

Athens, 23-12-2021 Prot. No.: 3001 DECISION 53/2021 (Department) of the President of the Authority Constantinos Menoudakos, The Personal Data Protection Authority met in a composition of the Department via teleconference on 15-12-2021 at the invitation of the President of, in order to examine the case referred to in the history of the present. Georgios Batzalexis, Deputy President, was present, obstructing the alternate members Nikolaos Livos as rapporteur, Demosthenes Vougioukas and Maria Psalla in place of the regular members Charalambos Anthopoulos, Konstantinos Lambrinoudakis and Grigorio Tsolias respectively who, although legally summoned in writing, did not attend due to obstruction. The meeting was attended by order of the President, Kyriaki Karakasi, legal auditor - lawyer, as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: Submitted to the Authority under no. prot. C/EIS/7349/11-11-2021 application of A, with which the complainant requests the review of the filing act from 03-11-2021 (notified to her with C/EX/2550/10-11- 2021 transfer document of the Authority) with no. prot. C/EIS/5803/16-09-2021 of her complaint. In particular, it was submitted to the Authority with no. prot. C/EIS/5803/16-09-2021 complaint by A against B. In the context of the above complaint, the already applicant states, among other things, that both (the complainant and the person complained of) are employees of the Ministry... and that in the context of the pending litigation of 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) 1 dispute with the above-mentioned complainant, the latter submitted as a relevant document the proposals he filed before of the Single-Member Court of First Instance of Athens a confidential document of the Ministry of ... (Sworn administrative examination report), which includes the complainant's personal data, without, according to her claims, this being necessary for the subject of the above trial [claim for damages against her for insult to the personality of the accused]. The complainant, as she mentions, protested before the aforementioned court regarding the presentation of the document in question. Subsequently, it is stated that in his addendum-rebuttal document and after the aforementioned protest, the complained-opponent stated that "this conclusion is a secondary element for the judgment [of the Court] in the contested case. Therefore, and in order to remove any diversion of the trial from its real object, he [accepts] not to be taken into account by the Court in terms of its content", while he has already presented it, according to the complaint, also in the criminal part of exactly the same case. The complainant's request to the Authority consists in establishing the illegal nature of the processing of the document in question on the part of the complained against party, in the notification to the complainant to remove it, with a request for revocation, from the file of the pending summons against her, in order to not be taken into account by the

competent pre-investigative and prosecutorial authorities, as well as in ensuring that the complained against party will refrain from any similar future action of [judicial] use of said document. Subsequently, the Authority, after examining the above-mentioned complaint, issued the above-mentioned filing act from 03-11-2021, with the reason that it does not fall under the Authority's competence. Specifically, taking into account that the complaint is directed against the complainant's opponent and concerns the judicial use of a confidential document (of ...), and given that the document in question is already included in a case file and is or has already been the subject of a judicial assessment, the complaint and the request made concerns the judicial use of the document in question, the Authority considered that this issue is beyond the authority of the Authority. Exclusively competent to judge the legality of the 2 collection and use of personal data before a court is the competent judicial officer before whom the case is pending each time (article 55 par. 3 GDPR, article 10 par. 5 Law 4624/2019, see and established jurisprudence of the Authority, e.g. Decision 147/2001, Decision 1/2020 on its website). (treatment), with which, Subsequently, the complainant submitted through her attorney-at-law against the above act the case under review with no. prot. C/EIS/7349/11-11-2021 application claims that the provisions mentioned in the contested archiving act are not applied, as the subject of the disputed complaint was not the processing of data by a judicial authority, but the processing [collection and presentation before of the court] of the document in question by her alleged opponent. He insists on the claim that the Authority was asked to check the possible violation of Articles 5 and 14 of the GDPR by the alleged opponent of the complainant, citing the Authority's jurisprudence on the basis of the previous legislative regime, on the basis of which the Authority issued, after requests from controllers (e.g. Hospitals, etc.), permissions to grant third-party applicants documents for judicial use thereof. Finally, it is argued that the cited standing case law of the Authority regarding its incompetence is outdated, pointing out that the Authority is now, based on Directive (EU) 2016/680 of the European Parliament and of the Council of April 27, 2016, a competent Supervisory Authority regarding issue of providing a conclusion with personal data in the context of filing a lawsuit, including the necessity of keeping it in the prosecutor's file, although this has not been, according to the complainant, the subject of her above-mentioned complaint. The Authority, after examining the elements of the file and after hearing the rapporteur and the clarifications of the assistant rapporteur, who (last) withdrew after the debate and before the conference and the decision-making, and after a thorough discussion, **CONSIDERED ACCORDING TO LAW 3 1.** Whereas, article 2 par. 8 of Law 3051/2002 on the "Constitutionally enshrined independent authorities, amendment and completion of the recruitment system in the public sector and related regulations" issued in implementation of article 101 A of

the Constitution defines that "8. Against the executive decisions of the independent authorities, a petition for annulment may be filed before the Council of State, as well as the administrative appeals provided for in the Constitution and the legislation. Legal aid against the decisions of the independent authorities can also be exercised by the relevant Minister". Article 24 par. 1 of Law 2690/1999 (KDiad.) stipulates that "If the relevant provisions do not provide for the possibility of exercising, according to the following article, a special administrative or interlocutory appeal, the interested party, for the restoration of material or moral damage to his legal interests caused by an individual administrative act may, for any reason, with his application, request, either from the administrative authority that issued the act, its revocation or amendment (remedial request), or, by the authority that is in charge of the one that issued the act, its annulment (hierarchical appeal)". In the true sense of the provision, the request for treatment aims to revoke or modify the individual administrative act in question for its legal or factual defects that go back to the regime under which it was issued. 2. Because, with the above provisions of article 24 KDDiad. establishes the right of every "interested" administrator, who has suffered material or moral damage from an individual administrative act, to appeal against the authority that issued the said act before resorting to judicial protection (simple administrative appeal, otherwise a request for treatment). This is an "informal" administrative appeal in contrast to the standard "special" and "individual" appeals of article 25 of the Civil Code. The appeal in question requests the revocation or modification of the above-mentioned individual administrative act, in order to restore the material or moral damage of the applicant caused by the administrative act, in those cases where the law does not provide for the possibility of exercising the above appeals of article 25 KDDiad<sup>1</sup>. 1 See indicatively, the one with no. 73/2018 Decision of the Authority. 4 3. With the issues raised with the request for treatment, as set out above in the history of the present case, no new and crucial factual elements for the case are invoked but only legal claims<sup>2</sup>, insofar as the request of the complaint is repeated and an interpretive attempt is made approximation of the regulatory provisions that limit the competence of the Authority. The above-mentioned issues have been examined in the context of the issuance of the challenged filing act, and therefore the content of the latter is in no way shaken. 4. Specifically, what is reported against the complainant's opponent, for illegal, according to the complainant's claims, processing, which consists in collecting and presenting the document in question before a court, is covered by the provisions of articles 55 paragraph 3 of the GDPR and 10 paragraph 5 of Law 4624/2019, according to which the Authority is not competent to control processing operations carried out by courts in the context of their jurisdiction. It is pointed out that the presentation of documents to

civil courts is done in accordance with the relevant provisions of the Civil Code, basically at the initiative of each party against the burden of proving the claims of (deliberative system), and falls under, according to the above, judicial use of these. Therefore, the Authority adheres to the filing act dated 03-11-2021 which was forwarded to the already applicant with no. prot. G/EX/2550/10-11-2021 document, in the reasons of which it is mentioned.

#### FOR THOSE REASONS

It rejects A's request for treatment.

The Secretary

Irini Papageorgopoulou

The Deputy President

George Batzalexis

2 See Supreme Court 1175/2013 (sq. 9), 3259/2011 (sq. 9), 434/2007 (sq. 5), 2683/2003 (sq. 5).