

Correct repetition due to an error in the protocol number Athens, 09-09-2022 Prot. No.: 2220 A P O F A S H 50/2022

(Department) The Personal Data Protection Authority met as a Department composition via teleconference on 06-04- 2022 at 10:30 a.m., upon the invitation of its President, in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, due to the disability of the President of the Authority, Constantinos Menoudakos, and the alternate members Demosthenes Vougioukas, as rapporteur, and Maria Psalla, in place of regular members Konstantinos Lambrinoudakis and Grigorios Tsolia, respectively, who did not attend due to disability, although they were invited, attended legally in writing. Present without the right to vote were auditor Georgia Panagopoulou, specialist IT scientist, as assistant rapporteur and Irini Papageorgopoulou, employee of the administrative affairs department, as secretary. The Authority took into account the following: Submitted to the Authority with no. prot. C/EIS/7985/07-12-2021 teacher's complaint in which he states that during the working period... at 1-3 Kifissias Ave., 11523 Athens, T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 "Yordanakeion Modern Schools SA" there were surveillance cameras in the classrooms and it was being recorded continuously without her knowledge of the existence of the cameras and without her consent. The Directorate of Primary Education of Athens 4 with the no. prot. C/EIS/8305/21-12-2021 document also forwarded to the Authority a complaint of ... teacher with the same content. The Authority sent it with no. prot. C/EX/3/07-01-2022 document to the complained company, with which it informed about the applicable legal framework, i.e. about Regulation (EU) 2016/679 on the protection of natural persons against data processing of a personal nature (hereinafter "GDPR"), Law 4624/2019, Directive 1/2011, and Guidelines 3/20191 of the GDPR regarding the processing of personal data through video recording devices. A special questionnaire was included in the document in order to examine the GDPR's accountability obligations regarding the processing of personal data through the operation of a video surveillance system. The complained company responded with no. original G/EIS/1686/03-02-2022 document in which it states, among other things, that the video surveillance system has been operating since 2007 with the aim of direct visual contact with dangerous points for students (courtyard, balconies) and discouraging would-be vandals/invasers. These are fixed cameras, they do not transmit sound and the transmitted image is not recorded. The camera locations and shooting fields include the ground floor, outdoor and courtyard areas and the courts of the adjacent sports facilities, the outdoor corridors on the balconies of the three floors, the outdoor courtyard area of the 4th floor, as well as the school's function hall. Access 1 https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-32019-processing-personal-data-through-video_el 1-3 Kifissias Ave., 11523 Athens, T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 2 in the

transmitted image is the director, owner and president of the school, via a computer located in his office. The owner and president of the school made the decision to install the system. Natural persons entering the premises are informed by signs and verbally about the existence of the video surveillance system. Teachers are informed when they are hired. Attached are responsible statements of teachers, dated 21-1-2022, by which they certify that they have received knowledge and have no objection regarding the video surveillance system and that there are no cameras inside the classrooms. Finally, it stated that it does not keep records of activities. Then the Authority, in order to complete the examination of the case, called with no. prot. C/EXE/434/15-02-2022 document the complained company at the meeting of the Department on 2-3-2022. This meeting was attended by Millas Dimitrios with AM..., A, and B, After the meeting, the complained company submitted the no. prot. C/EIS/4348/15-3-2022 memorandum, with which, in addition to the reference to the operation of the video surveillance system, the following additional information is provided: a) decision of the Teachers' Association of 04-03-2022, from which it appears that the Primary - High School grades concerned with the system in question have consulted with the owner, been informed and accept the decision of the owner - competent representative body of the Company for the operation of a video surveillance system without data recording, b) data protection impact assessment (DPA)), which evaluates the use of the video surveillance system with the legal basis of the processing being the overriding legitimate interest for the protection of property and health and in which the legality of each camera is documented, c) activity records in accordance with the Authority's model, in electronic format, d) notification texts to the staff about the principles of the GDPR in general, about the type of data processed by the complained company as a data controller under the contract Kifisias Avenue 1-3, 11523 Athens, T: 210 6475 600 E: [contact@ dpa.gr](mailto:contact@dpa.gr) www.dpa.gr 3 work, the special legal basis for video surveillance without maintaining an image file, for the rights of employees and the way to exercise them. The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote, after a thorough discussion, DECIDED IN ACCORDANCE WITH THE LAW 1. The installation and operation of video surveillance systems with the reception or image or sound recording through the collection, preservation, storage, access and transmission of personal data, constitute as individual acts of processing, interference with the individual rights to respect for private life according to art. 9 S., 7 XTHDEE2 and 8 ECHR as well as the protection of personal data according to art. 9A S., 8 ESDA and 8 XTHDEE3, as decided by the Authority with its Opinion No. 3/2020. 2. According to the Guidelines 3/2019 of the EDPS regarding the processing of personal data through video devices⁴, in order to judge the legality of the installation and operation of the video

surveillance system, the conditions of articles 5 and 6 para. 1 GDPR must be met cumulatively and the legality of the processing should be documented internally prior to the installation and operation of the system, and in fact, when determining the purpose of the processing, a relevant assessment may be needed for each camera separately, depending on where it is installed. In particular, these Guidelines define the following: "a (...) 5. Video surveillance is not necessary by definition if there are other means to achieve the 2 TEU Digital Rights Ireland para. 29. 3 TEU Digital Rights Ireland para. 38. 4 https://edpb.europa.eu/our-worktools/ourdocuments/guidelines/guidelines-32019-processing-personal-data-through-video_el 1-3 Kifisias Ave., 11523 Athens, T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 4 underlying purpose. Otherwise, there is a risk that the cultural norms will be changed and therefore the lack of privacy will be established as a general principle (...). b "(...) 20. The legal interest must actually exist and concern a present matter (ie the interest must not be fictitious or hypothetical). There must be an actual risk situation – such as damage or serious past events – before surveillance can begin. (...). c. "(...) 24. Personal data should be appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization"), see Article 5(1)(c). Before installing a video surveillance system, the controller should always thoroughly consider whether this measure is, firstly, appropriate to achieve the desired objective and, secondly, sufficient and necessary to achieve its purposes. Video surveillance measures should only be chosen if the purpose of the processing could not reasonably be fulfilled by other means, which infringe to a lesser extent the fundamental rights and freedoms of the data subject. 3. The Authority has issued Directive No. 1/2011 on the issue of the use of video surveillance systems for the purpose of protecting persons and goods, the provisions of which must be applied in conjunction with the provisions of the GDPR and Law 4624 /2019, which defines GDPR implementation measures. This applies in particular to the obligations of the data controller included in chapter C of this (Articles 10 to 13 of Directive 1/2011). For example, data controllers no longer have an obligation notification of the processing to the Authority⁵, but must take the necessary measures to comply with the requirements of the GDPR and ensure the satisfaction of the enhanced rights provided for 5 See and the Authority's announcement regarding the abolition of record keeping/editing notices and the granting of licenses (decision 46/2018). 1-3 Kifissias Ave., 11523 Athens, T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 5th GDPR. In article 18 of Directive 1/2011 for schools and other places where minors are active, the following are provided for: a. "(...) 1. The mere existence of cameras in schools and other places where minors are active (such as kindergartens, boarding schools, tutoring centers, etc.) needs special attention, since it is not easy to evaluate the consequences that such processing may have for the

free development of the personality of minors. Specifically, there is a risk of limiting the development of their sense of freedom if they believe from an early age that it is normal to be monitored by cameras (see also Opinion 2/2009 of the Article 29 Working Group, as well as Decision 77/2009 of the Authority. (...)" b. "(...) 2. The video surveillance system is allowed to operate only during the hours when the school is not in operation. The operating hours of the system must be clearly indicated on the relevant information signs, so that all students and educational community bodies are fully aware that during their entire presence at the school/tutoring school they are not being monitored. (...)" c. "(...) 3. Exceptionally in cases of large school facilities, where it is not practicable to control remote areas of the premises by milder means (eg security guards), cameras focusing on remote areas may be permitted to operate during school hours, subject to approval by the Authority. d. "(...) 5. The decision on the installation and operation of the system must be taken by the competent body for the administration of the school, after taking into account the opinion of the representatives of the teaching staff, the parents' association and the student associations where there are (...)" In practice, the Authority has provided special guidance to data controllers who plan to use video surveillance systems in schools , which, if followed, ensures compliance with the conditions of articles 5 and 6 para. 1 GDPR, as set out in the previous paragraph. 4. As it appears from the data of the case file, the complained company has the role of controller for the processing of personal data carried out through the video surveillance system. 5. The conditions of article 18 of Directive 1/2011 are not met for this particular processing, since the system is active during school hours, in areas where employees and students move, thus violating the principle of purpose limitation . 6. Furthermore, the decision on the operation of the system had not been taken in accordance with article 5 of Directive 1/2011, nor had the alleged superior legal interest of the data controller been documented in any other way, i.e. that the processing is necessary for the purposes of legitimate interests pursued by the controller or a third party, unless these interests are overridden by the interest or the fundamental rights and freedoms of the data subject that require the protection of personal data, in particular if the data subject is a child (Article 6 par. 1 section f) of the GDPR). The decision of the Teachers' Association of 04-03-2022 was issued after the hearing, while the system has been operating since 2007. Finally, the exception of case 3 of article 19 of Directive 1/2011 does not apply in this particular case, because it is not a case of a school establishment large area, where it is not practical to control the remote points of the facilities by milder means. Therefore, the legality of the processing in violation of articles 5 par. 2 and 6 of the GDPR is not documented. 7. The information to parents and employees regarding the operation of the system was incomplete, because according to the controller's statement, it was done orally, in violation of

articles 5 par. 1 sec. a and of articles 12 and 13 1-3 Kifisias Ave., 11523 Athens, T: 210 6475 600 E: contact@dpa.gr

www.dpa.gr 7 and 5 par. 2 sec. b of the GDPR, because the complainant is not in a position to prove that such oral information was given and even if it is accepted that oral information was given, it does not cover every category of subjects, especially children, workers and visitors to the site, not satisfying transparency and accountability requirements. 8. The principle of purpose limitation is not observed, since through the access to the transmitted image by the manager and employer it is not clearly established or technically ensured that the purpose of the processing is exclusively the protection of persons and goods. 9. The principle of accountability was not respected in terms of documentation through the keeping of activity records, in violation of articles 5 par. 2 and article 30 of the GDPR. The controller did not keep activity records for the processing of personal data through the video surveillance system, he only provided them after the hearing. 10. Based on the above, the Authority considers that there is a case to exercise its corrective powers according to article 58 par. 2 of the GDPR in relation to the violations found. The Authority also considers that, based on the circumstances established, it should be imposed, pursuant to the provision of article 58 par. 2 sec. i of the GDPR the effective, proportionate and dissuasive administrative fine according to article 83 of the GDPR both to restore compliance and to punish illegal behavior. 11. Furthermore, the Authority took into account the criteria for measuring the fine defined in article 83 par. 2 of the GDPR, paragraph 5 item. a' and b' of the same article that apply to this case and the Guidelines for the application and determination of administrative fines for the purposes of Regulation 2016/679 issued on 03-

10-2017 by the Article 29 Working Group (WP 253), as well as the facts of the case under consideration and in particular: a) the nature, gravity and duration of the violation, given the nature of 1-3 Kifisias Ave. , 11523 Athens, T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 8 extent or purpose of the relevant processing, as well as the number of data subjects affected by the breach and the degree of damage they suffered and specifically : i. the fact that the data controller violated the provisions of article 5 par. 1 sec. a' of the GDPR principles of legality, objectivity and transparency, in addition the principle of limitation of purpose according to article 5 par. 1 sec. b' as well as the obligation (principle) of accountability according to article 5 par. 2 of the GDPR, i.e. it violated fundamental principles of the GDPR for the protection of personal data, ii. the fact that the observance of the principles provided by the provisions of article 5 par. 1 sec. a' and para. 2 of the GDPR is of capital importance, primarily, the principle of legality, objectivity and transparency so that if this is missing, the processing becomes illegal from the beginning, even if the other processing principles have been observed. Of equal capital importance is the

principle of purpose limitation and the principle of accountability in the context of the new compliance model introduced with the GDPR, where the burden of compliance and the related responsibility rests with the controller, which has been provided by the GDPR with the necessary compliance tools, iii. the fact that the controller failed to comply with the requirements of the processing authorities of article 5 par. 1 sec. a' and b' GDPR, moreover, he failed to document in the context of compliance the legality of the video surveillance system, iv. the fact that the violation of the above principles falls under the provisions of article 83 par. 5 sec. a' of the GDPR in the highest prescribed category of the classification system of administrative fines, v. the fact that, from the information brought to the attention of the Authority, no material damage occurred to the data subjects, vi. the fact that the violation of the principles of article 5 par. 1 sec. a', b' and para. 2 of the GDPR did not concern, based on the information brought to the attention of the Authority, 1-3 Kifisias Ave., 11523 Athens, T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 9 personal data of articles 9 and 10 of the GDPR, but it concerns children, who require special protection with regard to personal data (ref. paragraph 38 and article 6 par. 1 f) of the GDPR). vii. the fact that the said system and cameras had been installed and operated illegally since 2007, while even after the implementation of the GDPR, no compliance action was found until the intervention of the Authority.b) the degree of culpability of the controller. The installation and operation of the video surveillance system in violation of its principle legality, objectivity and transparency, the limitation of purpose as well as accountability was the result of insufficient knowledge and application of the provisions of the GDPR attributable to negligence and therefore is taken into account in mitigation in relation to the possibility that it had taken place maliciously.

c) any actions taken by the controller to mitigate the damage suffered by the data subjects and the degree cooperation with the Authority for the remedy of the violation and the restriction of its possible adverse effects. The complainant took action to document the processing and comply with the GDPR after hearing, and his cooperation with the Authority was satisfactory.

d) any relevant previous violations of the controller. From

a relevant inspection reveals that it has not been imposed on the complained-about company until today administrative sanction from the Authority.

e) the categories of personal data affected by

violation. This is not personal data of the articles 9

and 10 of the GDPR, according to the information brought to the attention of the Authority, but

concerns children, who require special data protection

of a personal nature (cit. paragraph 38 and article 6 par. 1 f) of the GDPR).

f) the size of the company.

Based on the above, the Authority unanimously considers that it should be imposed on

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denounced company as controller or the one referred to in the ordinance

administrative sanction, which is considered proportional to the gravity of the violation.

FOR THOSE REASONS

The beginning

A. Gives an order to the complained company with the name "Yordanakeion

Modern Schools SA" as controller, such as within one (1) month

upon receipt of this, to uninstall the cameras and update

in writing to the Authority in this regard.

B. It imposes on the complained company with the name "Iordanakeion

Modern Schools SA" the effective, proportionate and deterrent

administrative fine appropriate to the specific case,

according to its special circumstances, amounting to fifteen thousand

(15,000.00) euros for the above found violations of articles 5 par.

1(a), 5 par. 1(b) and 5 par. 2, and articles 6, 12, 13, 30 of the GDPR.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

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