

From Data Protection Prospective, It Is More Favourable If Security Guards Operate CCTV Systems

Regarding CCTV systems operable by security guards, while complying with the fundamental principles of data protection, provisions of the Act on Property Protection shall be applicable, granting statutory authorisation to security companies for carrying out certain data processing tasks. If security guards operate the CCTV systems installed at a multitude of venues of our life, they shall be liable for the lawfulness of data processing therefore security guards qualify as data controllers, they make and implement decisions regarding data processing and determine the purpose thereof.

In numerous cases we find CCTV cameras installed in stores, banks or other premises operated at their choice by owners or users of the facilities themselves or they may retain security companies to do so.

As for CCTV systems operable by security guards, while observing the fundamental principles of data protection, the provisions of the Act on Asset Protection shall be applicable, granting statutory authorisation to security companies to implement certain data processing tasks.

The expert of Kovács Réti Szegheő pointed out that pursuant to the Act CXXXIII of 2005 on Personal and Property Security and Private Investigation Activities, the security guard may prepare or handle visual and audio as well as audiovisual recordings by way of operating electronic monitoring system in the framework of the agreement concluded between the security guard and the client and for the purpose of discharging its duties according to such agreement

Liability for the lawfulness

In case security guards operate the electronic monitoring system, in respect of monitoring by CCTV cameras, the security guard shall qualify as data controller that is, the security guard shall be the person who, in the framework of the pertaining legal provisions makes and implements decisions on data processing, determines its purpose as well as assuming liability for the lawfulness of data processing.

In the opinion of Dr. Zita Tamás, it is important to emphasise that the security guards may apply CCTV system solely on private property or its part open to public use and that in the course of operating the CCTV system, they shall be observant of the data protection rights and regulations.

As a general rule, the proper informing and express consent of the observed person are necessary for the taking recording of a person, which consent may be granted impliedly for instance in case a person enters the area monitored by cameras despite appropriately placed warnings thereof. No CCTV system is applicable in such premises, where monitoring may infringe upon human dignity so, for instance in changing rooms, dressing rooms, bathrooms or toilets.



When no consent by the affected person is required

The Act on the Protection of Property, however, includes an express statutory authorisation pursuant to which, observant of the statutory provisions and in order to achieve the data processing purpose determined thereof, no consent by the affected person is required for the application of the electronic monitoring system. The data processing purpose in such cases shall solely be protection of human life, physical integrity and personal freedom, guarding hazardous materials, protection of business, payment, banking and securities secrets or property protection, underlined the expert of Kovács Réti Szegheő Attorneys at Law.

A further condition of the application of the CCTV system is that the circumstances existing in the course of performing security guard duties shall indicate the probability that the detection of infringements of rights, apprehending culprits in the act, prevention of illegal actions or proving thereof may not be achieved by any other means furthermore, such technical equipments shall be applied solely to the extent indispensable and shall not cause disproportionate limitation of data protection rights. Detailed information shall be provided about the conditions of data processing to the affected persons even in such cases.

Deadline for deletion and pertaining legal provisions

The Act on Property Protection sets out in detail to what deadline the recordings prepared under the above statutory authorisation shall be deleted. The deletion deadline – provided that such recordings are not used as evidence in the course of the respective court or other authority proceedings, in regular cases is 3 working days while in certain cases even 30 or 60 days. The recordings shall be handed over promptly on the order of the court or other authorities.

Such cases might arise that a person whose rights or rightful interests are infringed upon by the visual, audio or audiovisual or other personal data recording (for instance, they are shown on the recording) requests that the recording be destroyed. Recording shall be destroyed in such cases too within a certain deadline (usually, 30 days) even in the absence of such instructions by a court or other authority, notes dr. Zita Tamás.

Cases of “Self-Operating”

In case owners or users of the premises operate the CCTV system themselves, the general rules of data protection shall be applicable so the provisions of the Act CXII of 2011 Informational Self-Determination and Freedom of Information, pursuant to which the appropriately informed voluntary and express consent of the affected person shall be necessary for data processing therefore in such cases the statutory authorisation for the use of electronic monitoring systems contained in the Act on Property Protection shall not be applicable.

Different aspects shall be considered when CCTV cameras are operated in such rooms where work is being performed and the main principle thereof is that the intensity of work performed by the employee may not be observed therefore solely the above data processing purposes (for instance, property protection, protection of human right, physical integrity etc.) are permitted in the course of CCTV monitoring applied at workplaces.



In the recommendation recently issued by the National Data Protection and Freedom of Information Authority for employers, – though establishing that the act on property protection does not include all circumstances incurring in the course of performance of work – in addition to the fundamental principles of labour law and data protection and in absence of detailed labour law regulation the guarantees of the Act on Property protection shall be considered by the Authority in the course of deliberating the lawfulness of the respective monitoring systems, concluded the expert of Kovács Réti Szegheő.