004 Opinion of the Article 29 Working Group on the processing of personal data through video surveillance (WP89) 10. The no. 06/2014 Opinion of the Article 29 Working Group on the concept of legitimate interests of the controller (WP 217), insofar as it is interpretatively useful in the context of this 11. The Guidelines of the Article 29 Working Group "Guidelines on transparency under Regulation 2016/679", WP260 rev.01, to the extent that they are interpretatively useful in the context of this

CONSIDERED IN ACCORDANCE WITH THE LAW 1. According to article 4 par. 1 of the GDPR, personal data means any information that concerns an identified or identifiable a natural person whose identity can be ascertained, directly or indirectly,

in particular on the basis of an identity number or on the basis of one or more specific elements characterizing his condition from a physical, biological, mental, economic, cultural, political or social point of view. For the identification of the natural person, which can also be indirect, i.e. without direct reference to the natural person, all the means that can reasonably be used, either by the data controller or by a third party, must be taken into account. According to Decision No. 41/2017 of the Authority, indirect identification can be a function of many different factors. The same elements, the combination of which does not allow the identification of a person in a wide social environment, may lead to complete identification in the context of a small social group, where all members of the 10 know each other or live in the same building, in a small neighborhood or in nearby residences. For this reason, in order to examine whether personal data processing has taken place, all of these parameters relating to the processing in question must be taken into account, because the possibility of indirect identification, when it is not negligible, makes, in principle, the information, personal data. Thus, taking or recording a person's image from e.g. great height¹ or a long distance or with covered features (e.g. craniofacial) that makes it impossible to recognize the physical features of the face of a data subject does not automatically imply the impossibility of identifying him, as it can ultimately be achieved from other information, such as e.g. the appearance characteristics (height, body structure, color and type of clothing and footwear) in combination with additional information² (e.g. boarding a motor vehicle, marking or recording the route and final destination).

2. From the processing and combination of processing of personal data through the use of video surveillance systems it is possible to draw conclusions that lead to the creation of a profile of the natural person, which will concern either occasionally or on a permanent basis the habits, the places of permanent or temporary place of residence, daily and other movements, activities practiced, social relationships and social environments frequented. In particular, in the case of taking and recording with a video surveillance system installed in a house the image of persons who are or are trafficked, even occasionally, in another property, it is possible to create a file-calendar with the usual arrival-departure times and the other activities carried out in this property.

3. The image of a person which is collected through the use of a video surveillance system constitutes personal data, to the extent that it is possible to identify the specific natural person³

1 See Guidelines no. 3/2019 ESPD on processing of personal data through video devices p. 7. 2 See Decision No. 20/2008 of the Authority. 3 CJEU C-212/13 Rynes decision para. 22, CJEU C-345/17 Sergejs Buivids decision para. 31, CJEU C- 708/18 TK v. M5A decision para. 35. 11 directly or indirectly according to the above, while the recording of the image which is stored and maintained in a streaming video recording mechanism, such as e.g. on the system hard drive recommends automated data

processing⁴. 4. The installation and operation of video surveillance systems with the capture or recording of images and/or sound through the collection, preservation, storage, access and transmission of personal data, even from a public space⁵, constitute as separate acts of processing, interference with the individual rights of respect for private life according to art. 9 S., 7 XTHDEE⁶ and 8 ECHR as well as the protection of personal data according to art. 9A S., 8 ESDA and 8 XTHDEE⁷. 5. In order for personal data to be lawfully processed, i.e. processed in accordance with the requirements of the GDPR, the conditions for the application and observance of the principles of Article 5 paragraph 1 GDPR must be cumulatively met, as also emerges from the recent decision of the Court of the European Union (CJEU) of 16-01-2019 in case C-496/2017 *Deutsche Post AG v. Hauptzollamt Köln*⁸. The existence of a legal basis (Article 6 GDPR) does not exempt the controller from the obligation to comply with the principles (Article 5 para. 1 GDPR) regarding legality, necessity and proportionality and the principle of minimization⁹. In the event that any of the principles provided for in article 5 par. 1 of the GDPR is violated, the processing in question is deemed to be unlawful (subject to the provisions of the GDPR) and the examination of the conditions for applying the legal bases of article 6 4 Rynes TEU is omitted paras 23, 25, *Sergejs Buivids* para 34, TC para 34. 5 ECtHR *Vukota-Bojic v Switzerland*, 61838/10, 18.10.2016, § 52 ff., *Lopez Ribalda v Spain (GC)*, 1874/13 & 8567/13, 17.10.2019, §§ 89, 93, *Antovic & Mirkovic v Montenegro*, 70838/13, 28.11.2017, § 42, *Uzun v. Germany*, 35623/05, 2.9.2010, §46, *Peck v UK*, 44647/98, 28.01.2003, §59. 6 CJEU *Digital Rights Ireland* para. 29. 7 CJEU *Digital Rights Ireland* para. 38. 8 "57. However, any processing of personal data must comply, on the one hand, with the principles to be observed in terms of data quality, which are set out in Article 6 of Directive 95/46 or Article 5 of Regulation 2016/679 and, on the other hand , to the basic principles of lawful data processing listed in Article 7 of this Directive or Article 6 of this Regulation (cf. judgments ... C-465/00, C-138/01, C-139/01, C -131/12".. 9 Relatedly, see L. Mitrou, the general regulation of personal data protection [new law-new obligations-new rights], Sakkoula ed., 2017 pp. 58 and 69-70). 12 GDPR¹⁰. Thus, the illegal collection and processing of personal data in violation of the principles of Article 5 GDPR is not cured by the existence of a legitimate purpose and legal basis (No. 43/2019 Decision of the Authority). In addition, the CJEU with the from 01-10-2015his decision in the context of the case C-201/14 (*Smaranda Bara*) considered as a condition of the legitimate and legal processing of personal data the information of the subject of the data before the processing thereof¹¹. 6. Furthermore, the controller, in the context of observing the principle of legitimate or fair processing of personal data, must inform the data subject that it is going to process his data in a legal and transparent manner (see CJEU C-496/17 cit. para. 59 and CJEU C-201/14 of 01-10-2015 paragraphs

31-35 and in particular 34) and be in a position at any time to prove his compliance with these principles (principle of accountability according to article 5 par. 2 in combination with articles 24 par. 1 and 32 GDPR). 7. The processing of personal data in a transparent manner constitutes an expression of the principle of legitimate processing and is linked to the principle of accountability, providing the right to the subjects to exercise control over their data by making the controllers accountable (see Guidelines OE 29, Guidelines on transparency under Regulation 2016/679, WP260 rev.01, pp. 4 and 5). 10 Compare StE 517/2018 para. 12: "[...] in order for personal data to be lawfully processed, it is required in any case that the conditions of article 4 para. 1 of Law 2472/1997 be met cumulatively, which among other things, it stipulates that the data must be collected and processed in a legitimate and legal manner, for clear and legal purposes... If the conditions of article 4 para. 1 of Law 2472/1997 (lawful collection and processing of data) are met for clear and legal purposes), it is further examined whether the conditions of the provision of article 5 par. 2 of Law 2472/1997 [legal bases] are met. Also, see SC in Plenary 2285/2001 para. 10: "[...] Only if the above basic conditions are met, the provisions of articles 5 and 7 of Law 2472/1997 apply, which impose as a further additional, in principle, condition of legal processing of personal data of a specific person, his consent". 11 "31. the person responsible for processing the data or his representative is subject to an obligation to inform, the content of which is defined in articles 10 and 11 of Directive 95/46 and differs depending on whether the data is collected by the person to whom the data concern or not, and this without prejudice to the exceptions provided for in Article 13 of that Directive [...]" 34. Consequently, the requirement for lawful data processing provided for in Article 6 of Directive 95/46 obliges the administrative authority to inform the persons who concern the data related to the transmission of said data to another administrative authority for the purpose of their processing by the latter as the recipient of said data". 13 8. With the GDPR, a new model of compliance was adopted, the central dimension of which is the principle of accountability, in the context of which the controller is obliged to plan, implement and generally take the necessary measures and policies in order for the processing of data to be in accordance with the relevant legislative provisions. In addition, the data controller is burdened with the further duty to prove himself and at all times his compliance with the principles of article 5 par. 1 GDPR. It is no coincidence that the GDPR includes accountability (Article 5 para. 2 GDPR) in the regulation of the principles (Article 5 para. 1 GDPR) governing the processing, giving it the function of a compliance mechanism, essentially reversing the "burden of proof" as to the legality of the processing (and in general compliance with the principles of article 5 par. 1 GDPR), shifting it to the data controller,¹² so that it can be validly argued that he bears the burden of invoking and proving the legality of processing¹³. Thus, it constitutes an obligation

of the data controller on the one hand to take the necessary measures in order to comply with the requirements of the GDPR, on the other hand, to prove at any time the above compliance, without even requiring the Authority, in the context of exercising its investigative and audit powers, to submit individual – specialized questions and requests to establish compliance. 9. In conclusion, the installation and operation of the relevant video surveillance system is legal, as long as the conditions of articles 5 (general principles) and 6 (legal basis) GDPR as well as Directive 1/2011 of the Authority are cumulatively met, and the related obligation to prove the legality is borne by the data controller in application of the principle of accountability in the context of compliance and documentation thereof, which must take place in time before the installation and operation of the system (Decision 43/2019 of the Authority). 12 Relatedly see L. Mitrou, The principle of Accountability in Obligations of the controller [G. Giannopoulos, L. Mitrou, G. Tsolias], Collected Volume L. Kotsali – K. Menoudakou "The GDPR, Legal Dimension and Practical Application", published by Law Library, 2018, p. 172 ff. 13 P. de Hert, V Papakonstantinou, D. Wright and S. Gutwirth, The proposed Regulation and the construction of a principles-driven system for individual data protection, p. 141. 14 10. The transmission of the material recorded through the video surveillance system constitutes a separate and independent act of processing personal data and therefore should be carried out by the data controller, corresponding to the initial legal collection and retention of the material, a check of legality according to articles 5 and 6 of the GDPR, taking into account the possible change of the original purpose of processing according to article 6 para. 4 GDPR (for details see ESPD 3/2019 *ibid.* para. 48 et seq.). It goes without saying that the illegal initial collection and retention of said material containing personal data, likewise renders illegal any further processing of the same data in violation of Article 5 para. 1 GDPR, even in the event that the conditions would be met application of a legal basis of article 6 par. 1 GDPR, such as e.g. that of paragraph f, since non-compliance with the processing principles of article 5 par. 1 GDPR is not cured by the existence of a legitimate purpose and legal basis (see recital no. 4 of Decision 43/2019 of the Authority). 11. The provisions of Directive 1/2011 of the Authority regarding the issue of the use of video surveillance systems for the purpose of protecting persons and goods must be applied in conjunction with the new provisions of the GDPR. This applies in particular to the obligations of the controller included in chapter C' thereof (articles 10 to 13 of Directive 1/2011). For example, data controllers no longer have an obligation to notify the Authority¹⁴ of the processing, but must take the necessary measures to comply with the requirements of the GDPR and ensure the fulfillment of the enhanced rights provided for by the GDPR. 12. Exclusively personal or domestic activity means that which refers to the private field of action of a person or a family, i.e. that which does not fall under their

professional and/or commercial activity and does not have as its purpose or result the systematic transmission or dissemination of data to third parties¹⁵, as is the case ¹⁴ See and the Authority's announcement regarding the abolition of record keeping/editing notices and the granting of licenses (decision 46/2018). ¹⁵ CJEU C-345/17 Sergejs Buivids decision of 14-02-2019 para. 43. ¹⁵ which is posted on the internet or published in newspapers of the collected audio-visual material or presentation of the material to competent authorities. In particular, if the field of control of the cameras of a video surveillance system installed in a private house includes only private spaces, then the processing in question is considered a domestic activity (see recital GDPR no. 18 and article 3 par. 2 of Directive 1/2011 of Authority). ¹³. On the contrary, it is not considered an exclusively personal or domestic activity to capture and process images or sound with a video surveillance system installed in a private home, when the field of control of the camera includes external public or shared spaces or spaces belonging to the properties of others, in which case the principles of personal data protection apply. In particular, in case C-212/13 Frantisek Rynes, the Court of Justice of the EU with its decision of 11-12-2014, it ruled that the use of a surveillance system with a camera, which was placed under the eaves of the roof of the house and recorded the entrance of the same house, the public street as well as the entrance of the house opposite (par 13) on the one hand, it constitutes the processing of personal data, on the other hand, it cannot be considered as exclusively "personal or domestic activity" (para. 33). ¹⁴. According to article 5 of no. 1/2011 of the Authority's Directive on the use of video surveillance systems for the protection of persons and goods, the legality of the processing is examined in the context of the purpose pursued by the controller and in accordance with the principle of proportionality, which requires video surveillance systems to be convenient and necessary in relation to the intended purpose, which should not be achieved by milder means. The affordability and necessity of video surveillance is assessed based on the risk that the controller wants to face in relation to the intended purpose. Furthermore, the locations of the cameras and the way the data is captured must be determined in such a way that the data collected is no more than is absolutely necessary to fulfill the legitimate purpose of the processing and does not affect the ¹⁶ fundamental rights of the persons present in the area being monitored and in particular not to violate what can be considered as a "legitimate expectation of a certain degree of privacy protection" in a specific area. ¹⁵. In particular, according to article 6 par. 1 of Directive 1/2011, it is prohibited to take images from side streets and sidewalks, during the surveillance of the perimeter of buildings for the purpose of the safety of persons and/or goods (e.g. protection of property from damages), as there is a risk of surveillance by passers-by. In exceptional cases, such a download may be allowed if the conditions of the same paragraph of

the above article are met. 16. According to article 6 par. 2 of Directive 1/2011, it is prohibited to take pictures from the entrances or inside of neighboring houses, buildings or other places. 17. According to article 6 par. 4 of Directive 1/2011, the use of cameras with the ability to rotate and focus can only be allowed in cases where the data controller monitors the movements of natural persons in real time in order to intervene immediately to prevent someone event (e.g. night security in large areas, such as factories, warehouses, etc.) and if all the necessary technical measures have been taken to limit the reception area to the absolutely necessary (e.g. using the hide area function - "mask" mode). 18. According to article 7 of Directive 1/2011, surveillance in workplaces is prohibited except in the cases mentioned in said article. 19. According to article 12 of no. 1/2011 of the Authority's Directive, before a person enters the range of the video surveillance system, the data controller must inform them, in a visible and understandable way, that they are going to enter an area that is being videotaped. To this end, it must: a) be posted in a sufficient number and in a visible place clearly visible signs, which will indicate the person on whose behalf the video is being recorded (the person in charge of processing), the purpose, as well as the person with whom the interested parties can contact to exercise the rights that the GDPR now recognizes in the data subject. 17 20. In this case, the complainant, despite the accountability obligation that rests on him and derives from article 5 par. 2 GDPR, failed to prove the legality of the installation and operation of the video surveillance system, as he did not present, nor did he bring written documentation to the attention of the Authority of compliance, prior to the installation of the cameras, to the rules and principles arising from articles 5 and 6 GDPR in conjunction with the no. 1/2011 Directive of the Authority and did not provide, although it was expressly requested by the Authority during the hearing, documents (e.g. purchase invoices for the cameras, receipts) or other documents (e.g. responsible statements of the person who installed the cameras) from which to prove the time of purchase, installation and operation of the system, moreover, he did not avoid both during the hearing and in his memoranda to specify the exact time of installation and operation of the system, which would be an important element for judging the issue if the purpose of the processing concerned the protection of his property, as he claims, or the monitoring of natural persons crossing the street and entering the property of the complainants in order to provide relevant evidence to the competent authorities in order to achieve the cessation of construction work, as alleged by the complainants. On the contrary, from the admission of the accused himself in his memorandum from 04/12/2019 with a hearing before the Authority (prot. no. C/EIS/8535/06-12-2019), but also the photographs included in the case file it appears that the complainant had activated and directed (he speaks of "targeting") the camera located on the roof of his house in such a way as to receive an image and

record the activities of the complainants as well as any natural person in their ownership, so that the processing in question does not meet the conditions of exclusively personal or domestic activity according to article 2 par. 2 sec. c of the GDPR, in accordance with what was developed in no. 12 consideration of the present. 21. In his pleadings, the complainant refers to the private disputes he has with the complainants and the alleged violations of building legislation, but the relevant allegations are beyond the authority of Principle 18 and in any case do not cover the obligation of accountability for the installation and operation of the system video surveillance and, however, the possible existence of a legitimate purpose and legal basis cannot remedy the violation of the principles of article 5 GDPR and make the processing legal, according to the no. 5 consideration of the present. 22. The taking and recording of the image of the complainants as well as any natural person in their property allows the identification of the data subjects in accordance with what was developed in no. 1 paragraph of the present, and primarily of the complainants, whose identity is known to the complainant anyway, as owners. 23. Consequently, the complainant did not document the legality of the installation and operation of the video surveillance system in accordance with the principle of accountability pursuant to Article 5 para. 2 of the GDPR and did not bring relevant written documentation of the legal operation to the attention of the Authority for this purpose of the system according to articles 5 and 6 of the GDPR, but also of Directive 1/2011 of the Authority. It is established, in fact, based on the data in the file, that the accused installed and operated an illegal video surveillance system and that overall the installation and operation of this system violated Article 5 par. 1 sec. a' of the GDPR the principle of legality, objectivity and transparency, in view of the principle of accountability according to article 5 par. 2 GDPR, the examination of the other processing principles of the same article, the application of the principle of proportionality as well as the examination of the application of the appropriate legal basis according to article 6 par. 1 of the GDPR in combination with the provisions of Directive 1/2011 of the Authority. 24. According to the GDPR (App. Sk. 148) in order to strengthen the enforcement of the rules of this Regulation, sanctions, including administrative fines, should be imposed for each violation of this Regulation, in addition to or instead of the appropriate measures imposed by the supervisory authority in accordance with this Regulation. In cases of a minor violation or if the fine that may be imposed would constitute a disproportionate burden on a natural person, a reprimand could be imposed instead of a fine. 19 25. Based on the above, the Authority considers that it is appropriate to exercise its corrective powers under Article 58 para. 2 of the GDPR in relation to the identified violations and to instruct the complainant to make the processing operations that take place through of the video surveillance system that maintains compliance with the provisions of the GDPR. In particular, the obligation to restore the

correct application of the provisions of article 5, par. 1, must be imposed on the complainant. a' of the GDPR, as well as subsections b' to f' of the same paragraph to the extent that the identified violation affects compliance with the provisions of the GDPR within the framework of the principle of accountability, in accordance with what is contained in the reasoning herein.

This order must be executed within one (1) month from the receipt of this notice, and the person complained about has an obligation to inform the Authority accordingly. 26. The Authority further considers that the above corrective measure is not sufficient to restore compliance with the provisions of the GDPR which have violated and that it should, based on the circumstances established, to

imposed, pursuant to the provision of article 58 par. 2 sec. i of the GDPR, additional and efficient, proportionate and dissuasive administrative money fine according to article 83 of the GDPR, both to restore compliance, as well as for the punishment of illegal behavior¹⁶.

27. Furthermore, the Authority took into account the criteria for measuring the fine which are defined in article 83 paragraph 2 of the GDPR, paragraph 5 of the same article applicable to the present case and the Guidelines for the application and determination of administrative fines for its purposes Regulation 2016/679 issued on 03-10-2017 by the Working Group of article 29 (WP 253), as well as the actual data of the subject case and in particular:

a) the nature, gravity and duration of the violation, in view of the nature of extent or purpose of the relevant processing, as well as the number of

¹⁶ See OE 29, Guidelines and the application and determination of administrative fines for the purposes of Regulation 2016/679 WP253, p. 6

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of data subjects affected by the breach and the degree of damage that specifically suffered:

i.

the fact that the accused violated the provisions of article 5 par. 1 sec. a' of GDPR principles of legality, objectivity and transparency as well and the obligation (principle) of accountability according to article 5 par. 2 of the GDPR, i.e breached fundamental data protection principles of the GDPR personal,

ii.

the fact that the observance of the principles provided by its provisions article 5 par. 1 sec. a' and par. 2 of the GDPR are of capital importance, primarily, the principle of legality, objectivity and transparency so that if this is missing, the processing becomes illegal from the beginning, even if the other processing principles have been observed. Similarly of capital importance becomes the principle of accountability in its context new compliance model introduced with the GDPR, where the burden compliance and the relevant responsibility rests with the controller, the which has been provided by the GDPR with the necessary tools compliance,

iii.

the fact that the complainant failed to comply with the checks of the processing authorities of article 5 par. 1 sec. 1 GDPR, in addition and, failed to document its legality in the context of compliance video surveillance system,

iv.

the fact that the violation of the above principles falls under the provisions of article 83 par. 5 sec. a' of the GDPR in higher education prescribed class of the administrative grading system

finer,

v.

the fact that, from the elements brought to the Authority's attention, it did not emerge

the occurrence of material damage to the data subjects – complainants

from the non-satisfaction of their right, nor was a relevant appeal made

damage,

vi.

the fact that the violation of the principles of article 5 par. 1 sec. a' and par. 2

of the GDPR did not concern, based on the information brought to her attention

Authority, personal data of articles 9 and 10 of the GDPR.

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b) the degree of culpability of the accused

The installation and operation by the complainant

video surveillance system in violation of the principle of legality,

objectivity and transparency as well as accountability was the result

insufficient knowledge and application of the provisions of the GDPR and therefore

attributed to negligence.

c) any actions taken by the complainant to mitigate the

damage suffered by the data subjects and the degree of cooperation

with the Authority for the remedy of the violation and the limitation of

of its possible adverse effects

Apart from the complainant's statement that it suspends its operation

video surveillance system, the complainant was not found to have committed

other actions to mitigate any (non-material) damage suffered by

complainants, such as to the deletion of the recording material.

d) any relevant previous violations of the complainant

A relevant check shows that it has not been imposed on the complainant

until today administrative sanction from the Authority.

e) the categories of personal data affected by

violation

It is not about personal data of articles 9 and 10 thereof

GDPR, according to the information brought to the attention of the Authority.

f) the fact that the complainant did not send the Authority the documents that

were requested during the hearing

g) the statement of the complainant from 04/12/2019 with hearing Memorandum

before the Authority (under prot. no. C/EIS/8535/06-12-2019) in accordance with

which: "I happen to be one of the greatest ... of Greece, known for

my business activity and my financial prosperity", which is taken

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taken into account in the assessment of effectiveness and deterrence

nature of the imposed administrative sanction.

26, Based on the above, the Authority unanimously considers that it should be imposed on

reported data controller or the one referred to in the executive order

sanction, which is judged to be proportional to the gravity of the violation.

FOR THOSE REASONS

THE BEGINNING

A. Gives an order to E as within one (1) month from the receipt of this:

i.

to restore the correct application of the provisions of article 5 par. 1 sec.

a' of the GDPR in accordance with the considerations contained herein,

ii.

to subsequently restore the correct application of the other provisions

of article 5 par. 1 sec. b-f GDPR to the extent that the identified violation affects compliance with the provisions of the GDPR by taking all necessary measures measure under the principle of accountability,

iii.

to make the processing operations that take place through it video surveillance system that maintains compliance with GDPR provisions and Directive 1/2011, in particular adjusting the field of reception and recording images in such a way as to achieve the protection of property and life of the residents of the house in question without taking an image of the property of the complainants or other private or public places and making use of them camera with the ability to rotate and focus only if he documents it fulfillment of the conditions of article 6 par. 4 of Directive 1/2011,

iv. to inform the Authority about the realization of the above actions.

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B.

It imposes on E the effective, proportional and deterrent administrative fine that is appropriate in the specific case, according to special circumstances thereof, amounting to eight thousand (8,000.00) euros.

The president

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou

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