

Evidential Validity of Video Surveillance Footage in Criminal Investigation and Court Proceedings

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Abstract

The paper analyzes several aspects of the video surveillance system application, starting from the prevention of misdemeanors and crime according to the Council Decision on the establishment of the European Crime Prevention Network. The second aspect relates to the use of video surveillance systems in the misdemeanors and crime investigation, and the third one relates to the evidential value of video surveillance systems in court proceedings. For this purpose, the case law analysis of the highest level was made, namely of the High Misdemeanor Court, the Supreme Court of the Republic of Croatia and of the European Court of Human Rights through case studies. The paper discusses the evidential value of the footage important for criminal investigation. However, the central issue is a question whether digital evidence in the form of video surveillance can be decisive in court proceedings or not, since no court order is required for it as for other evidentiary actions. The paper proposes solutions *de lege ferenda* given that video surveillance systems are becoming more widespread and have proven to be very effective in criminal investigation, but, contextually speaking, also in procedural terms. The respective contextual approach requires the interpretation of current case law emphasizing that the content and significance of the footage in court proceedings must be perceived as a whole and that, besides the right of defense, the public and the victim's interests are to be taken into account.

Keywords: video surveillance; protection of human rights and fundamental freedoms; appropriateness test; necessity test; proportionality test.

Introduction

A fair procedure is in the interests of the public, the media, and the bodies conducting criminal proceedings. The values related to this process, as well as to human rights in general, have been actively contributed by the European Court of Human Rights and the European Convention for the protection of Human Rights and

Fundamental Freedoms. The principle of fair procedure, as Roxin (2012) states, is a supreme principle, and two functions stand out in the procedure: the protection of society from crime; and the protection of human rights.

Thus, video surveillance can be viewed in the context of the principle of protection of citizens' rights and the principle of effectiveness. It is against these two different

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contexts where dubious interpretations occur, even at the highest court levels. Video surveillance is no longer the exception but the rule in the protection of persons and property. Accordingly, there is no important institution that is not covered or protected by video surveillance.

The aim of this paper is to determine the probative value of video surveillance and related institutes, which are sometimes problematized when evaluating evidence. Our research is based on case studies of judgments of the European Court of Human Rights, the Supreme Court and county courts of the Republic of Croatia. The following issues will be particularly problematized:

- When applying video surveillance, is it a violation of Art. 8. European Convention for the Protection of Human Rights and Fundamental Freedoms¹.
- When applying video surveillance, is it legal evidence that has sufficient probative force or must it be supported by other evidence, such as, for example, the questioning of the defendant, temporary confiscation of objects, questioning of witnesses and other evidentiary proceedings?
- When applying video surveillance, should the appropriateness test, necessity test and proportionality tests be applied.

Video surveillance in general

It has already been emphasized that video surveillance should be seen in the context of protecting society from crime, which, on the one hand, nevertheless limits the rights of citizens, and, on the other hand, protects the same citizens from possible threats. The crucial importance of video surveillance is that it has a preventive as well as a revealing role in the criminal investigation of misdemeanors or criminal acts. Gold (2004) states that video surveillance is closed circuit television as a generic term (CCTV), and it is the use of video cameras to transmit video signals to a central control computer in order to monitor the obtained footage in real time or store it for subsequent review and analysis (Gold, 2004, according to Butorac et al., 2016, 102).

When video surveillance was introduced, there were concerns on their impact on individual rights and freedoms that evaporated subsequently when their role in detecting serious crimes became evident. A criminal event that,

even on a global level, brought changes in the understanding of the value of video surveillance took place on February 12, 1993, when two perpetrators J.V. (10 years old) and R.T. (10 years old) kidnapped and tortured two-year-old J.B., whom they eventually killed. The perpetrators were discovered, and later convicted too, by using surveillance cameras recordings that revealed the perpetrators taking the toddler away (see Levine, 1999; Maguire, Morgan & Reiner, 2007; Easton & Piper, 2016).

In the last ten years, video surveillance has not only been accepted, but has also been demanded in public places because their presence makes the citizens feel safer. Moreover, research has shown a reduction in both misdemeanors and criminal offences in such a places. The research conducted by Filipović and Šneperger (2012, 850) in Vodnjan near Pula (Croatia) shows the effectiveness of video surveillance in preventing crime at the main square of a small town. The aim of this research was to determine the number of criminal offences by comparing the number of incidents four years before the introduction of video surveillance with the number of respective cases four years after such a system was installed. There was a decrease in criminal offences by 31 percent, and misdemeanors by 32 percent. Butorac et al. (2016, 104) state that the advantages of video surveillance are multidimensional and manifest in reducing the fear of crime in the local community, providing emergency medical care, managing the scene, gathering information, added value to this surveillance and assisting in criminal investigations.

Regarding video surveillance, Usher (2003) states that it is a surveillance technique aimed at preventing punishable behavior with increasing the perceived risk for being detected when committing a criminal offence. The main purpose of video surveillance is to deter potential criminals from committing criminal acts in areas under video surveillance, provided they are aware of the existence of such surveillance. In cases where the existence of cameras is publicly known, potential perpetrators, as a rule, perceive and evaluate situations in which the increased risk of arrest outweighs the possible benefit of the criminal act, and most often give up their original intention.

¹ Available at https://www.echr.coe.int/Documents/Convention_ENG.pdf.

Application of video surveillance over financial institutions, public areas, workplaces and residential buildings

The use of new technologies should also be seen in the context of several important sources, namely, first of all, the EU Charter of Fundamental Rights (2016/C 202/02), which determines the protection of privacy and family life, home and communication (Article 7). Protection of personal data from Art. 8. is determined in more detail, so the first paragraph refers to the protection of personal data, the second paragraph requires that several conditions be cumulatively met: the data must be processed fairly for established purposes and based on the consent of the person in question, or on some other legitimate basis established by the law. The third paragraph states that the protection of personal data is subject to the supervision of an independent body.

In the EU Charter of Fundamental Rights, and the Treaty on the Functioning of the European Union (2016/C 202/1) in Art. 16. the protection of personal data is defined, as well as the rules on the protection of individuals with regard to the processing of personal data in the institutions, bodies, offices and agencies of the EU, when they perform their activities in the area of application of EU law and the rules on the free movement of such data (Art. 16, para. 2, UFEU). Consequently, it can be concluded that the protection of personal data is subject to numerous normative sources.

Video surveillance is most commonly used in financial institutions, public areas, workplaces and residential buildings. There are several normative sources in force in Croatia that regulate the application of video surveillance, namely the Act on the Protection of Financial Institutions (Official Gazette 56/15, 46/21) and the Act on the Implementation of the General Data Protection Regulation (Official Gazette 42/18), which implemented Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Independent supervision, in addition to criminal prosecution bodies, is carried out by the Personal Data Protection Agency according to the aforementioned acts. It is important to emphasize that the processing of personal data through video surveillance can only be carried out for a purpose that is *necessary and justified* for the protection of persons and property, and record-

ings obtained through video surveillance can be kept for a maximum of six months (Article 26, paragraph 1 of the Act on the Implementation of the General Data Protection Regulation). It is important to emphasize that if, during the implementation of the supervision, information is obtained or objects are found that point to the commission of a criminal offence for which there is *ex officio* prosecution, the authorized persons shall notify the competent police station or the state attorney as soon as possible (Article 38 of the Act on the Implementation of the General Data Protection Regulation).

The Act on the Protection of Financial Institutions (Official Gazette 56/15, 46/21), financial institutions, branches of the Financial Agency, the Croatian Monetary Institute, bank branches, central vaults, ATMs, residential savings banks, post offices, betting shops, slot machines, jewelry stores, and casinos requires protective measures, one of which is a continuous video surveillance system inside and outside the facility with video storage in digital form. There are numerous examples in Croatia, and only a few will be singled out in the following, from which the effectiveness of video surveillance in detecting the perpetrators of criminal offences is the most notorious, because the afore mentioned legislative solution has networked cities with cameras that are also used by the police in case of criminal offences.

Video surveillance of public areas

Video surveillance of public areas is permitted only for public authorities, legal entities with public authority, and legal entities performing public service, and it is permitted only when it is prescribed by law as being necessary for the execution of the business and tasks of public authorities or for the protection of life and health of people and property (Article 32 of the Act on the Implementation of the General Data Protection Regulation). Offenders have often, and still do, filed appeals that video surveillance footage is illegal evidence, but, as research into numerous case studies displays, such appeals have been rejected as unfounded. This is also the case in the judgment of the County Court in City of Split (Business number: Kžmp-7/2021-5, Split, March 9, 2021), in which it is stated that surveillance camera footage of public places such as streets, squares, and the like do not constitute illegal evidence, since every person who appears in a public space must be ready and reckon with the fact that they can be recorded by a surveillance camera.

Video surveillance of residential buildings

The establishment of video surveillance in residential or business-residential buildings requires the consent of the co-owners, who make up at least 2/3 of the co-owned parts, and video surveillance can only include access to entrances and exits from residential buildings and their common rooms. The use of video surveillance to monitor janitors, cleaners and other persons working in a residential building is prohibited (Article 31 of the Act on the Implementation of the General Data Protection Regulation).

Perpetrators of criminal offences problematize and call into question court decisions regarding the legality and evidentiary use of video surveillance recordings of commercial companies and residential buildings. Thus, in the following example of the decision of the Supreme Court of the Republic of Croatia (SCRC), it is evident that it is, contrary to the allegations of the appeal, and according to the assessment of the SCRC as a second-instance court, the correct conclusion of the first-instance court that the minutes on the temporary confiscation of items and certificates on the temporary confiscation of items refer to video surveillance recordings, and, consequently, specific video surveillance recordings, as well as the expert report and opinion of expert V. M. are not illegal evidence, and that there is no place for their separation, as suggested by the defendant. From the cited certificates and minutes on the temporary confiscation of objects, the video surveillance footage was exempted by the police in the pre-investigation procedure related to the investigation of the criminal offence referred to in Article 110 in connection with Article 34. Criminal Code/11 (attempted murder) committed to the detriment of the victim K. R. Therefore, contrary to the appellant's position, the data processing, which unquestionably includes the viewing of recordings, and which has the purpose of discovering criminal offences and their perpetrators, in this particular case was carried out by the competent authorities, and not by the compiler of the disputed video surveillance, so it is not illegal evidence (SCRC, Number: I Kž 680/2020-4, Zagreb, December 14, 2021).

Video surveillance of workplaces

The processing of the employee's personal data through the video surveillance system can only be carried out if the conditions established by the regulations governing safety at work are met and if the employ-

ees were adequately informed in advance about such a measure and if the employer informed the employees before making the decision to install the video surveillance system. Video surveillance of work premises must not include rooms for rest, personal hygiene and changing clothes (Article 30 of the Act on the Implementation of the General Data Protection Regulation).

There are frequent complaints for illegal recording. In one separate judgment of the County Court it was pointed out that video surveillance at the DM – drogerie markt d.o.o. shopping center in the City of Zagreb, was installed in accordance with legal regulations in public space and with the aim of preventing criminal acts. Namely, as the first-instance court correctly concluded, in this particular case it is not illegal evidence because a warning that the area is under video surveillance, was displayed in a visible place in the area of the shopping center (Zagreb County Court, 7 Kž-706/2020-3 dated October 19, 2020).

Video surveillance in recent decisions of the European Court of Human Rights

Video surveillance appears in the context of several provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and it is certainly worth highlighting: "The right to respect for private and family life" (Article 8) and "The right to a fair trial" (Article 6).

Article 8, paragraph 1 of the Convention reads: "Everyone has the right to respect for his private and family life, his home and his correspondence", and Art. 8, paragraph 2 of the Convention reads: "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

In the introductory part, it was already said that there is a conflict between the *principle of protection of citizens' rights and the principle of effectiveness*, which can also be applied to Art. 8, paragraph 1 of the Convention, because on the one hand, respect for one's private and family life, home and correspondence is ensured, but not unconditionally, because already Art. 8. paragraph 2 stipulates that the public authority (police) shall not in-

terfere in the exercise of this right, except in accordance with the law and if in a democratic society it is necessary in the interest of state security, public order and peace, or the economic wellbeing of the country, and prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. The example of video surveillance in the workplace has already been mentioned, but it should be viewed through Art. 8, paragraph 1 and paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The legal doctrine of the application of video surveillance according to Art. 8. is not completely uniform, but additional criteria have been given in several judgments, so it is evident in the recent separate case study *Bărbulescu v. Romania* (application no. 61496/08 of January 12, 2016) that the European Court of Human Rights has determined the principles that must be applied in cases of employee supervision at the workplace.

In order to ensure the proportionality of surveillance measures, i.e. to achieve a fair balance between conflicting interests, domestic courts must take into account the following factors:

- Whether the employee had been notified of the possibility of video-surveillance measures being adopted by the employer and of the implementation of such measures;
- The extent of the monitoring by the employer and the degree of intrusion into the employee's privacy;
- Whether the employer had provided legitimate reasons to justify monitoring and the extent thereof;
- Whether it would have been possible to set up a monitoring system based on less intrusive methods and measures;
- The consequences of the monitoring for the employee subjected to it;
- Whether the employee had been provided with appropriate safeguards (*Bărbulescu v. Romania*).

Video surveillance in the shopping center

The European Court for the Protection of Human Rights and Fundamental Freedoms has also discussed the application of video surveillance in numerous recent decisions. In the judgment of *López Ribalda et. al. v. Spain* (ECHR, 1847/13, January 9, 2018) it is evident that "the applicants were employed in the Spanish supermar-

ket chain M. as cashiers and sales assistants, and after the manager noticed the economic losses in the supermarket business, he decided is to install visible and invisible cameras to confirm suspicions about potential thefts" (§ 12.). The applicants claimed that the decision by which their employer fired them was based on video surveillance that was carried out in violation of their right to respect for their private life guaranteed by Art. 8 of the Convention and that domestic courts have not fulfilled their obligation to ensure the protection of that right (§ 3). Furthermore, according to Art. 6. of the Convention they complained about the inclusion in evidence of recordings obtained by video surveillance during the procedure. According to the same provision, the third, fourth and fifth applicants further appealed against the acceptance of the settlement agreement they signed with their employer by the domestic courts (§ 3). The court made a decision that there was a violation of Art. 8., and that there was no violation of Art. 6 of the Convention. On October 17, 2019, the Grand Chamber made another decision that is different from the decision of January 9, 2018, that is, it considered that there was no violation of the Convention.

It is worth noting that in this case too the court points out in an ambiguous way that the court should not act as a court of fourth instance and therefore will not question the judgments of national courts unless their findings can be considered arbitrary or manifestly unreasonable (§ 149). In the judgment of *López Ribalda et. al. v. Spain*, an opinion was expressed that is significant and even far-reaching, and indeed when some authors say that the Convention is a "living organism", this is confirmed in the following statement: "New technologies have dramatically changed the ease with which video surveillance can be carried out and transmitted, thereby significantly multiplying the potential violation of the right to privacy under Article 8 of the Convention". It is precisely for this reason that there is a need, at the national level, for the legislative framework to be clear and predictable in relation to cases concerning electronic surveillance (p. 51 and 52. *López Ribalda et. al. v. Spain*), and such a notion repeated is also in the case of *S. and Marper v. the United Kingdom* ([VV], no. 30562/04 and 30566/04, ECHR 2008), where the court concluded that "detailed rules governing the scope and application of measures" are necessary to ensure sufficient guarantees against the risk of abuse and arbitrariness.

From the judgment of *López Ribalda et. al. v. Spain* are the visible criteria that the national courts have estab-

lished for the measure to be considered acceptable, namely that it should pass a threefold test, the first relates to a legitimate aim (appropriateness test), the second measure should be necessary (necessity test) and proportional (proportionality test). In other words, the courts had to determine whether a fair balance had been established between the interference with the fundamental right and the importance of the legitimate aim achieved (López Ribalda et. al. v. Spain, ECHR, 1847/13, January 9, 2018).

Thus, all three criteria must be met when evaluating the video surveillance in order not to resort to more difficult means to achieve the goal, which would constitute a violation of human rights. The fact that in the judgment *López Ribalda et. al. v. Spain Proportionality test* was highlighted 28 times, *Necessity test* 5 times and *Appropriateness test* 4 times, speaks of their relevance.

Video surveillance in the faculty lecture halls

The judgment *Antović and Mirković (Case of Antovic & Mirkovic v. Montenegro, 70838/13, 28.11.2017, 28.2.2018)* is in focus because many, who deal with legal doctrine, can find themselves in such a situation that they are recorded when they have presentations in front of students, whether they are permanently employed at the faculties or are guest lecturers. This judgment is also interesting because there were separate opinions of the judges questioning whether it is really a violation of Art. 8 of the Convention.

It is evident from the circumstances of the judgment that the dean of the Faculty of Science and Mathematics informed the professors who teach there (including the applicants) at the session of the Faculty Council that video surveillance has been introduced in seven lecture theatres (§ 6). The decision stated that the aim of the measure is to ensure the safety of property and people, including students, and to supervise the performance of teaching activities. The decision stated that access to the collected data was protected by codes that were known only to the dean, and the data was to be kept for one year (§ 7).

It is evident from the judgment that on January 19, 2012, the applicants filed a claim for damages against the University of Montenegro, the Agency for the Protection of Personal Data and the State of Montenegro, due to the violation of their right to private life, especially

through the unauthorized collection and processing of data about them. In particular, they argued that such interference in their private lives, without any possibility of controlling that process, was not foreseen by any law and therefore was not in accordance with the law, in the sense of Article 8 §. 2 of the Convention. They also argued that it did not pursue any legitimate goal and was not needed in a democratic society. They referred to the relevant provisions of the Personal Data Protection Act, Art. 8. of the Convention and relevant case law of the Court (§ 13).

On December 27, 2012, the basic court in Podgorica established that the term private life certainly includes activities in the business and professional sphere. However, judgment stated that the University is a public institution that performs activities of public interest, including teaching, and that, therefore, it is not possible for the use of video surveillance in lecture halls as public places to violate the applicant's right to respect their private life. It is concluded that the installation and use of video surveillance and the collection of data did not violate the applicant's right to privacy and, therefore, did not cause them mental pain (§ 13).

Nevertheless, the European Court of Human Rights reiterates that "private life" is a broad concept that is not subject to exhaustive definition and that it would be too restrictive to limit the concept of "private life" to the "inner circle" in which an individual can live one's personal life as one chooses and to completely exclude from it the external world that is not covered by that circle (§ 41.). The court has already ruled that the term "private life" can include professional activities or activities that take place in a public context. Therefore, there is a zone of interaction of a person with others, even in a public context, which can fall within the scope of "private life", and professional life is part of it (§ 42).

The European Court of Human Rights pointed out that university lecture theatres are the workplaces of teachers where students are taught, but communication with them is also achieved, developing mutual relations and constructing their social identity (§ 55). The court notes that the domestic courts did not examine the question of whether the actions were in accordance with the law, given that they did not consider that the contested video surveillance was an interference in the applicant's private life at all (§ 56), but the Agency for the Protection of Personal Data of Montenegro expressly determined that this is not in accordance with the law, especially Ar-

articles 10, 35 and 36 of the Personal Data Protection Act (see previous paragraph 11).

In this regard, the Court notes that Art. 35 of the Personal Data Protection Act stipulates that public institutions, like universities, can conduct video surveillance of access areas to official premises. However, in this particular case video surveillance was carried out in lecture theatre (§ 58).

Furthermore, Art. 36 of the Personal Data Protection Act stipulates that video surveillance equipment can also be installed in official or business premises, but only if the goals provided for in that article, especially the safety of people or property or the protection of confidential data, cannot be achieved in any other way. The court notes that video surveillance in this case was introduced to ensure the safety of property and people, including students, and to monitor classes.

It should be noted that one of these goals, namely the supervision of teaching, is not provided by law as a basis for video surveillance. Furthermore, the Agency expressly considered that there was no evidence that property or people were endangered, which is one of the reasons for justifying the introduction of video surveillance, and the domestic courts did not deal with this issue. The government, for its part, has not provided any evidence to the contrary in this regard, nor has it shown that it even previously considered any other measure as an alternative (§ 59).

Given that the relevant legislation expressly provides for the fulfillment of certain conditions before resorting to camera surveillance, and that in this particular case these conditions were not met, and taking into account the Agency's decision in this regard (in the absence of any examination of the issue by domestic courts), the Court cannot but conclude that the interference in question was not in accordance with the law, and this is a fact that is sufficient to constitute a violation of Art. 8. Bearing in mind the previous conclusion, the Court does not consider it necessary to examine whether the other requirements from paragraph 2 of Art. 8. fulfilled (see *Amann v. Switzerland* [GC], no. 27798/95, § 81, ECHR 2000-II, and *Vukota-Bojić v. Switzerland*, Application no. 61838/10; § 78).

In the judgment *Antović and Mirković v. Montenegro*, there are two separate opinions of the judges, in the first, judges Vučinić and Lemmens fully agree with the

determination of the violation of Art. 8 of the Convention, but they believe that greater importance should be given to the nature of the activity that is under supervision and that Art. 8 of the Convention guarantees the development, without external interference, of the personality of each individual in his or her relations with other human beings and that therefore there is a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life (see *Peck v. United Kingdom*, No. 44647/98, § 57, ECHR 2003-I et al.). (Joint concurring opinion of judges Vučinić and Lemmens, *Case of Antović & Mirković v. Montenegro*, 70838/13, 28.11.2017, 28.2.2018).

These interactions are, of course, not exclusively of social nature. In the classroom, the professor can allow himself to act ("perform") in a way that he might never do outside the classroom, and that, at least in an academic environment, where both teaching and learning activities are covered by academic freedom, the aforementioned expectation of privacy should be considered "reasonable".

This does not mean that video surveillance in the hall is not possible. There may be good reasons for putting the auditorium under video surveillance. This means, among other things, that there must be an appropriate legal basis, that the scope of supervision must be limited and that there are guarantees against abuse (*A. and M. v. Montenegro*, 70838/13, 28.11.2017, 28.2.2018).

In the same case, the judges of the European Court of Human Rights Spano, Bianku and Kjølbro issued a joint unanimous opinion and voted against declaring the request admissible and establishing a violation of Art. 8 of the Convention because they believe that the judgment expands the scope of Art. 8, paragraph 1 of the Convention and can have significant implications because it interprets the term "private life" very extensively and broadly (Joint dissenting opinion of judges Spano, Bianku and Kjølbro, *Case of Antović & Mirković v. Montenegro*, 70838/13, 28.11.2017, 28.2.2018). The judges state that the teachers held classes in the university lecture theatre, which meant that they were fully engaged in their professional activities, and not, for example, in their offices. Because they were informed of the video surveillance in it, their reasonable expectation of privacy in that particular context, if any, was very limited. In conclusion, the mere fact that the lecture theatres are monitored cannot, according to the interpretation of the already mentioned judges, include Art. 8, paragraph

1 of the Convention without proven further elements and that it is not sufficiently supported by convincing legal arguments.

From the aforementioned recent judgment, it is evident that there is a disagreement first between the Agency for the Protection of Personal Data of Montenegro and the Basic Court in Podgorica (Montenegro), where the Agency is of the opinion that the introduction of video surveillance in the faculty's lecture theatres is against Article 8 of the Convention, which was ultimately concluded by the European Court for Human Rights². The Court held that covert video surveillance of employees at their workplace must be considered, as such, as a considerable intrusion into their private life, entailing the recorded and reproducible documentation of conduct at the workplace which the employees, who were contractually bound to work in that place, could not evade. There was no reason for the Court to depart from that finding even in cases of non-covert video surveillance of employees at their workplace. Furthermore, the Court had also held that even where the employer's regulations in respect of the employees' private social life in the workplace were restrictive they could not reduce it to zero. According to Art. 8, paragraph 2, respect for private life continued to exist, even if it might be restricted in so far as necessary. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Conclusion

The issue of video surveillance, as can be seen from recent decisions, is complex and there are still doubts, especially regarding the application of Art. 8. European Convention for the Protection of Human Rights and Fundamental Freedoms. It is a good circumstance that, at the level of the Council of Europe, there are control, and even supervisory, mechanisms that ensure uniform application and that do not deviate from the most important principles, and that only in the case of extremely serious criminal offences can there be justification for the use of new technologies as the only or decisive evidence.

A new normative framework will definitely have to be prepared for new technologies, which will definitely contain provisions related to artificial intelligence, because these are all challenges that the world will face in the near future. However, there is no need to deviate from the fundamental human values that are contained precisely in a superior legal source such as the European Convention for the Protection of Human Rights and Fundamental Freedoms.

We should definitely go back to the opening remarks of the article, in which the two principles of protecting the rights of citizens and the principle of effectiveness are problematized, and the question was which of them will prevail. The answer to the last mentioned question certainly depends on the case by case, that is, there should be a balance as a guide that we encountered in history inspired by Greek and Roman mythology such as *Themis and Iustitia* were.

From the research of judicial practice, case studies were selected that best indicate the problem that can arise with the application of new technologies such as video surveillance, and this is confirmed by the quote from the judgment of *López Ribalda et al. v. of Spain*:

"New technologies have dramatically changed the ease with which video surveillance can be carried out and transmitted, thereby significantly multiplying the potential violation of the right to privacy under Article 8 of the Convention" (Joint dissenting opinion of judges De Gaetano, Yudkivska and Grozev, López Ribalda et. al. v. Spain (ECHR, 1847/13, January 9, 2018), § 4).

Therefore, it is important that there is a clear and unambiguous legal basis, that the scope of duration must be limited in time and that there are control mechanisms of supervision. In addition, there must be a legitimate, necessary and proportional goal.

We can conclude from the judgments that the jurisprudence of the European Court of Human Rights is also changing and that it is noticeable that when things are similar or identical, part of the "balance" is still tilted towards the protection of citizens' rights. This is an aspiration that should continue to be guided because if there were no such efforts, the question is what level of intrusion into human rights would occur with the further development and application of new technologies.

² See [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-183012%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-183012%22]})

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