Litigation Chamber

Decision on the merits 73/2020 of

November 13, 2020

File numbers: DOS-2018-04368, DOS-2018-06611, DOS-2019-02464, DOS-2019-

04329, DOS-2020-00543 and DOS 2020-00574

Subject: Complaints against a social housing company for non-compliance with several

principles of data processing, including those of lawfulness and transparency

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

Hijmans, chairman, and Messrs. Dirk Van Der Kelen and Jelle Stassijns, 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;

.

.

.

.

.

.

made the following decision regarding:

-

-

The plaintiff: Mr. X

The defendant: the social housing company Y .

1. Facts and procedure

1. The Complainant lodged at different times a total of six complaints against the

respondent. Given that the defendant, also responsible for the treatment, is the company

of social housing Y in all cases, complaints are handled jointly. The service

of Inspection issued an inspection report concerning the first three complaints.

Complaint 1: DOS-2018-04368, Right of Access

2. This complaint was filed on November 19, 2018 and was declared admissible by the Service

of Front Line on January 14, 2019. The complaint concerns the exercise of the right of access of the

complainant in accordance with Article 15 of the GDPR.

3. On October 4, 2018, the Complainant requested access to all the data that the Respondent

deals with him since his registration as a prospective tenant. In this context, the

Complainant asked several questions of Respondent. These questions relate to the purposes of the

processing, categories of personal data, recipients or categories

of recipients to whom the data is communicated and more specifically the

recipients abroad, retention periods, whether the right of

rectification or erasure of personal data exists, the source of the data

in the event of indirect data collection and finally the question of whether it is a question of taking

automated decision making.

4. In response to this request, the Complainant received a document entitled Uittreksel

Persoonsgegevens Kandidaat – huurder Y Huisvesting CVBA (Extract of personal data

staff of the candidate-tenant of the social housing company Y)

quoted in the file are free translations made by the General Secretariat of the Authority of

data protection, in the absence of an official translation]. Character data

personnel appearing on the extract are the following: the name, the address and the data relating to

at home, as well as the National Register number, bank account, e-mail address,

income data and telephone number. The same excerpt specifies that the data

of a personal nature are only shared with "parties authorized to do so". In his

complaint, the complainant wonders who these authorized parties are, what function have the

Decision on the merits 73/2020 - 3/32

personal data about the extract and what purpose the extract serves. The defendant asserts

use this data; however, the complainant wonders how and for what

purposes the various data are processed.

5. Next, the Complainant submits that the Respondent does not clearly and unequivocally indicate to the

data subjects how, among other things, the right to rectification and erasure of

data can be exercised. Furthermore, the complainant points out that it is not easy to find

and consult relevant legislation and documents.

Complaint 2: DOS-2018-06611, Website […]

6. The second complaint was lodged on November 20, 2018 and declared admissible on

January 14, 2019. This complaint concerns the website [...]. The complainant complains that the site

The internet is not at all compliant with privacy legislation.

According to the complainant, the website is not sufficiently secure, since it uses

an http connection rather than an https connection whereas, according to the complainant,

confidential information is processed. According to the complainant, in the context of the use of a

https connection, the data is encrypted when sending. In addition, a website not

secure (which uses an http connection) is subject to possible attacks from the outside

according to the complainant. The complainant wonders what mechanisms have been developed by the

defendant to prevent possible attacks. According to the complainant, the site nowhere provides

explanations or information about how the data is secured.

According to him, the part of the website where you can connect to check in which position

the candidate-tenant is on the waiting list also works via an http connection

not secure. The request for a new password to connect is done via the same

http connection and goes completely against the principles of data protection according to the

complainant.

7. The latter also considers that the forms used on the website are not

more secure. Secure forms should be used so that everything runs smoothly

clearer and more streamlined way.

8. According to the complainant, the site does not specify anywhere whether and to what extent Google Analytics is

used.

9. The Complainant claims that the Respondent also uses cookies on the website [...]

(see also the separate complaint on this subject: complaint 3). According to the complainant, it is not indicated

Decision on the merits 73/2020 - 4/32

for what purposes cookies are used, with what content and who are the

recipients. In addition, no possibility of possibly refusing cookies is offered.

According to the complainant, the site also uses "keywords" and a "description" of the website, which

which indicates that the defendant wants search engines to find it, which

will lead to more visitors to an unsecured website.

10. According to the complainant, the privacy statement is very general and refers to texts

of law, deliberations, etc. without indicating where these documents are and where they can be

consulted. The defendant tries, according to the plaintiff, to disclaim liability via a disclaimer

(a disclaimer) stating that you should not visit the website if you

does not agree with the defendant's terms and conditions.

11. With regard to the protection of personal data, the declaration of

confidentiality indicates that the data that is collected is processed for a constitution

efficient and correct file and that this data is recorded in the files of the

social housing company Y and in those of the Vlaamse Maatschappijj voor Sociaal Wonen

(Flemish Social Housing Company). According to the complainant, there is no consistency or

consistency.

12. The Complainant then complains that the information on the Respondent's website does not

are not at all understandable and lack clarity. He points out that most

(candidates-) tenants of a social housing company like that of the defendant are part

vulnerable groups of people for whom this information is difficult to obtain

decipher.

13. Finally, the complainant asks what other personal data are still

collected when visiting the website, via which intermediary this takes place and from which

way. In this regard, the complainant draws attention to "GO4it media group" which is the

manager of the defendant's website. The complainant points out that this website

does use a secure https connection.

Complaint 3: DOS-2019-02464, Website www.[…].be

14. On July 1, 2019, the complainant filed a complaint. The complaint was declared admissible by

Front Line Service on July 3, 2019.

15. The Complainant complains about the website [...] used by the Respondent. According to the complainant, the site

The Internet does not comply with current privacy legislation.

The complainant asserts that the only element relating to data protection is a

document entitled "privacy policy" which contains a very summary text. The complainant indicates

that it concerns an additional new website of the defendant. The complainant is

concerned that there is no correct and complete privacy statement and

there is also no cookie policy.

16. The complainant claims that personal data is collected via a form

in line. Several favorite themes must also be communicated and you must mark your

agreement with the defendant's privacy statement, according to the plaintiff. Furthermore, according to

the complainant, cookies from Google Analytics in particular are used. The plaintiff complains

moreover the fact that it is not indicated which third parties are involved in the

processing the content of online forms.

17. Personal data is recorded and, according to the complainant, there is no mention

nowhere how long the data is kept and for what purposes it will be

used. According to the complainant, it is also not indicated how the data will be

handled or by whom.

Complaint 4: DOS-2019-04329, Processing of medical data

18. This complaint was filed on August 16, 2019 and declared admissible on

September 30, 2019. The plaintiff complains that the defendant processes personal data

personal, and in particular medical data, and that this processing is contrary to the

GDPR. In order to qualify for single-storey/adapted accommodation, the complainant provided

medical information to the defendant. The appendices reveal that the Complainant sent by

e-mail a medical certificate to the defendant in such a way that his preferences in terms of

housing can be adapted. The defendant reacted to this e-mail by specifying that following the

medical certificate that has been submitted, accommodation preferences would be adjusted

to single-storey dwellings only. On the list of documents to be provided when

registration, medical certificates are also mentioned. According to the complainant, the

purposes of the processing are absolutely unclear. The complainant asserts that the treatment

of health data in this case is contrary to Articles 5, 6, 12 and 13 of the GDPR.

Also in this complaint, the complainant refers to the general policy of protection of life

privacy of the defendant by indicating that the defendant is in breach of privacy laws

privacy with the policy.

Complaint 5: DOS-2020-00543, Use of digital counters

19. The complaint was filed on January 23, 2020 and declared admissible on February 4, 2020.

The plaintiff received a letter from the defendant on January 10, 2020 entitled "intermediate statement

- gas consumption". You can read on this document what was the consumption for the

heating and hot water for the past two months. The complainant states that he did not give

no consent to the defendant for

process their consumption data.

The consumption of gas and electricity is retained by the defendant without the plaintiff's knowledge,

and a fortiori without his consent, according to the complainant. The latter considers that it is

of processing that is not necessary, since customers can transmit

meter readings themselves. In an email dated January 20, 2020 from

e-mail [...], the defendant writes that the data is read automatically and sent to the

defendant via an Internet connection.

Complaint 6: DOS-2020-00574, Use of surveillance cameras

20. The complainant lodged a complaint on 30 January 2020 which was declared admissible by the

Frontline Service on February 4, 2020. Complainant alleges that Respondent deals with

personal data by means of several fixed cameras in different entities

of accommodation. According to the complainant, 4 surveillance cameras were installed on the roof, 2 in

the common entrance halls and 1 in the entrance to the common cellar. According to the complainant, the

privacy policy does not mention anything about the use of cameras. According to

plaintiff, the lease contains only a mention of the use of surveillance cameras.

The complainant also wishes to know what is the legal basis and what are the purposes of this

processing.

Continuation of the procedure

21. The Inspection Service was seized on 7 June 2019 concerning complaints 1 to 3 inclusive1.

22. On August 9, 2019, the Inspection Service sent a letter to the defendant with questions.

23. The letter contained questions for the attention of the Respondent in order to allow the Service

of Inspection to examine possible violations of Articles 5, 6, 12, 13, 15, 24, 37, 38 and 39

GDPR and better understand complaints.

1 Regarding files DOS-2018-06611, DOS-2018-04368 and DOS-2019-02464.

Decision on the merits 73/2020 - 7/32

24. Regarding the defendant, the Inspection Service requested the following information:

a.) Respondent's communications to Complainant regarding the Access Request

complainant and the opinions that the Data Protection Officer of the Respondent has issued to this

topic.

b.) With regard to the privacy policy of the website [...], a

copies of the decisions which have been taken in this respect and which can be consulted on the

website as well as a copy of the opinions of the data protection officer in

matter.

c.) A copy of the decisions relating to the legal information and the clause of

disclaimer on the defendant's website along with a copy of the delegate's notices

at

the protection of data concerning these

information and

the clause of

disclaimer.

d.) A copy of the record of processing activities.

e.) A reasoned and documented answer to the question whether the defendant

whether or not it has a data protection officer. If so, the Service

of Inspection wished to receive an organization chart showing the position of the delegate to the

data protection, his title and the tasks he performs, including the tasks

which are not related to data protection.

25. On July 2, 2019, the Inspection Service received a reply to its letter of June 7, 2019.

The answer included in annex a letter from the defendant dated October 25, 2018 in reaction

at the complainant's request of 4 October 2018 requesting access to his file from the

respondent. The reaction contained an extract of the personal data of the

candidate-tenant, in this case the complainant. This extract mentions the name, address and

data relating to the domicile, as well as the national register number, the bank account,

email address, income and phone number.

26. In addition, an information sheet relating to privacy has been attached as an appendix on which

can only read information and personal data of (candidate-) tenants

are kept in order to check whether a person is entitled to social housing. Data

which, according to the defendant, are kept are the following: identification data, the

national registry number, address and contact details, household composition,

linguistic knowledge, financial data, ownership data and, in

Decision on the merits 73/2020 - 8/32

some cases, guidance services. It is mentioned that the data is kept

10 years, in accordance with the law on archives.

27. The Respondent also indicates that he consults several authorities in order to obtain data.

These instances are:

a) the Federal Public Service Finance: data relating to taxable income and

property data;

b)

the National Register: the National Register number, surnames and first names, date of

birth, sex, main and historical residence, place and date of death, marital status,

household composition, nationality and history, legal cohabitation, register in which

the person is registered and able to act;

vs)

the Federal Public Service Social Security: data relating to the integration income;

d)

the Vlaamse Agentschap voor Integratie en Inburgering (Flemish Integration Agency

and civic integration): data relating to civic integration and the disposition

to learn the language;

e)

the VREG (Vlaamse Regulator van de Elektriciteits- en Gasmarkt, independent authority of the

Flemish energy market): housing data on the value

energy of social housing.

28. On July 9, 2019, the Inspection Service made provisional findings and made

additional questions to the defendant, following the answers he received from the latter on

July 2, 2019. The provisional findings of the Inspection Service were as follows:

at. The respondent does not have notice provided by the Data Protection Officer

regarding the complainant's request for access;

b. The respondent does not have an opinion from the Data Protection Officer regarding the

privacy policy on the website [...];

vs. The defendant does not have any decisions made regarding the protection policy of

privacy on the website;

d. The copy of the processing register does not mention the name and contact details of the

controller, nor of the data protection officer and does not contain

either the purposes of the processing;

e. The defendant does not give any explanation on the missions and competences of the delegate

to data protection.

29. The Inspection Service also put additional questions to the Respondent

concerning the data protection officer. Thus, a copy of the

documents showing a justification for the choice of this person as a delegate to

data protection, the date of designation with the Data Protection Authority

data of this data protection officer and finally, a copy of the documents which

attest to the effective exercise of its mission was also requested, more particularly

notices, correspondence, etc.

30. By email of August 8, 2019, the Respondent conveyed its reaction to the interim findings

of the Inspection Service. The reaction includes several annexes including the correspondence by

e-mail between the defendant and the data protection officer who is employed at V .

This email is designated as a notice from the Data Protection Officer regarding the

complaint.

31. By way of communication regarding the privacy policy requested

by the Inspection Service, the defendant attached an e-mail from the Vlaamse Maatschappij voor

Social Wonen (VMSW). The e-mail contains the message that the VMSW has published

new privacy statements for clients of social housing companies.

This is an e-mail sent to all social housing lessors. Then, files

general information has always been added.

32. In addition, it is specified that the processing register has been adapted following the findings

temporary staff of the Inspection Service.

33. Questions from the Inspection Service to the defendant concerning the appointment of the delegate

to data protection in accordance with Article 37 of the GDPR (outside the framework of

survey) also got a response. It is indicated that the appointment of the delegate to

data protection took place on the initiative of the VMSW which concluded, by way of

award, a framework contract with the company V.

34. The defendant points out in this respect that: "Companies could subscribe on their own

initiative to V services which also imposes on all its employees, in addition to a minimum

of experience, obtaining a minimum number of certificates in the field of

knowledge of data protection."

35. The Data Protection Officer notification date is 25 May 2018.

The defendant indicates that he has submitted a new notification to the Protection Authority

data in which another person has been notified as a delegate. According to

respondent, the latter is therefore the effective data protection officer.

Decision on the merits 73/2020 - 10/32

36. On 16 September 2019, the Inspection Service sent its report to the Chamber

Litigation, under article 92, 3° of the LCA.

37. The inspection report finds potential violations of Articles 5, 6, 12, 13, 15, 30, 31,

32 and 37 to 39 inclusive of the GDPR.

38. The Inspection Service finds that the defendant has not complied with the obligations imposed

by Articles 5 and 6 of the GDPR. The Inspection Service came to this conclusion because

given that no justification emerges from the Respondent's replies as to the decisions which

have been taken regarding the legal information / the legal disclaimer (the clause of

legal disclaimer) and the general conditions on the web page […]2.

39. Respondent further acknowledges that no notice was issued by the Data Protection Officer

data given that according to the Respondent, this mission does not normally fall within the tasks of the

delegate.

40. The Respondent's responses also do not reveal what decisions were made

concerning the elements of the website [...] which facilitate the processing of personal data

personal, such as the contact page.

41. According to the Inspection Service, the company's privacy protection policy

social housing Y is not transparent and not understandable for people

concerned. It is unclear what happens to personal data

obtained. According to the Inspection Service, the privacy policy is confusing

and contains all kinds of incomprehensible notions for those concerned.

Furthermore, it is mentioned in the policy that if a data subject contacts

with the defendant and does so via an electronic means other than via the website, the

privacy statement of this other means prevails. According to the Inspection Service, this

also indicates that there is no transparency with regard to the persons concerned.

42. The Inspection Service emphasizes that despite an express request to this effect, no opinion

of the data protection officer was transmitted to him by the defendant.

43. According to the Inspection Service, a technical examination showed that the website [...]

used cookies. One of them is a necessary technical cookie called "hs_js" and a

another, a marketing cookie called "IDE" from Google-Doubleclick. For the latter

2 See page 3 of inspection report DOS-2018-006611, exhibit 21.

cookie, no consent is required from visitors to the website. The treatment of

personal data that takes place in this context is therefore unlawful according to the Service

of inspection.

44. The Inspection Service also found violations with regard to Articles 12,

13 and 14 GDPR. The Inspection Service arrived at these findings given that the Annex

Internal rental regulations appendix 11 which is linked to the life protection policy

privacy of the defendant is not transparent and understandable for the persons concerned,

which leads the Inspection Service to note a violation of article 12.1 of the GDPR. Onne

not clear what is meant by different concepts used in Annex 11

mentioned. The contact details of the data protection officer of the defendant are

fault. The processing purposes as well as the legal basis for the processing are missing.

The Inspection Service also notes that the attention of the persons concerned is not

not drawn to the right of access.

45. As of 1 July 2019, an adapted privacy protection policy has been published by the

defendant on its website3. According to the Inspection Service, the document containing the

Respondent's privacy policy is not transparent or understandable

for data subjects and therefore does not meet the requirements of Article 12.1 of the GDPR.

Furthermore, all information prescribed in accordance with Articles 13 and 14 of the GDPR does not

are not actually defined in the privacy policy either.

Several notions are used interchangeably and the contact details of the protection delegate

data is lacking, according to the inspection report.

46. The Respondent reacted to the Complainant's request for access made on the basis of Article 15

of the GDPR by sending in particular a document entitled "GDPR". According to the Inspection Service,

this document is also not transparent or comprehensible for the persons concerned.

The defendant therefore does not meet the requirements set out in Article 12.1 of the GDPR. According to

Inspection Service, the response does not meet the requirements of Article 15.1 of the

GDPR. Information that must be mentioned, such as

recipients of the personal data, are lacking.

47. A violation of Articles 28 and 30 of the GDPR has also been noted by the Service

of Inspection, for the following reasons. The defendant submitted that a company

called C-Works designed the website [...]. personal data of

tenants have been collected and processed via this website. The defendant does not consider

3 […].

the company as a subcontractor. Based on the information provided, the Service

d'Inspection does not know clearly if it is a subcontractor and if a contract of

subcontracting should therefore have been concluded in accordance with Article 28 of the GDPR.

Additional Findings (Outside Complaints)

48. According to the Inspection Service, the Respondent did not comply with the obligations imposed by the

articles 37.5 and 37.7 of the GDPR. The justification for the choice of data protection officer

is not provided by the defendant. The defendant only indicates that it was done at

the initiative of the VMSW which had a framework contract with V by way of tender.

The contact details of the data protection officer are also not published and

this implies a violation of Article 37.7 of the GDPR according to the Inspection Service.

49. Finally, the Inspection Service found that the Respondent had also failed to comply with the

obligations of Articles 38.1 and 38.3 of the GDPR. The various documents received from the defendant by

the Inspection Service allow the conclusion to be drawn that no opinion was requested from the

data protection officer for the processing of personal data via

the website [...] in particular.

Substantive processing by the Litigation Chamber

50. On March 21, 2020, the Litigation Chamber informed the parties that the six complaints lodged

separately will be processed jointly and decides, in accordance with Article 95, § 1, 1° and

in article 98 of the LCA, that the case can be dealt with on the merits. The parts are also

informed, pursuant to Article 99 of the LCA, of the deadlines for transmitting their conclusions.

The deadline for receipt of the Respondent's submissions in response was set at

March 26, 2020, that for the complainant's submissions in reply to April 27, 2020 and that

for the Respondent's Reply to May 27, 2020.

51. On March 26, 2020, the data protection officer, who works for company V,

submits on behalf of the defendant the conclusions of the defendant by e-mail, in which he makes

also know that the latter wishes to be heard.

52. On August 19, 2020, the parties were informed that the hearing will take place on

September 23, 2020.

53. On September 23, 2020, the parties were heard by the Litigation Chamber.

54. On September 29, 2020, the minutes of the hearing were submitted to the parties.

55. On October 2, 2020, the Data Protection Officer sent the Chamber

contentious, on behalf of the defendant, a reaction to the minutes by which several

corrections to the minutes are requested4.

56. On October 8, 2020, the complainant reacted by e-mail to the minutes. In his reaction to

minutes, the complainant repeated his previous arguments in detail.

In this regard, the Litigation Chamber underlines that, as has already been specified during

hearing, no new facts can be added as the proceedings have already been

closed. The report is only transmitted to check if everything has been returned

correctly. Consequently, the arguments put forward after the closing of the debates will not be taken

taken into account in the decision.

57. In its conclusions of March 26, 2020, the Respondent acknowledges that no opinion was issued by

the data protection officer regarding legal information/legal

disclaimer (legal disclaimer). In this context, it is specified that the

document will be withdrawn, since it does not mention any conditions applicable to the exchange

of personal data.

58. With regard to the findings of the Inspection Service relating to the website [...], the

defendant reacts as follows: "Regarding the technical examination carried out on the website [...],

the social housing company Y accepts the fact that the findings made by the Service

inspection are correct and that a marketing cookie was indeed active on the page

Internet. Considering the unique event that was organized and the ephemeral use of the website,

the social housing company Y continued to assert in good faith on the explanations of the

website generator (Go4IT), an email supporting this assertion was attached to the former

file, that no cookies were active on the website. The social housing company Y

acknowledges that failure to submit the website to a test could constitute a

reprehensible omission and draws the necessary lessons for the future."

59. The Respondent then states that it took note of the findings of the Inspection Service

concerning transparent information, communication and modalities for the exercise

4 See the email of October 2, 2020 sent to the Litigation Chamber dated October 2, 2020 with the feedback concerning

the minutes of the DPO of Z on behalf of the defendant.

5 Email from the plaintiff to the Litigation Chamber of October 8, 2020 following the minutes of the hearing.

the rights of the data subject (Articles 12 and 13 of the GDPR). The defendant indicates that he

will adapt the privacy statements.

60. With regard to the findings relating to the right of access of Article 15 of the GDPR, the

defendant reacts as follows. The defendant clarifies that he always tries to provide

information in a transparent and clear manner in its responses to the questions it receives from

its (candidate-) tenants. The defendant then asserts that he "did his best to provide

the necessary documentation, within the framework of the exercise of the right of access of the person

concerned, the company acknowledges that after a first reading, some elements of this

document may not be sufficiently clear. As a small SME, this is the first

time that the social housing company Y was confronted with such a request. The organization

recognizes that areas for improvement and efficiencies are possible if such

request arises."

61. The Respondent indicates that it is at all times open to questions and communication with

the (candidate-) tenants. The defendant was unaware that the document contained inaccuracies

and would rather have expected the Complainant to speak to him about it first before

to file a complaint.

62. The Respondent states that it took note of the findings of the Inspection Service concerning the

record of processing activities. In the meantime, the register has been adapted, according to the defendant.

63. The Respondent concludes its submissions as follows:

"To conclude, the social housing company Y stresses that the necessary efforts have indeed

been provided to comply with the GDPR. The social housing company Y

then recognizes the importance of the protection of personal data and the role

that the Data Protection Authority has to play in this context. Nevertheless, the company

social housing Y had to undergo this procedure for the last few weeks and the last

month. Although the social housing company Y always tries to serve its

(candidates-) tenants as adequately as possible, also respects the legislation

necessary in this context and also contacts as much as possible the organizations of parties

interested, it became apparent that as a small social housing company, this required a

extremely heavy workload and financial efforts to deal with this

administrative procedure down to the level of detail required. With this consideration, the company

social housing Y would like to stress once again the importance of being heard in this

case."

Decision on the merits 73/2020 - 15/32

64. By e-mail of October 23, 2020, the Litigation Chamber informed the defendant of the intention

to impose an administrative fine as well as the amount of the fine and the possibility of

respondent to submit its submissions in this regard.

65. On October 30, 2020, the defendant reacts by e-mail to the intention to impose a fine. In this

regard, the Litigation Chamber points out that no new facts can be added

since the debates have already been closed. In summary, the defendant's reaction contains

the following: According to the defendant, the amount of the fine is too high. The defendant indicates

financially, he is going through difficult times, forcing him in particular to sell his

dwellings in order to be able to continue to exist. This has direct consequences for their

target group, namely the most deprived persons in society, according to the defendant.

The defendant does not share the Litigation Chamber's point of view on the (in)accessibility

of the Data Protection Officer. According to the defendant, the delegate can be contacted according to the

manner prescribed by the GDPR. The defendant points out that the positive result of EUR 528,355

as stated in the fine form is incorrect and attaches other figures. In what

concerns the violations found with regard to surveillance cameras, the defendant specifies

to be able to adhere in large part to the opinion of the Litigation Chamber, however by adding

that the defendant did not consult the images but only kept them.

2. Motivation of the Litigation Chamber

66. For reasons of procedural economy, given the number and importance of complaints

lodged, the Litigation Chamber assesses the degree of merit of the complaints using the

subject of the complaint. Therefore, complaints 1 to 6 inclusive will not be dealt with in this order.

but will be classified under the themes to which they relate. The themes that are the subject of

various complaints and on which the Litigation Chamber will issue its opinion are the

following:

-

-

-

-

-

-

the privacy policy and the right of access in accordance with Article 15

of the GDPR (section 2.1)

the data protection officer (section 2.2)

the cookie policy (section 2.3)

the processing of health data (section 2.4)

the cameras law (section 2.5)

processing using digital meters (Section 2.6).

Decision on the merits 73/2020 - 16/32

67. The Litigation Chamber points out that under Articles 5.2 and 24 of the GDPR, the person responsible

processing must take the appropriate technical and organizational measures to

guarantee and be able to demonstrate that the processing of personal data is

made in accordance with the GDPR. In this context, the GDPR requires in particular that it be held

account of the nature and scope of the processing operations as well as the risks for the persons□

concerned. When assessing the question of whether and to what extent□

sanctions must be imposed, these elements will play an important role.□

2.1 The privacy policy and the right of access in accordance with□

GDPR Article 15□

68. With regard to the right of access of Article 15 of the GDPR and the alleged violations□

put forward by the plaintiff (especially in complaint 1), the Litigation Chamber reasons□

as following.□

69. The document entitled "Extract of the personal data of the Candidate-tenant of the□

Social housing company Y SCRL" contains several data including the Register number□

national, name, address and residence data as well as nationality, e-mail address,□

the gender, date of birth and household income of the (candidate) tenants. Besides the extract,□

a document is sent to the complainant entitled: "Private life: what information does the□

social housing company Y?" This information page contains the introductory paragraph□

following: "Through the social housing company Y, you can rent social housing. Therefore,□

we keep information about you in lists and records in order to□

check if you are entitled to anything. Or to help you better."6□

Articles 13.1 and 13.2 of the GDPR provide the following:□

"1. Where personal data relating to a data subject is□

collected from this person, the data controller provides him, at the time when□

the data in question are obtained, all of the following information:□

a) the identity and contact details of the controller and, where applicable, of the□

representative of the controller;□

b) where applicable, the contact details of the data protection officer;□

c) the purposes of the processing for which the personal data are intended as well as□

the legal basis for the processing;□

d) where the processing is based on Article 6(1)(f), the legitimate interests

sued by the controller or by a third party;

6 See the annex to the email of 4 October 2018 from the complainant to the Data Protection Authority.

e) where applicable, the recipients or categories of recipients of the personal data

staff ;

f) where applicable, the fact that the controller intends to make a transfer

personal data to a recipient in a third country or an organization

international community, and the existence or absence of an adequacy decision issued by the

Commission or, in the case of transfers referred to in Article 46 or 47, or Article 49,

paragraph 1, second subparagraph, the reference to the appropriate or suitable safeguards and the

means of obtaining a copy or where they have been made available.

2. In addition to the information referred to in paragraph 1, the controller shall provide the

data subject, at the time the personal data is obtained, the

following additional information that is necessary to ensure processing

fair and transparent:

a) the retention period of the personal data or, where this is not

possible, the criteria used to determine this duration;

b) where the processing is based on Article 6(1)(f), the legitimate interests

sued by the controller or by a third party;

c) the existence of the right to request from the controller access to the data to

personal character, the rectification or erasure of these, or a limitation of the

processing relating to the data subject, as well as the right to oppose the processing and

the right to data portability;

d) where the processing is based on point (a) of Article 6(1) or on Article 9,

paragraph 2(a), the existence of the right to withdraw consent at any time, without

undermine the lawfulness of processing based on consent made prior to withdrawal

of it;

e) the right to lodge a complaint with a supervisory authority;

f) information on whether the requirement to provide personal data

personnel is of a regulatory or contractual nature or if it conditions the conclusion of a

contract and whether the data subject is obliged to provide the personal data,

as well as on the possible consequences of not providing this data;

g) the existence of automated decision-making, including profiling, referred to in Article 22,

paragraphs 1 and 4, and, at least in such cases, useful information concerning the logic

underlying data, as well as the significance and anticipated consequences of such processing for the

concerned person."

70. During the hearing, the respondent indicates that the confidentiality statement has been published

on the website after having been examined and validated by the Board of Directors. It's about

of a confidentiality statement borrowed from the example of the VMSW according to the defendant.

Decision on the merits 73/2020 - 18/32

71. The Litigation Division finds that the aforementioned confidentiality statement -

even in the form of an information page after the declaration has been adapted

and entered into force on 1 July 2019 - does not meet the requirements imposed on the

processing according to Articles 12 and 13 of the GDPR. Such a life information page

privacy should be used to fully inform the data subject about what he

actually happens to his personal data and on the framework in which these

data is processed. Any processing of personal data must be carried out

lawful, fair and transparent manner. The persons concerned must be clearly

informed of the data that is processed, the way in which this processing is carried out and the

reasons for which the personal data are processed. The information page

in terms of privacy does not make it possible to establish for what exact purposes the data to be

personal character are used.

72. The privacy information page contains the following paragraph regarding the
processing of personal data: "Via the social housing company Y, you
can rent social housing. Therefore, we keep information about you
in lists and folders. We use this information to check whether you have
right to something. Or so that we can help you better."

73. The Litigation Chamber considers that the aforementioned text is very vague, general and
imprecise and in no way makes it possible to deduce for what purposes the personal data
personnel collected are actually used. This text is not GDPR compliant.
For example, it is not at all clear what is meant by "we use these
information to check if you are entitled to something. Or so you can better
help." You have to communicate clearly with the people involved.

74. Transparency requirements are defined in the GDPR and are specified in
the Guidelines on transparency within the meaning of Regulation (EU) 2016/6797 of the Group of
data protection "Article 29" which states: "A fundamental aspect of the principle of
transparency highlighted in these provisions is that the data subject should be
able to determine in advance what the scope and consequences of the processing
encompass so as not to be caught off guard at a later stage as to how
their personal data have been used.8" The specific interest in question must be
identified with respect to the data subject.

7 See the annex to the email of 4 October 2018 from the complainant to the Data Protection Authority.

8 Transparency Guidelines, p.8.

75. Information and communications concerning privacy must also meet the
principle of transparency, this means that the information must be simple, accessible
and understandable, in accordance with Article 12.1 of the GDPR. By "understandable", there is

to understand that the message must in particular include a certain level of language,

namely "expressed in clear and simple terms". In addition, the language must be adapted to the

target group9. This means communicating in clear and simple terms with

persons concerned10. The defendant should express himself in a way that is more comprehensible and

clearer, (all the more) when it comes to (candidate-) tenants of a housing company

social. Indeed, these are low-income tenants and in general (apart from

exceptions) with a low level of education, requiring all the more

politics more understandable.

76. In addition to the above breaches, the privacy policy is even more

difficult to understand given that in several places and on several occasions, various

terms such as "personal data", "information" and "data" are used

indifferently in the privacy information page. In addition, we make

references without providing an explanatory glossary or clear explanations. Information

provided are generally not current. By way of example, we can cite the reference to the

website of the supervisory authority, which refers for example, as have done

notice to

rightly so much

the complainant that

the Inspection Service, at the site

www.privacycommision.be while the current website since May 2018 is

www.dataprotectionauthority.be.

77. The Litigation Division then notes that the privacy protection policy of the

defendant is incomplete, since it does not contain the mandatory information

defined in Article 13 of the GDPR. According to Article 12 of the GDPR, information relating to the life

privacy must be "concise"; this does not mean that we can undermine the

mention of mandatory information, in accordance with article 13 of the GDPR.

78. Respondent's privacy policy does not contain this information

mandatory, in accordance with Article 13.1, b) of the GDPR, such as the contact details of the delegate

to data protection, in a way that complies with the legislation and the guidelines

9Article 29 Data Protection Working Party, Guidelines on Consent under

Regulation 2016/679, WP259, p. 4; Guidelines on transparency within the meaning of Regulation (EU) 2016/679, WP260,

p. 8: “The requirement that such information be "comprehensible" means that it should be capable of being understood by the

majority of the target audience. Comprehensibility is closely linked to the requirement to use clear and simple terms.

A data controller knows the people about whom he collects information and can take advantage of this information.

knowledge to determine what that audience would be likely to understand. For example, a controller

collecting the personal data of professionals carrying out an activity can assume that its public has a

higher level of understanding than if the same controller collected personal data

concerning children. […]".

10 Recital 39 GDPR.

Decision on the merits 73/2020 - 20/32

Article 29 Working Party on Data Protection Officers (DPOs)11.

In order to meet the requirement of the communication of prior information, these

contact details must however be included in the privacy policy.

79. As rightly pointed out by the Inspection Service, the e-mail address […] mentioned

on the privacy information page is, according to the "Explanations of

organization chart" provided by the defendant, linked to the inbox of the IT manager of the

defendant, while the function of data protection officer is, according to the

defendant, subcontracted to a third party under a VMSW framework contract12.

The data protection officer appears to work for this third party, in

company V in this case. The e-mail address of the delegate is [...] according to the various documents and

the e-mail exchanges between the defendant and the delegate. The persons concerned have

therefore incorrect data from the Data Protection Officer and cannot

contact the right person if necessary. Following this listing of

findings, the Litigation Division finds that there is a violation of

Article 13.1, b) of the GDPR. Although a new data protection officer is

entered into service on September 1, 2020, the violation continued until that date and a new

designation does not remedy the violation that has been committed.

80. The Litigation Chamber infers from the findings of violations listed above that the

respondent failed to comply with its transparency obligations under Article 12 of the GDPR or its

information obligation of Article 13 of the GDPR. The Respondent acknowledges these facts in its

conclusions. The defendant thus acted with culpable negligence, in breach of his

liability as defined in articles 5.2 and 24 of the GDPR. This information must be

compliant with articles 12 and 13 of the GDPR.

81. Article 15 of the GDPR which defines the data subject's right of access is worded as

follows:

"1. The data subject has the right to obtain from the controller confirmation

that personal data relating to him are or are not being processed and,

when they are, access to said personal data as well as the information

following:

a) the purposes of the processing;

11 Article 29 Data Protection Working Party, WP243 rev.01, Guidelines on Data Protection Officers

(Guidelines for Data Protection Officers (DPOs)), p.12.

12 Exhibit 10 of DOS-2018-06611.

b) the categories of personal data concerned;

c) the recipients or categories of recipients to whom the personal data

personnel have been or will be communicated, in particular recipients who are established

in third countries or international organisations;

d) where possible, the retention period of the personal data

envisaged or, when this is not possible, the criteria used to determine this duration;

e) the existence of the right to request from the controller the rectification or

the erasure of personal data, or a limitation of the processing of

personal data relating to the data subject, or the right to oppose

to this treatment;

f) the right to lodge a complaint with a supervisory authority;

g) when the personal data is not collected from the person

concerned, any information available as to their source;

h) the existence of automated decision-making, including profiling, referred to in

Article 22, paragraphs 1 and 4, and, at least in such cases, useful information

regarding the underlying logic, as well as the significance and intended consequences of

this processing for the data subject.

2. When the personal data is transferred to a third country or to a

international organization, the data subject has the right to be informed of the guarantees

appropriate, under Article 46, with respect to this transfer.

3. The controller provides a copy of the personal data making

the object of treatment. The controller may require the payment of fees

reasonable based on administrative costs for any additional copies requested

by the person concerned. When the person concerned submits his request by

electronic, the information is provided in a commonly used electronic form,

unless the data subject requests otherwise.

4. The right to obtain a copy referred to in paragraph 3 does not affect the rights and

freedoms of others."

82. In the respondent's privacy policy, several of the mandatory elements

of Article 15.1 of the GDPR are missing. It does not appear from the life protection document

private what are the exact purposes of the data processing that the defendant requests

Decision on the merits 73/2020 - 22/32

to (candidate-) tenants. It is necessary to define exactly the purposes for which each data

collected is used precisely. If data relating to health is requested, it will be necessary

mention that these data are for example processed in order to be able to check whether on the

based on a determined health situation, suitable accommodation can be allocated. He is not

no longer indicated who the recipients and categories of recipients are. In this context, the right

available to the data subject to request that their data be rectified and/or

deleted, in accordance with Article 15.1.e) of the GDPR, is also not mentioned. It is not

nor does it indicate that the processing of personal data will be restricted.

The Litigation Chamber thus considers that a violation of Article 15.1 of the GDPR has been proven.

83. The complainant further claims that he did not have access to all of his personal data

handled by the defendant. According to the complainant, this is a page containing only

general information from the National Registry. According to him, there is no indication as to whether

the information provided is complete.

84. The Litigation Chamber recalls that Article 15 of the GDPR confers on the data subject

"the right to access the personal data that has been collected about him and

to exercise this right easily and at reasonable intervals, in order to become aware of the

processing and verifying its lawfulness"13.

It is clear from all the above that the information provided by the defendant on the data

of the complainant it deals with do not meet the requirements of Article 15 of the GDPR. The complainant

rightly pointed out that he was unable to exercise his right of access properly. Between the

personal data of the complainant which are processed by the respondent and those

to which the complainant had access, there are, for example, no medical certificates that the

plaintiff transmitted to the defendant, as will appear from section 2.4 below.

2.2 Data Protection Officer

85. The inspection report also mentions additional findings regarding the

data protection officer, outside the scope of the complaint. The Inspection Service has

found that the defendant had acted in violation of Articles 37.5 and 37.7 of the GDPR. By virtue of

Article 37.5 of the GDPR, the delegate must be designated in particular on the basis of his knowledge

13 Beginning of Recital 63 GDPR.

specialists in data protection law and practice. Article 37.7 of the

GDPR specifies that the contact details of the delegate must be published and communicated to the authority

control.

86. Indeed, it appears from the answers provided by the defendant to the Inspection Service concerning the

designation of the data protection officer that this designation took place on the initiative

of the VMSW via a company in which the latter had a framework contract. Bedroom

Litigation finds that the defendant does not meet the obligation to justify the choice of

data protection officer. The defendant only refers to information

and a very general communication from the VMSW to the Respondent. In addition, the defendant specifies

on several occasions that a framework contract has been concluded between the VMSW and V as DPO.

The Litigation Chamber emphasizes that the defendant is ultimately responsible and has the obligation to

comply with article 37.5 of the GDPR which provides that the data protection officer is

appointed on the basis of his professional qualities and, in particular, his knowledge

specialists in data protection law and practice. This testifies to a

lack of justification for the respondent's choice of delegate. Furthermore, the data from

delegate have not been published as required by Article 37.7 of the GDPR. The Litigation Chamber

thus finds violations of Articles 37.5 and 37.7 of the GDPR.

87. The Litigation Chamber refers to the Guidelines of the "Article 29" Working Group

concerning data protection officers (DPO) in which it is specified what

following regarding external delegates: "For the sake of legal clarity and good

organization, and in order to prevent conflicts of interest for team members, the lines
guidelines recommend providing a clear division of tasks in the service contract
within the external team in charge of the DPO function and to appoint a single person
as the main "responsible" contact person for the customer."14
88. During the hearing, the current Data Protection Officer, who has been a Data Protection Officer since
September 1, 2020, claimed that the manner in which he was appointed as a new delegate
to data protection is in line with the Group 29 guidelines on the role of the
data protection officer. In essence, this amounts to saying that the delegate to the
data protection must be available to the data controller. The fact that
some correspondence first reached the IT manager of the defendant and was
then sent to the Data Protection Officer is correct according to the Data Protection Officer
data protection15. The Litigation Chamber underlines that according to the guidelines of the
14 Article 29 Working Party Guidelines on Data Protection Officers (DPOs) – WP243,
p. 28.
15 Page 5 of the minutes of the hearing of September 23, 2020.

Group 29, the requirements to publish delegate contact details are intended to ensure that
both the persons concerned (within or outside the organization) and the authorities of
control can easily make direct contact with the Data Protection Officer
data. Access must be direct, without any other part of the organization having to be contacted.
In this case, the contact took place via the IT manager of the defendant, which goes against
the intention of the legislator. Confidentiality is very important: workers can thus be
reluctant to lodge a complaint with the Data Protection Officer if the
confidentiality of their communications is not guaranteed.
89. Articles 38.1 and 38.3 of the GDPR require the controller to ensure that the
data protection officer is involved in all matters relating to data protection

personal data. The Data Protection Officer cannot receive

no instruction in the exercise of its missions. Following responses and documents

received, the Inspection Service noted that no opinion had been requested from the delegate for

data protection regarding privacy issues. Bedroom

Litigation indeed notes that no justification of the person in charge of the treatment was

provided regarding the decisions that have been made for the website [...], regarding the

legal information and general conditions. There is no notice from the Protection Officer

data with regard to the processing of data via this website. The defendant

further acknowledges in his conclusions that he did not actually seek any advice from the delegate to

data protection. The Litigation Division therefore finds that the defendant violated

GDPR Article 38.1.

2.3. Cookie Policy

90. As already mentioned above, the Complainant alleges that the Respondent uses

cookies on the websites [...] and [...]. According to the complainant, no consent is requested

for the use of cookies. The Inspection Service noted by means of a technical report

that cookies were used on the website [...]. As indicated earlier, this is

a necessary technical cookie called "hs_js" from the defendant itself and a cookie called

"IDE" from Google-Doubleclick.net. For this last "IDE" cookie mentioned, no

no consent was requested from visitors to the website according to the inspection report16.

91. The Respondent acknowledged during the hearing that the website dated from 2010 and did not meet

therefore more to the current regulations. It is not a question of ill will; limitations

However, techniques do not make it possible to display, for example, a pop-up for the use of

16 Inspection report, p. 5.

Cookies. According to the defendant, setting up a secure connection via a domain name

https is also not possible on the current website. Currently, we are working on a

new website. According to the defendant, it will most likely be ready by the end of this
year.
92. In its Planet49 judgment, the Court of Justice ruled that in order to place cookies, information
should be provided by the controller17. The information provided must establish
how long the cookies will remain active and whether third parties can also access these
Cookies. This is necessary to guarantee fair and transparent information.
93. Article 129 of the law on electronic communications of 13 June 2005 provides that
the user must have given their consent for the placement and consultation of cookies
on its terminal equipment. The consent requirement does not apply to
technical recording of information. When the placement of cookies is necessary for the
provision of a service explicitly requested by the subscriber or end user, the requirement of the
consent is also not applicable18.
94. The Litigation Division further draws attention to the following recitals of the judgment
Planet49 mentioned above: "Active consent is thus now expressly provided for by the
regulation 2016/679. It is important to note in this regard that, according to recital 32 of this
regulations, the expression of consent could be done in particular by ticking a box when
of consulting a website. On the other hand, said recital expressly excludes that there
has consent "in case of silence, boxes checked by default or inactivity". It follows
that the consent referred to in Article 2(f) and Article 5(3) of the
Directive 2002/58, read in conjunction with Article 4(11) and Article 6(1) under
a), of Regulation 2016/679, is not validly given when the storage of information or
access to information already stored in the terminal equipment of the user of a site
Internet is allowed by a box checked by default which the user must uncheck to refuse
to give consent."19.
95. The consent must also be "specific". The Litigation Chamber refers to the Lines
guidelines on consent within the meaning of Regulation 2016/67920 which have been ratified by the EDPB:

"Article 6(1)(a) confirms that the consent of the data subject must

be given in connection with "one or more specific purposes" and that the data subject has

17 Court of Justice, 1 October 2019, C-673/17, ECLI:EU:C:2019:801.

18 See also in this respect decision no. 12/2019 of the Litigation Chamber of December 17, 2019.

19 Planet49 judgment, points 62 and 63.

20 Data Protection Working Party, Guidelines on Consent within the meaning of Regulation 2016/679,

WP259, p. 4.

a choice regarding each of these purposes".21 This means "that a data controller

that seeks consent for various specific purposes should provide for consent

separate for each purpose so that users can give specific consent

for specific purposes."22

96. The Litigation Chamber notes with the help of the technical report requested by the inspection that

the defendant has not requested consent for the placement on the websites of a

cookie with marketing purposes, namely the "IDE" cookie. In addition, the defendant replied

in the negative to the question of the Inspection Service to find out whether cookies were used

on websites. The Respondent retracted the foregoing by acknowledging in its

conclusions having used cookies for which consent was required. The defendant

indicates that it has adapted the cookie policy and now requests consent

users23.

97. Given the facts and findings mentioned above, the Litigation Chamber considers that the processing

of personal data by means of the placement of cookies, without having a basis

valid legal consent, in accordance with Article 6.1 of the GDPR, is unlawful.

98. In accordance with Articles 5.2 and 24 of the GDPR, the controller must take the

appropriate technical and organizational measures to ensure and be able to demonstrate that the

personal data processing carried out using cookies is carried out

in accordance with Articles 12 and 13 of the GDPR. In its submissions, the Respondent acknowledges that

certain mandatory information such as the purposes of the processing were missing in the

initial website privacy statement.

2.4 Health data

99. The Complainant asserts that the Respondent also processes medical data. The complainant

indicates that he provided his medical certificates to the defendant. According to the Complainant, the Respondent deals

systematically illicit medical data. The complainant considers that he

does not belong to the defendant

judge concretely

the health status of a

(candidate-) tenant.

21 Ibid, p. 14.

22 Ibid, p. 14.

Decision on the merits 73/2020 - 27/32

100. The e-mail exchanges between the plaintiff and the defendant are annexed to the complaint.

In any case, it emerges from the various e-mails the following. In an email dated August 30, 2016, the

defendant told the plaintiff that he had received the doctor's certificate but could not give

no certainty as to the positive decision relating to the complainant's request to proceed

the candidates appearing higher on the list for the allocation of accommodation. The complainant has since

when asked to be placed higher on the list. It appears from another email dated February 6, 2019

sent by the plaintiff to the defendant that the plaintiff sent on his own initiative an e-mail

to the defendant in which he informed the defendant of the change in his medical situation.

The complainant concluded the e-mail with these words "A medical certificate can still be provided if you

have doubts again or have your own opinion about my medical situation.

I therefore urge you to please consider my physical limitations.

medical conditions and to choose accommodation near a hospital. Due to

seriousness of the problem of (...), I ask you to absolutely avoid accommodation in a

noisy environment."

101. During the hearing, the Respondent indicated that a medical certificate was only

asked if a (candidate-) tenant requested special housing preferences

as is the case here. The defendant indicates that no diagnosis is made in the

medical certificates. The complainant does not contest this assertion. The doctor asks that he

the situation of the person concerned is taken into account and therefore, for example, accommodation with

lift or accommodation in a quiet environment. Medical certificates serve

only to be able to make a fair attribution, according to the defendant.

102. In accordance with the foregoing, the Litigation Division decides that this is not processing

illicit health data. This treatment is indeed necessary and can be based on

Article 9.2.h) of the GDPR: "the processing is necessary for the purposes of preventive medicine or

occupational medicine, the assessment of the worker's work capacity, diagnostics

medical, health or social care, or the management of systems and services

healthcare or social protection on the basis of Union law, the law of a Member State

member or under a contract entered into with a healthcare professional and subject to the

conditions and guarantees referred to in paragraph 3", given that there are no diagnoses in

medical certificates. It also emerges from the e-mail exchanges that the complainant made it known

on his own initiative to the defendant what his state of health was and indicates that he can

possibly provide the defendant with a medical certificate.

2.5 Surveillance by cameras

Decision on the merits 73/2020 - 28/32

103. The Complainant claims that there is camera surveillance in several housing entities

of the appartment. According to the complainant, the privacy policy does not mention anything

on camera surveillance. The complainant also wishes to know what is the legal basis and

what are the purposes of this processing.

104. It appears from the documents produced that in point 11 of the rental contract, mention is made of the surveillance cameras that are installed on the roof, in the common entrance halls and at the entrance to the common cellar. Apart from this information, nothing is known about the use of cameras.

105. During the hearing, the Respondent stated, when asked, that he knew that the cameras monitoring systems had been installed in 2012 in the cellars and corridors at the request of residents to ensure safety. According to the defendant, the cameras were legally recorded and are used as a deterrent. No operation would be carried out later with the pictures. A year and a half ago, the images of the cameras were consulted once according to the defendant. According to him, the cameras are difficult to manage since there are too many little budget for their maintenance. Currently, there is no maintenance contract for surveillance cameras. The defendant indicates that he can consult the images and be the controller for the images. The Data Protection Officer points out that the Camera Law of March 21, 2007 constitutes the legal basis for the processing of images cameras.

106. Using the documents available in the file and what was put forward during the hearing, the Litigation Chamber notes that there are many inaccuracies concerning the use surveillance cameras. As the purpose of the processing, we must first mention the prevention of incivility. Then, the defendant indicates during the hearing that he was asked for a time to consult the images concerning the clandestine deposits. The Litigation Chamber considers that the defendant is not very clear what the cameras are actually for. In addition, according to the Litigation Chamber, the available elements do not make it possible to establish enough if the Cameras Act is properly complied with by the defendant. § 2 of Article 6 of the Cameras Law provides that the controller keeps a register listing the activities for processing images from surveillance cameras and, on request, makes this register available disposal of the Data Protection Authority and the police services. The defendant does not

does not maintain such a register. Furthermore, it is apparent from what the Respondent said in court that the

retention period of Article 6, § 3 of the Cameras Act is also not respected given the

that it emerges from this article that "if [the] images cannot contribute to providing proof of a

offence, damage or incivility", they must in principle be destroyed after a

Decision on the merits 73/2020 - 29/32

month. The Litigation Chamber thus finds violations of Article 30 of the GDPR (holding a

register of processing activities) and Article 5.1.e) of the GDPR (retention limitation).

2.6 Digital consumption meters

107. The plaintiff complains that the defendant uses digital consumption meters

and thus keeps the consumption of the tenants and processes data on this consumption

unlawfully without a valid legal basis. The complainant indicates that he gave no

consent for the processing of data relating to its gas and electricity consumption.

108. The defendant indicated during the hearing that the digital meters were linked to the address.

This makes it possible to read the consumption at a determined address. These data are also

transmitted to a third party (local company) with which there is a subcontract. This firm

reads consumption. According to the defendant, the latter receives a list of them and links it to the files of

tenants.

109. Pursuant to Article 6 of the GDPR, the person responsible for processing personal data

personal must have a basis for the processing to be lawful. Under Articles 24

and 25 GDPR, the defendant must therefore take technical and organizational measures

to ensure and be able to demonstrate that the processing is carried out in accordance with the

GDPR. In this context, the data controller must effectively apply the principles of

data protection, protect the rights of data subjects and only process data

personal data which are necessary for each specific purpose of the processing.

On the basis of the facts and documents present, the Litigation Division finds that the defendant

could not demonstrate that any privacy policy had been developed

concerning the remote digital reading of meter readings. Furthermore, we do not know

clearly on what basis the data is processed in accordance with Article 6 of the

GDPR. A violation of Article 6 of the GDPR is thus established. The complainant indicates that he did not give

no consent for processing. The defendant does not invoke any other legal basis

for the treatment. Furthermore, the Litigation Division finds in this case a violation

of Article 5.1.a) of the GDPR given that it is apparent from the foregoing that the personal data

personal are not processed in a lawful, fair and transparent manner. The defendant indicates

that a third party reads the consumption data and transmits it to him. Bedroom

Litigation draws attention to the fact that under Article 28.3 of the GDPR, the processing by

a processor must be governed by a contract between the controller and the

subcontracting.

Decision on the merits 73/2020 - 30/32

Sanctions to be imposed

Given the foregoing, the Litigation Chamber will proceed to the imposition of two sanctions, namely:

1. order the processing to be brought into compliance, in accordance with Article 100, § 1, 9° of the LCA;

2. impose an administrative fine, in accordance with Article 100, § 1, 13° of the LCA.

In view of Article 83 of the GDPR and the case law of the Court of Markets, the Chambre

Litigation motivates the imposition of an administrative sanction in a concrete way:

-

-

the seriousness of the violation: the reasoning set out above demonstrates the seriousness of the violation;

the duration of the violation: the defendant attempted to rectify certain violations and satisfy

privacy rules; nevertheless, many of the violations found are

are still continuing today.

-

the necessary deterrent effect to prevent further violations. Regarding the

nature and seriousness of the violation (art. 83.2.a) of the GDPR), the Litigation Chamber underlines that the

compliance with the principles set out in Article 5 of the GDPR – in particular here the principle of lawfulness – is

essential, because these are fundamental principles of data protection. Bedroom

Litigation considers that the violation of the principle of lawfulness of article 6 of the GDPR which is committed

by the Respondent therefore constitutes a serious breach. The Litigation Chamber finds that

Article 83.7 of the GDPR provides the following: "Without prejudice to the powers of which the supervisory authorities

have on the taking of corrective measures pursuant to Article 58(2), each

Member State may lay down the rules determining whether and to what extent administrative fines

may be imposed on public authorities and public bodies established in its territory.

The GDPR does not provide any further explanation as to the scope of what is meant by

"public authorities and public bodies". According to the Litigation Chamber, it is however clear that

this exception clause must be strictly interpreted.

In this case, the Litigation Chamber considers it particularly necessary to give

strict interpretation to the (optional) exemption from an administrative fine which is provided for in

GDPR Article 83.7 for "public authorities and public bodies". For this reason,

Article 221, § 3 of the law of July 30, 2018 on the protection of individuals with regard to

processing of personal data, which implements Article 83.7 of the GDPR, must

also be subject to strict interpretation. In addition, Article 83.7 of the GDPR does not allow

Member States to define the notion of "public authorities and public bodies". It is therefore a

concept of Union law which must be given an autonomous and uniform meaning. It therefore belongs

only the institutions of the Union, namely the Court of Justice, to define the limits of this concept.

Decision on the merits 73/2020 - 31/32

According to the Litigation Chamber, a private law organization such as the social housing company

Y is not part of it, even if this organization carries out missions of public interest in the field

social housing.

The Litigation Chamber notes that these are serious culpable breaches on the part of the

respondent. As explained in detail above, the Litigation Division found

a considerable series of shortcomings. Among these shortcomings, violations of the principles

data protection fundamentals have been observed. The violations found already justify

in itself a high fine, according to the Litigation Chamber. When establishing the fine

administrative, the Litigation Chamber nevertheless takes into account several moderating factors,

including the manifest willingness of the defendant to adapt certain things, the appointment of a delegate to

data protection expert and a new website which, according to the defendant, will comply

to GDPR. In addition, when determining the amount of the fine, the Litigation Division takes

also take into account the fact that this is a non-profit social housing company. The fact that in

his reaction to the fine form, the defendant indicates that he is not doing well financially,

supporting figures, is also taken into consideration by the Litigation Chamber in the decision.

FOR THESE REASONS,

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

pursuant to Article 100, § 1, 9° of the LCA, to order compliance of the

treatment with Article 5.1.a) and b), Article 5.2, Article 6.1, Article 12.1, Article 13.1.b)

and c), Article 13.2.b), Article 15.1, Article 25.2, Article 37.5, Article 37.7, Article 38.1,

article 38.3 and article 39 of the GDPR, and this at the latest three months after the notification of the

present decision, and within the same period, to communicate to the Data Protection Authority

data (Litigation Chamber) by e-mail (via the e-mail address litigationchamber@apd-

gba.be) that the aforementioned injunction has been executed;

-

- pursuant to Article 100, § 1, 13° and Article 100 of the LCA to impose a fine

administrative fee of 1,500 euros.

24 See recital 52 of decision 31/2020 of the Litigation Chamber of June 16, 2020.

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.

Hielke Hijmans

President of the Litigation Chamber