Athens, 17-05-2021 No. Prot. : 1236 DECISION 21/2021 (Department) The Personal Data Protection Authority met as a Department at its headquarters on 15.7.2020 at 10.00 a.m. at the invitation of its President, in order to examine the case referred to in the present history. The Deputy President, Georgios Batzalexis, who was in the way of the President of the Authority, Constantinos Menoudakos, and the alternate members, Evangelos Papakonstantinou, as rapporteur, and Grigorios Tsolias, in place of the regular members, Konstantinos Lambrinoudakis and Charalambos Anthopoulos, who, although legally summoned, were present. in writing, they did not attend due to disability. Present without the right to vote were Maria Alikakou, legal expert scientist, as assistant rapporteur, and Irini Papageorgopoulou, employee of the department of administrative and financial affairs, as secretary. The Authority took into account the following: With his appeal No. C/EIS/4519/26.6.2019, A complains about the Municipal Organization of Preschool Education and Social Solidarity (hereinafter DOPAKA), which is a Legal Entity under Public Law of the Municipality of Tavros Moschatos for the illegal processing of his personal data and the publication in the Clarity Program of the decision of the board of directors with ADA: ..., which is entitled "..." and concerns his person. The decision in question is an extract from the minutes of the DOPAKA Board of Directors' meeting from ..., during which issues related to the applicant's work were discussed, which are boldly reflected in the above extract, thus DOPAKA making public the applicant's personal data. 1-3 Kifissias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 In particular, the complainant states in his pending appeal that the disputed decision was illegally posted on the "Diavygia Program ", seriously offends him as it contains his own personal data, which refer to his behavior as an employee and which he considers completely defamatory. In particular, the information concerning him consists of his initials (…), profession and job position, date of employment (…) and employment relationship with DOPAKA, as well as work location. Furthermore, the complainant states that with his application No. ... to DOPAKA, he requested that DOPAKA immediately proceed with its revocation. According to the complainant's claims, the posting in question is illegal and contrary to the principles of the GDPR, while it is solely based on vindictive reasons on the part of DOPAKA and this because, according to the complainant's claims, the latter had also made other complaints against DOPAKA before public authorities. DOPAKA never responded to the above request. Following this, the appellant admittedly submitted the complaint under consideration to the Authority. The Authority, in the context of examining the said complaint, with the original number C/EX/4519-1/09.9.2019 her document, requested clarifications from DOPAKA regarding the above complaints. DOPAKA responded with his document no. ... (authority no. C/EIS/6672/04.10.2019), according to which he claimed that the complaint under

consideration is unfounded, and should be filed , for the reason that there was no issue of personal data processing and this because, according to his claims, the posted act did not contain the complainant's personal data. DOPAKA did not respond, however, regarding the non-satisfaction of the right to erasure. Subsequently, the Authority with no. prot. C/EX/3846/04.6.2020 and C/EX/3847/04.6.2020 documents invited the audited DOPAKA and the appellant, respectively, to be presented at the meeting of the Department of the Authority on 17.6.2020 in order to discuss the matter under consideration complaint. Following the relevant request of DOPAKA, the meeting was postponed and took place on 19.6.2020. At the meeting in question, the appellant A and from the side of the audited DOPAKA, B, President of the Municipality of Moschatos - Tavros and Eugenia Papatheodorou, attorney-in-fact of the same Municipality, were present. During the meeting, those present, after verbally expressing their views, requested and received a deadline for the submission of written memoranda until 29.6.2020, which they submitted on time, with documents no. prot. APDPX 2 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr Γ/EIS/4450/26.6.2020), regarding the reported DOPAKA and no. prot. APDPH C/EIS/4509/26.6.2020, regarding the complainant, A, their applications. The complainant, during the aforementioned hearing, as well as with his memorandum to the Authority, informed that DOPAKA has not yet withdrawn the posting in question, stressing that because of it he has been seriously hurt, both on a personal and professional level. With reference in particular to DOPAKA's claim that it is not possible to identify him through the post in question, the complainant added that his identification is completely possible for the additional reason that in the municipal community of Tavros, where ... is located, who works, information mentioned and in the posted deed in question, there are only … …, of which only … works with … (in the other … … is …). DOPAKA during the above hearing, but also with its memorandum to the Authority, argued, among other things, that the disputed posting is legal for the following reasons: a) it does not contain personal data of the applicant, as the disputed document has been anonymized as only the initials of the applicant's name are used and from the other information contained therein it is not possible to identify the applicant even indirectly, b) provided for in no. 2 para. 4 c. 22' of Law 3861/2010, according to which it is mandatory to post individual administrative acts, the publication of which is foreseen by a special provision of the law and in this sense it was a legal obligation of DOPAKA according to the article 6 par. 1 c) and, finally, ancillary c) is based on no. 6 par. 1 f GDPR, for the reason that, according to DOPAKA's claims, the contested post was intended to protect its legal interest, which consisted of "preserving its orderly operation and prestige, so that it can respond adequately in his duties." The Authority, from the hearing process, from the elements of the case file, as well as from the

memoranda submitted to the Authority, after hearing the rapporteur and the assistant rapporteur, who left after the discussion of the case and before the conference and the taking a decision, after a thorough discussion, IT WAS CONSIDERED IN ACCORDANCE WITH THE LAW 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 3 1. Since, from the provisions of articles 51 and 55 of the General Data Protection Regulation (Regulation 2016/679) and Article 9 of Law 4624/2019 (Government Gazette A΄ 137) it follows that the Authority has the authority to supervise the implementation of the provisions of the GDPR, this law and other regulations concerning the protection of individuals from the processing of personal data. In particular, from the provisions of articles 57 par.1 item. f of the GDPR and 13 par. 1 item g' of Law 4624/2019 it follows that the Authority has the authority to take charge of A's complaint against the DOPAKA Municipality of Moschatos - Tavros for illegal processing and non-fulfilment of the right to erasure regarding personal data concerning him and to exercise, respectively, the powers granted to it by the provisions of articles 58 of the GDPR and 15 of Law 4624/2019. 2. Because, according to article 4 par. 1) GDPR as personal data are defined as "any information concerning an identified or identifiable person ("data subject"); an identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular by reference to an identification element, such as name, identity number, location data, online identifier or one or more factors that characterize the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person.' Furthermore, in recital 26 of the GDPR it is underlined that: "The principles of data protection should be applied to any information that concerns an identified or identifiable natural person. […] The principles of data protection should therefore not apply to anonymous information, i.e. information that does not relate to an identified or identifiable natural person or to personal data that has been made anonymous in such a way that the identity of the data subject cannot be or can no longer be ascertained." 3. Because Article 5 GDPR defines the processing principles that govern the processing of personal data. Specifically, it is defined in paragraph 1 that personal data, among other things, :«a) are processed lawfully and legitimately in a transparent manner in relation to the subject of the data ("legality, objectivity, transparency"), b) are collected for specified , express and legitimate purposes and are not further processed in a manner incompatible with these purposes (…), c) are appropriate, relevant and limited to what is necessary for 4 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr ("minimization of the purposes for which data are processed") (...)". Furthermore, with the provision of article 5 paragraph 2 of the GDPR, the principle of accountability is specifically provided for, according to which the controller bears the responsibility and must be able to demonstrate his compliance with the principles of processing

established in the above-mentioned paragraph 1 of article 5. This principle is a central dimension of the new compliance model introduced by the GDPR, in the context of which the data controller is obliged to plan, implement and generally take the necessary measures and policies, in order for the processing of data to be in accordance with the relevant legislative provisions. In addition, the data controller, in accordance with this principle, is burdened with the further duty to demonstrate by himself and at all times his compliance with the principles of Article 5 para. 1 GDPR, both to the data subject, and , in particular, before data protection supervisory authorities. 4. Because, according to article 6 par. 1 GDPR the processing of "simple" personal data is lawful "only if and as long as at least one of the following conditions applies: [art. a) – f)]'. Because, among the cases in which the processing is permitted is when "c) the processing is necessary to comply with a legal obligation of the controller", as well as when "e) the processing is necessary for the fulfillment of a task performed to the public interest or in the exercise of public authority delegated to the controller". While, with regard to point f), according to which the processing is permitted, when "it is necessary for the purposes of the legitimate interests pursued by the data controller [...]", the second paragraph of the same above paragraph states that "the point f) of the first paragraph does not apply to the processing carried out by public authorities in the exercise of their duties." Therefore, the processing carried out by public authorities cannot have as a legal basis the satisfaction of their legitimate interests, as controllers. Furthermore, according to article 5 of Law 4624/2019 "Public bodies are allowed to process personal data, when the processing is necessary for the fulfillment of a task performed in the public interest or in the exercise of public authority assigned to the person in charge processing.". 1-3 Kifissias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 5 From the combination of the above provisions it follows that, especially for the processing of personal data by public bodies, a unique legal basis for the legality of this processing consisting of the obligation to fulfill a duty performed in the public interest or in the exercise of public authority assigned to the controller. However, the Authority with its Opinion 1/2020 observed regarding the said provision, among other things, that: […] with article 5 of the law, the legal basis of article 6 par. 1 sec. e GDPR, no new or subsidiary legal basis is introduced into national law, nor is the application of the legal bases of article 6 par. 1 GDPR excluded. Interpreted in this sense, the provision of article 5 of Law 4624/2019 does not contradict the GDPR, but it violates the rule of EU law, according to which no repetition of GDPR provisions is allowed in national legislation. Therefore, the processing, when it is carried out by public bodies, is lawful and when it is necessary for the fulfillment of a legal obligation, in accordance with the above-mentioned article 6 para. c GDPR. 5. Because, regarding the exercise of rights, including the right to erasure, article 12

par. 3 and 4 of the GDPR provides that: "3. The controller shall provide the data subject with information on the action taken upon request pursuant to articles 15 to 22 without delay and in any case within one month of receipt of the request. This deadline may be extended by a further two months if necessary, taking into account the complexity of the request and the number of requests. The data controller shall inform the data subject of said extension within one month of receipt of the request, as well as of the reasons for the delay. (…)". 4. If the controller does not act on the data subject's request, the controller shall inform the data subject, without delay and at the latest within one month of receipt of the request, of the reasons for not acting and of the possibility filing a complaint with a supervisory authority and taking legal action. [...]". Furthermore, according to article 17 par. 1 item d' GDPR " 1. The data subject has the right to request from the controller the deletion of personal data concerning him without undue delay and the controller is obliged to delete personal data 6 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr without undue delay, if one of the following reasons applies: a) […] d) the personal data was processed illegally […]". Subsequently, the provision of paragraph 3 of the same article provides for derogations from the right to erasure, defining, among other things: " 3. Paragraphs 1 and 2 do not apply to the extent that the processing is necessary: (...) b) to comply with a legal obligation which requires the processing based on the law of the Union or the law of the Member State to which the data controller is subject or for the fulfillment of a duty performed in the public interest or in the exercise of a public authority delegated to the data controller, (…)." 6. Because, according to article 1 of Law 3861/20101 ("Strengthening transparency: Posting laws-acts on the internet - "TRANSPARENCY") "The object of this law is the introduction of the obligation to post laws, presidential decrees, and of the acts issued by the persons and institutions referred to in article 2 on the Internet and the creation of the conditions and procedures to ensure the widest possible publicity of these." Furthermore, in article 2 par. 4 of the same law, the acts posted in the "Transparency Program" are mentioned. The posting in the said Program serves transparency in the public and wider public sector (see also the Authority's Opinion no. 1/2010)2 and is not prohibited, in principle, by the legislation on personal data, as long as the acts in question they do not include special categories of data ("sensitive data"). In particular, in accordance with article 5 of Law 3861/2010, the posting of the acts referred to in article 2 of this law on the Internet and specifically on the "Transparency Program" platform, as well as the organization of the search for information, takes place subject to the rules for the protection of individuals from the processing of personal data. Furthermore, according to article 2 par. 4 para. 22 of the same law "4. The following are posted on the internet: 1) […] 22) individual administrative acts, the

publication of which is provided for by a special provision of the law.". In particular, with regard to the posting of the acts in question 1 With Law 4727/2020 (article 108) "open data" (see Chapter IA Digital Transparency - Transparency Program, no. 75-83) the provisions of articles 1 up to 6, 8, 10A and 10B of Law 3861/2010. Since, however, the posting in question, as well as the request for revocation, took place before the aforementioned repeal, in the present case the provisions of Law 3861/2010 are taken into account, which, after all, DOPAKA itself invokes. In any case, with regard to the suspended acts after the repeal of the above provisions, they are provided for in article 76 of Law 4727/2020. 2 Available on the Authority's website www.dpa.gr. 7 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr in the "Transparency Program" it is pointed out that "individual administrative acts are posted on the Transparency Program only in the cases that are published in accordance with special provision of the law either in the Government Gazette or in the daily press, or on the website or in the institution's store. In particular: According to par. 4 of article 6 of the Ministerial Decision no. EX 604/2012 (G.Yf.) DISKPO/F.1/oc. 10885/2012 (Government Gazette B´ 1476), "the category "other individual administrative acts" includes only individual administrative acts, which are published in accordance with a special provision of the law either in the Government Gazette or in the daily press, or on the website or in the store of the carrier." If the individual administrative acts are compulsorily published either in full or in summary in one of the aforementioned ways, then there is an obligation on the body to post them in the transparency program. In any other case, there is no obligation to post the individual administrative acts of case 22 par. 4 of article 2 of Law 3861/2010." 3. 7. Because, from the data in the file, it appears that, in the present case, the disputed act contains personal data of the complainant as mentioned above. In particular, although his name is not explicitly mentioned in the act in question, the reference to his initials in combination with the rest of the specific supplementary information contributes to the identification of the complainant, thus making him an identifiable natural person ("data subject "), in the above sense of article 4 par. 1) GDPR. This has as a direct consequence, as has been analyzed above, the mandatory application of the principles of protection of Article 5 of the GDPR during the contested posting. As the Article 29 Working Group (hereafter OE A29) states, a natural person is a person "whose identity can be ascertained", even if his identity is not yet known, based on identifying information4. In particular, the recognition of a person's identity "is normally achieved on the basis of specific information called "identifying elements" and which is in a particularly privileged and close relationship with the specific person. Examples of such information are various external characteristics of the appearance of the person in question, such as height, hair color, clothing, etc. or some property of the person that cannot be immediately 3 For more information see

website of the "Diavgeia Program" and in particular the following link: https://diavgeia.gov.gr/faq/post 4 See Opinion 04/2007 OE A29 on the definition of personal data, issued on June 20, 2007, 01248/07/ EN WP 136, p. 12 ff. 8 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr perceived, such as profession, position, name, etc." OE A29 goes on to state that the determination of a person's identity can be made "directly from the name or indirectly from a telephone number, car registration number, social security number, passport number or from a combination of important criteria that allow identification by limiting the scope of the group to which he belongs (age, occupation, place of residence, etc.)", while ""identification" does not only mean the possibility of retrieving a person's name and/or address, but also includes the potential identification through detection, connectivity and inference".5 The mention, therefore, of the initials of the complainant's name in combination with the rest of the information written in the disputed posted act and referring to his professional capacity, are identifying characteristics in the pre-determined which contribute to the immediate determination of his identity, as a result o complainant to become known to third parties, both from his professional environment (close and wider), i.e. colleagues, but also ... who ... at ... who works, as well as from his social environment, i.e. relatives, friends and acquaintances. Due to the free accessibility of the Program in question, an unlimited additional number of people - users can identify the person of the complainant through the posting in question. Regarding, moreover, the claim of DOPAKA that the act in question has been anonymized, with the result that the identity of the complainant cannot be determined even indirectly due to the fact that his name is not explicitly mentioned, is unfounded, because first of all, in addition to the above, for the identification of a person the existence of his name is not required. On the contrary, the mere publication of other specific information, apart from the name, is sufficient to determine the identity of the person, in accordance with the above-mentioned Opinion 4/2007 of OA 29. Furthermore, the claim in question is unfounded and for the additional reason that anonymization is a technique that makes it impossible to verify the identity of the person to whom the information refers. The data, therefore, must be of such a form that it is not possible to verify the identity of the person referred to by "all" "possible" and "reasonable" means6, which, as 5 O. p. 6 It should be recalled in this regard that anonymization is also defined in international standards, such as in the ISO 29100 standard, as the process by which identifiable personal data 9 Kifisias Avenue 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa .gr www.dpa.gr is established, does not apply in the present case. An important factor is the irreversible nature of the processing. Therefore, the anonymization technique should entail the complete removal of the possibility of identifying the subject7. Besides, in accordance with the aforementioned recital 26 of the preamble of the GDPR, anonymous, in essence,

are considered "the data that has been made anonymous, in such a way that the identity of the data subject cannot or can no longer be ascertained.". In addition, DOPAKA's claim that the disputed post does not contain the complainant's personal data also contradicts his subsidiary claim that he made the disputed post in support of his legitimate interests, in accordance with Article 6 para. 1 f GDPR , which consist in the orderly and smooth operation of the service that would entail the nominal publication in the "Transparency Program" of information related to the work behavior of the complainant (regarding the invocation as a legitimizing reason of the support of legitimate interests, see in detail below). Consequently, DOPAKA's claim that the appeal is unfounded, for the reason that the applicant's personal data is not contained in the posted document, is rejected for the reasons stated above. Because, further regarding the legality of the posting in question, the audited DOPAKA maintains that it was based, primarily, on no. 6 par. 1 item 3 GDPR and additionally in article 6 par. 1 item f of the same regulation. In particular, DOPAKA maintains that the posting in question is legal and this because it had an obligation to do so based on a legislative provision and in particular, based on the provision of no. 2 par. 4 para. 22) of Law 3861/2010. Therefore, according to the claims of DOPAKA, the posting in question was in accordance with the GDPR and, in particular, with the above-mentioned provision of art. 6 par. 1 par. c', according to which the processing is legal, when it is necessary for the fulfillment of a legal obligation, which in this case consisted of the above from article 2 par. 4 par. 22) Law 3681/ 2010 obligation. However, the provision in question (personally identifiable information (PII)) are subject to irreversible modification in such a way that it is no longer possible to verify the identity, directly or indirectly, of the data subject, either exclusively by the data controller personally identifiable information (PII) or in collaboration with any other third party' (ISO 29100:2011). 7 For more information regarding anonymization techniques, see Opinion 5/2014 OE A29 regarding anonymization techniques, 0829/14/EL WP216, issued on April 10, 2014. 10 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr stipulates that the posting of an individual administrative act is mandatory, as long as its publication is provided for in a more specific provision of the law. DOPAKA, as the controller, did not invoke such a more specific provision of the law, with the result that it ultimately does not document the legality of the posting in question, in the context, in particular, of the principle of accountability, according to which the controller bears the burden of proof for the legality of the processing it carries out or has carried out. Therefore, the posting in question goes against the principles of data protection, with the result that DOPAKA violates articles 5 and 6, paragraph 1 c) GDPR. Because, further, DOPAKA puts forward as an auxiliary reason for the legalization of the posting in question the support of its legal interests, as these are detailed above. However, the

aforementioned legal basis cannot be accepted and this because the terms and conditions for the posting of deeds in the "Transparency Program" are expressly and exclusively provided for in the relevant legislation, as mentioned above, which does not include the possibility of posting deeds in said Program to satisfy its own legitimate interests. Such a thing, moreover, would circumvent the purpose of the Program in question and would make the processing of personal data uncontrollable, since this would be based on the discretion of the agencies when evaluating their own legitimate interests. In addition to this, the above claim is also rejected for the additional reason expressly mentioned in article 6 par. 1 sec. 2 GDPR, according to which processing by public authorities in the exercise of their public duties cannot be done for the purpose of serving their own legitimate interests. In the same vein, the Guidelines of the OE A29 regarding the legal interest of the data controller vary, in which it is clarified that the "interest" must first of all be legal, i.e. acceptable, by EU law or the law of a member state8. As a general rule the "interest" based on law,whether it is a legislative measure, rule or legal principle, it can be considered "legal" interest. Therefore, even if not expressly provided for in the law, the interest may

considered "legal", if recognized as

the legal system,

including legal authorities. Further, while for a processing no

required that there be a legal obligation, the intended interest cannot

such from

8 Opinion 6/2014 on the definition of the legal interest of the Controller, Group

Working Article 29, issued on 9 April 2014, 844/14/EN WP 217.

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it is against the law. In accordance with recital 47 of the GDPR

regarding the possibility of public authorities to be invoked as legitimizing

basis for the processing carried out by the service of their legitimate interests,

it is clarified that: "given that it is up to the legislator to provide by law the

legal basis for the processing of personal data by the public

principles, the specific legal reason should not apply to processing by

public authorities in the performance of their duties." The GDPR therefore exempts

the possibility of use by the public authorities of the said legal basis for the conduct

processing in the exercise of their duties, while emphasizing the importance of general

principle that public authorities should primarily carry out the processing

data during the exercise of their duties, only if they have the necessary

authorized by law.

Because, finally, DOPAKA did not proceed to satisfy the deletion request, which

submitted by the complainant with his application no. Specifically, DOPAKA does not

responded to the relevant request of the applicant, as he should have based on article 12 paragraph 3

and 4 GDPR, but did not proceed to satisfy this through the aforementioned revocation

of the mentioned act from the "Transparency Program", in accordance with article 17 par. 1

item 3 GDPR, but on the contrary it maintained the post in question without presenting a legal one

reason for maintaining it in said Program. In particular, according to the above

mentioned, DOPAKA should have immediately satisfied the complainant's request for

revocation of the act in question from the "Transparency Program", for the reason that it was not

in accordance with the aforementioned provisions of the GDPR.

Pursuant to the above, the Authority considers that DOPAKA by conducting the

above illegal posting of his personal data on the "Transparency Program".

complainant, A, and not satisfying the latter's right to delete the art

due to data, violated the above-mentioned provisions, namely, in

illegal processing, according to articles 5 and 6 par. 1 item c' GDPR and non

satisfaction of the right to erasure, in accordance with article 17 par. 1 item d' of the same

Regulation.

FOR THOSE REASONS

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The Personal Data Protection Authority:

A) imposes the following effective, proportionate and dissuasive administrative measures

monetary fines appropriate to the specific cases, according to

more special circumstances of these, which are as follows:

1. For the violation of article 6 par. 1 item 3 GDPR, the administrative money

a fine of seven thousand (7,000.00) euros

2. For the violation of articles 12 par. 3 and 4 and 17 par. 1 item 4 GDPR, the

administrative fine of three thousand (3,000.00) euros, and

B) instructs the Municipal Organization of Preschool Education and Social Solidarity

Municipality of Tavros Moschatos to proceed with the deletion (withdrawal) from the "Program

Clarity" of the disputed act referred to in the history of the present.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

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