PRESS RELEASE

The Hamburg Commissioner for
Data Protection and Freedom of Information

May 31, 2019

Federal Administrative Court stops Video Surveillance Improvement Act - National regulations on the privileged treatment of private video surveillance not applicable due to violation of European law

In its recently published decision of 27 March 2019, the Federal Administrative Court made it clear that video surveillance by private bodies must be measured exclusively against European data protection law. The case concerned an order issued by the Brandenburg Commissioner for Data Protection to ensure that video surveillance in a dental practice complies with data protection regulations.

In the opinion of the Federal Administrative Court, the European General Data Protection Regulation (GDPR) conclusively regulates video surveillance by private individuals. Consequently, the national provision in § 4 para. 1 sentence 1 Bundesdatenschutzgesetz (BDSG) is contrary to European law and therefore inapplicable. Private video cameras can only be operated on the basis of the GDPR, especially on Art. 6 para. 1 letter f GDPR. The balancing of interests to be carried out under this provision cannot be modified by national law.

The insertion of § 4 (1) BDSG in the course of the Video Surveillance Improvement Act (Videoüberwachungsverbesserungsgesetz) was a reaction to a killing spree in June 2016 in a Munich shopping centre in which nine people were shot. The then responsible Federal Minister of the Interior intended to make operators of shopping centres as well as sports facilities and parking lots helpers in the original state task of guaranteeing security and order. He argued that the security of public spaces should be given priority when weighing up the data protection interests of those affected. This priority clause could enable an expansion of video surveillance by private bodies and must be taken into account by supervisory authorities in the examination of data protection law.

The court confirms the legal opinion of the data protection authorities, which had already insisted on the primacy of Union law during the discussion in the legislative procedure in 2017.

Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information, commented: "The project to legitimise private video surveillance in public places with the Video Surveillance Improvement Act through the purpose of combating terrorism and public security was criticised for data protection, constitutional and European law reasons during the legislative process at that time. This has now been confirmed by the Federal Administrative Court. The task of video surveillance for the protection of public security cannot be transferred to private operators, but remains a task of the regulatory authorities authorised to exercise official authority. In future, too, private operators will be able to take into account the protection interests of third parties in data processing within the framework of current European law - but not within the framework of a national priority and reinforcing clause for the protection of public security by operating private video surveillance systems. The whole process once again shows that the legal policy pursuit of security interests must always be

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carried out with a sense of proportion and must not disregard the requirements of the rule of law. In this respect, legal uncertainty has arisen on the part of the operators in particular, which could have been avoided".

The decision of the Federal Administrative Court: https://www.bverwg.de/270319U6C2.18.0

The written statement of the HmbBfDI to the public hearing on 6.3.2017 in the interior committee of the Bundestag can be downloaded here:

https://www.bundestag.de/resource/blob/495892/968dd6e4291bf978ad9c0d20840fe306/18-4-785-f-data.pdf

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