

Real Estate - Austria

Tenant may install video camera outside leased object without lessor's consent

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In a recent case involving a tenant who had affixed two mock cameras to the front of his property without obtaining the landlord's prior consent, the Supreme Court analysed the tenant's rights in this context.

Facts

The tenant had rented a ground-floor apartment, including part of the garden and a parking space in the parking garage, from the landlord. Without obtaining the landlord's prior approval, the tenant fixed one mock camera on the façade, aimed at the garden, and a second mock camera in the garage, aimed at the rented parking space.

The landlord filed an action for removal of both mock cameras based on two grounds:

- The mock cameras were installed in places that were not rented by the tenant – neither the façade nor the parking garage were part of the rent agreement.
- The landlord was under a duty to ensure that the interests of the other tenants were not violated by the mock cameras, which gave the impression of constant video surveillance.

Supreme Court appraisal

The Supreme Court held that tenants are generally entitled to use exterior parts and general parts of a rented building, provided that they have a legitimate interest, the building is not damaged and the other residents are not disturbed or impaired in their interests.

Installing a mock camera, which gives the impression of a real camera, may violate other residents' right to privacy. This right is violated if neighbours and other tenants believe that they are under systematic surveillance which allows them to be identified. This is the case where the camera monitors or records other residents and their guests entering or exiting their respective apartments. Where a camera or mock camera is clearly positioned in such a way that it can catch only the rented apartment and garage space of the respective tenant, such camera does not violate the privacy of other tenants and their guests.

Based on the direction and position of the two mock cameras, the Supreme Court considered that an impartial observer would not believe that he or she was being monitored. Hence, the action was dismissed.

Comment

This decision is interesting because it concerns both a leasing object to which the Rent Act applies (ie, the apartment) and a leasing object to which it does not apply (ie, the parking space). The Supreme Court applied the same logic for both leases.

However, for procedural reasons, the Supreme Court did not have to rule on all preconditions contained in the Rent Act. In particular, the tenant would have had to prove that the installation of a camera was customary and that there was an important reason why he or she needed to install the camera, such as increased crime rates in the neighbourhood.

Moreover, the decision is limited to the contractual relationship between the landlord and tenant only. When affixing a working camera, tenants must observe the Data Protection Act, which requires that a camera be registered with the data protection authority before it starts recording. Once the camera is approved, the landlord will find it hard to argue that it infringes the neighbours' right to privacy.

For further information on this topic please contact [Martin Foerster](#) at Graf & Pitkowicz by

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