

Athens, 04-10-2022 Prot. No.: 2449 DECISION 29/2022 (Department) The Personal Data Protection Authority met as a Department via teleconference on 03-02-2022 at 09:30 a.m., after invitation of its President, in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, in opposition to the President of the Authority, Konstantinos Menoudakos, and regular members Spyros Vlachopoulos, as rapporteur, Konstantinos Lambrinoudakis and Charalambos Anthopoulos, were present. The meeting was attended, by order of the President, Eleni Kapralou, 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: denounces the Municipality of Nikaia-Agios With the no. prot. C/EIS/5637/07-09-2021 complaint to the Authority by A (hereinafter "complainant") (hereinafter "complainant") for partial satisfaction of the right to correct his mother's surname, which is written on his birth certificate (with no. ..., Volume ..., year ...). In particular, as it appears from the complaint in question and the documents attached to it, the complainant claims the following: Ioannis Rentis On ... the complainant sent a request by post to the Nice Registry, regarding the correction of his mother's surname in the registry birth certificate of (with no. ..., Volume ..., year ...) from the incorrect Φ to the correct X, by virtue of the birth certificate of his mother attached to it from ..., in which the last name of the latter is written as X (this application received an incoming number protocol...). The complainant invokes circular number 27162/04-05-2020 of the Ministry of the Interior (ADA PSK6B46MTL6-ENN), as well as article 13 of Law 344/1976 (Government Gazette 143/A /11-06-1976) such as registry corrections of deeds, regarding 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 replaced by article 28 of Law 4674/2020 (Government Gazette 53/A /11-03-2020) according to which: "3. Errors, intruding into a notarial act, obviously by mistake, can be corrected without the permission of the Prosecutor of First Instance or the Justice of the Peace, by the competent registrar, after a previous investigation and verification of the facts by him, upon request by anyone with a legal interest". On ... the complainant sent a request by mail to the Nice Registry Office, requesting the granting of a copy of the above registry certificate of his birth, both from the original entry in the registry volume, and from its transfer to the Civil Registry information system (this request was received incoming protocol number ...). On ... the Nicaea Registry Office sent the complainant via e-mail a copy of his birth certificate, in which, according to the complainant, it is readily apparent that his mother's surname has been manually corrected from F to X and a corresponding correction has been made in the Civil Registry information system, without however mentioning the upcoming correction in the margin of the original registration of the deed in the registry volume of ... and without mentioning it in the corresponding field

CORRECTIONS/CHANGES in its transfer to the Civil Registry information system. Subsequently, on ... the complainant sent an e-mail to the Nice Registry Office with attached excerpts of the same deed (years ..., ... and ...) from which the subsequent handwritten correction of his mother's surname from F to X can be seen and on ... he sent again e-mailed to the Nice Registry requesting the settlement of the said pending matter with the addition of the relevant mention, without however satisfying his request. The Authority, in the context of examining the above complaint, sent the complained Municipality the no. prot. C/EXE/2150/28-09-2021 document to provide opinions, with which he was asked to let her know: a) If the complainant exercised, as he claims, the right to correction for the data concerning him and in affirmative case for which data and in what manner did it respond to the complainant, attaching the relevant documents and b) what procedure is followed in general by the employees of the Registry Office regarding the processing of citizens' correction requests, what procedure was followed in the case of the complainant and, in particular, with in what ways is the accuracy of keeping the personal data in its files achieved, both in paper and electronic form. 2 Subsequently, the complainant responded to the above through the Data Protection Officer B, with no. prot. C/EIS/6450/06-10-2021 his memorandum, specifically: 1. It was claimed that the Authority does not have the authority to "order" the Registrar of the Municipality of Nikaia-Agios Ioannis Rentis to make a mention of the upcoming correction in the margin of the original registration of a birth certificate in the registry volume, as well as adding a note to the corresponding CORRECTIONS/CHANGES field in the Citizen Registry information system of the Ministry of the Interior, citing them with no. prot. 1200/24-05-2004 and 1201/24-05-2004 acts of the Authority. 2. Furthermore, with regard to the Authority's question under point (a) above, the complainant replied that "the complainant's request to Ms. Lixiarchos concerned the correction of an incorrect entry (namely of his mother's surname) in the birth registry certificate of, which was drawn up on ..., i.e. before any enactment of existing legislation on personal data and its accuracy. Despite the correction made by the Registrar, the complainant continues to consider that there is a deficiency regarding the correction as it took place and that it must be supplemented with a certain additional entry in the field CORRECTIONS/CHANGES in the CITIZEN REGISTER information system of the Ministry of the Interior, but which registration for the resulting change does not contain any personal data. (...) The complainant, based on the content of his complaint, essentially questions the validity and substance of the public document, i.e. the birth certificate as corrected and issued without mentioning the subsequent correction in the CORRECTIONS/CHANGES field. In other words, there is a disagreement between the complainant and the Registrar regarding the implementation approach of article 13 of Law 344/1976, which in the complainant's opinion affects the

validity and substance of the registry act of his birth". In addition, it states that: "In particular, although there is a relevant judgment of the Administration in the form of the Decision of the Registrar of Nice, with which a handwritten correction of the surname of the complainant's mother from F to X and a corresponding correction in the information system of the Civil Registry, the complainant disputes the legality of the correction in his registry act which he judges to be insufficient and that it must be supplemented with other entries, it now becomes clear that the issues that arise exceed the limits of the protection of personal data and the judgment in which legally the Authority may proceed. The only person responsible for the implementation of the registry legislation is the Registrar 3 of the Municipality and not the Data Protection Officer of the Municipality". Finally, in addition to the above, the complainant claims that the complainant never exercised the right of a. 16 GDPR, because he addressed his request to the Municipality Registrar and not to the Municipality's Protection Officer. 3.

Regarding (b) and the last question of the Authority, the complainant replied that "it has established a personal data protection policy and has a recorded procedure regarding the response to the submitted requests of data subjects and satisfaction of all the rights of articles 12-22 of the General Regulation of Personal Data (2016/679 EU). In this case, the complainant's request was processed by the responsible Ms. Registrar of the Municipality based on the relevant legislation on registry acts". It even attaches, in paper form, the "DIAD-008 Response Procedure to Data Subject Requests", the "Change Management Procedure" and the "Change Management Form". Following the above, the Authority sent its summons No. C/EXE/2474/02-11-2021 and C/EXE/2475/02-11-2021 to the complainant and the complained-of respectively, in order to attend the discussion of the complaint at the Department of the Authority, on 10-11-2021, at 09:30 a.m., a date on which the case was postponed at the request of the complainant and determined to be discussed on 17-11-2021, at 13 :00 p.m., the Authority sent to the complainant the under no. prot. 2555/10-11-2021 summons, in order to be present at the aforementioned expressly postponed discussion date of the complaint. During the discussion on 17-11-2021, the complainant himself and on behalf of the Municipality of Nicea - Agios Ioannis Rentis were represented by Karaferi Maria, Lawyer, Legal Advisor of the Municipality, ..., C, Registrar, B, Data Protection Officer of the Municipality and Dimitrios Kabourmalis, external associate lawyer of the Municipality, ..., who, after developing their views, were given a deadline for the submission of documentary documents, which they submitted in a timely manner electronically, and in which the following are noted, among other things, in summary: The Municipality of Nikaia-Agios Ioannis Rentis, in its written memorandum with no. first ... states in addition that the request for correction of the complainant has been satisfied and

the requested correction occurred in time before the submission of the complaint in question, in fact it invokes under no. 28/2018 Circular of the Ministry of Internal Affairs on the issues of the operation of the Civil Registry, according to which, as it states, the correction or completion of the data in the registry acts is aimed at making the data of these 4 transferees in the system of deeds consistent with their registered data of deeds in the register books. Next, he requests the exemption of the Municipality, given that - as he claims - there is no violation of articles 5 and 16 of the GDPR on the one hand, and no intention to violate the above legislation on the other hand. The complainant in his memorandum document no. first ... claims, among other things, that the complained-about Municipality has not yet satisfied the right of correction that it has submitted, as it has not added a relevant mention both in the margin of the Registry Volume and in the Corrections/Changes field of the electronic system Civil Registry. In fact, he states that with a simple reading of the copy of his birth certificate issued by ..., the impression is formed on the average reader that the mother's surname as X refers to a mother who was either registered in the first place or a holder of a Greek passport from a Greek consular authority, carrying a Greek public identification document with such nomenclature. In support of these claims, the complainant refers to the no. 58/2018 decision of the Authority, in which it is stated that: "The Authority with its acts No. acts according to art. 4 par. 1 of Law 2472/1997, considering that, on the one hand, it is a related obligation of the data controller to comply with the obligations of this article, on the other hand, that if doubts remain and for this reason the data controller refuses to make a correction, must, in accordance with the corresponding application of the provision of article 791 of the Civil Code, summarize the refusal and the reasons in the relevant book. And the pendency created by the refusal is lifted by a decision of the court in the region of which the Registry Office is located, upon the request of anyone with a legal interest". The Authority, after examining all the elements of the file and after hearing the rapporteur and the assistant rapporteur, which assistant rapporteur withdrew after the discussion of the case and before the conference, after a thorough discussion, OLD IN ACCORDANCE WITH THE LAW 1. Pursuant to the provision of article 4 par. 1 of the General Data Protection Regulation (EU) 2016/679 (GDPR) "personal data is any information concerning an identified or identifiable natural person ("data subject"); an identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular by reference to an identifier 5 of identity, such as a name, an identity number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of the natural person in question". 2. Furthermore, according to article 4 par. 2 GDPR as "processing of personal data" means any operation or series of operations carried out with or without the use of automated means, on personal data or

sets of personal data, such as collection, registration, organization, structuring, storage , adaptation or alteration, retrieval, retrieval of information, use, communication by transmission, dissemination or any other form of disposal, association or combination, limitation, deletion or destruction". 3. In fact, in the same article above and in item 6 it is defined that "a filing system is any structured set of personal data that can be accessed based on specific criteria, whether this set is centralized or decentralized or distributed on a functional or geographical basis" , while in element 7 it is defined that "the person responsible for processing is the natural or legal person, public authority, agency or other entity that, alone or jointly with others, determines the purposes and manner of processing personal data; when the purposes and the manner of such processing are determined by Union law or the law of a Member State, the controller or the specific criteria for his appointment may be provided for by Union law or the law of a Member State". 4. In article 2 par. 1 of the General Data Protection Regulation (EU) 2016/679 (GDPR) it is defined that "This regulation applies to, in whole or in part, the automated processing of personal data, as well as to the non-automated processing of such data included or to be included in a filing system". 5. Also, in article 5, par. 1, point d' of the GDPR it is stated that personal data "is accurate and, when necessary, updated; all reasonable measures must be taken to immediately delete or correct personal data character which are inaccurate, in relation to the purposes of the processing ("accuracy")". 6. In addition, according to article 8 par. 1 of Law 344/1976 (Government Gazette 143/A/11-06-1976) on notarial acts, as applicable, "For the certification of the civil status of the natural person in each Registry books are kept of births, marriages, cohabitation contracts 6 [of heterosexual persons], deaths and reports". In par. 2 of the same article above it is defined that: "The registry books are public", while in par. 4 that "The registration or correction or change of the content of the notarial acts is done upon the declaration of the designated for this purpose under this law person", while, in accordance with article 13 par. 3 of the same above law (Correction of details of registry acts) "3. Errors, intruding into a notarial act, obviously by mistake, can be corrected without the permission of the Prosecutor of First Instance or the Justice of the Peace, by the competent registrar, after a previous investigation and verification of the facts by him, upon request by anyone with a legal interest". 7. Regarding the claim of the complainant that the Authority does not have the authority to "order" the Registrar of the Municipality to make a reference to the upcoming correction, citing the Authority's acts no. prot. 1201/24-05-2004 and 1200/24-05-2004, reading that these concern the refusal of the Registrar to proceed with the correction, by virtue of a court decision, while on the contrary, in this case the Registrar actually did what was requested by the complainant correction. The complained-about Municipality does not claim that the correction has been made, that the right to correction has been

satisfied, and that nothing more remains to be done, further claiming that the additional entry in the field

CORRECTIONS/CHANGES in the Information System Citizen Register of the Ministry of the Interior does not contain some personal data, a claim, however, which is deemed to be rejected as unfounded, due to the fact that this additional information (indicative: when the said correction was made, by whom, on what legal basis, etc.) constitutes personal data, since it concerns an identified or identifiable natural person person ("data subject"). In this particular case, it appears that the contested birth certificate kept in the complained Municipality, both in paper form in a volume and in electronic form in the Civil Registry Information System, contains personal data concerning the complainant, including the surname of his mother¹. 8. Additionally, the complainant's claim that the right to correction was not legally exercised, due to the fact that, as he claims, it was exercised before the Registrar and not before the Data Protection Officer of the Municipality, is rejected, the existence of doubts, but 1 See and the under no. 134/2001 decision of the Authority according to which "The data of natural persons held by the registries and processed in accordance with the provisions of Law 344/76, for the purpose referred to in article 8 thereof, constitute personal data and fall within the scope of Law 2472/97". 7 due to the fact that the requests, with which the data subject exercises this right, are not required to contain a specific formula or to be exercised in a solemn manner, as well as to include the reasons why the data subject exercises the right of correction². 9. Furthermore, the change of the surname of the complainant's mother took place as an act of processing, and the complained Municipality is the controller, as it took the decision to carry out the specific correction. Besides, the disputed correction was included in the filing system maintained by the Municipality and consequently the Authority's competence is established according to articles 2 par. 1 of the GDPR and 2 of Law 4624/2019. The Authority therefore has the authority to judge the case and investigate whether there is a violation of the complained right to rectification and the data protection rules, including the principle of data accuracy (Article 5 par. 1, item d GDPR).

According to the above, the examination of this case by the Authority did not

contradicts the above-mentioned acts of the

2004 and 1201/24-05-2004), and in this case, it is irrelevant whether the challenges

on the legality or correctness of notarial acts or the refusal of the Notary to

register or correct a deed, are resolved by the civil courts, according to

process of voluntary jurisdiction, as, according to a. 13 par. 1 para. a' N.

4624/2019, in addition to its duties pursuant to Article 57 of the GDPR, the Authority is

responsible for monitoring and implementing the General Regulation on

Data Protection and other arrangements concerning the protection of the individual

against the processing of personal data, including the a.

5 para. 1 para. d' GDPR (principle of accuracy).

10. In particular, the obligation to ensure the accuracy of the data must

considered in the context of the purpose of data processing. Its beginning

accuracy largely determines the scope of the right to rectification, and

it may have a narrower or wider scope, depending on the purpose

processing. Further, whether the right to rectification is exhausted in such rectification

per se, as well as whether this mention of the upcoming correction and the additions

information concerning it (eg: when it was carried out, by whom, with what legal basis

etc) is essential and therefore necessary or not, is judged each time by the specific one

case and especially from the purpose of the specific processing and the facts

2 See APD decisions 16/2017 sc. 3 and APD 36/2021.

8

circumstances of each case.³ In cases that is, correction of error, in which

it is deemed necessary for the resulting correction to reflect the sequence of events, and sub

the condition that it is not misleading or confusing⁴, except as corrected, correct

information, it should also include the fact that he had intruded

the error and it has been corrected, if this is required by the purpose of the processing.

11. In this particular case, as it appears from the evidence presented, it has

the correction of the surname of the complainant's mother has already taken place, i.e. no

there is a mismatch of the transferee's information in the information system

Civil Registry deed with the details of the original notarized deed

deed, and they coincide in terms of their content, i.e. the mother's surname of the complainant is now correct as "X" in both entries. The above also accepts the DPO of the Municipality of Nicea-Agios Ioannis Rentis B, with the memorandum from ... of – in response to the Authority's clarification document – even mentioning that the correction was made "in the form of the Decision of the Lexiarch of Nicaea", without, however, submits such a decision. However, in the paper Volume of Registry Acts of the year... it seems that the controversial birth certificate has been manually corrected last syllable (from Φ to X), without making a relevant mention in its margin book, as well as in the corresponding field CORRECTIONS/CHANGES in the informational Civil Registry system about when this correction was made, by whom was made, based on the request of which natural person, based on which legislative provision and based on which decision, e.g.: of the Registrar of Nice or Court.

12. As previously mentioned, the correctness and completeness of personal data must be assessed based on the purpose for which the data was collected and are being processed. In this case, the processing purpose is inferred

3 See and "The rise of the personal data quality principle: is it legal and does it have an impact on the right to rectification?", Diana Dimitrova, European Journal of Law and Technology (EJLT), Vol 12 No. 3 (2021)

4 See <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/accuracy/>, as well as Guidelines on application of the decision of the Court of Justice of the European Union in the CJEU case C-131/12 "Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González" of the Article 29 Working Group on data protection, which issued on November 26, 2014, stating that "as a general rule, accuracy is judged by based on the actual nature of the data (...). In the legislation for the protection of data, the concepts of accuracy, adequacy and incompleteness are closely related

among themselves", especially when an inaccurate, insufficient or misleading image is created about the personal data, in relation to the facts, restoration is required and n monitoring the sequence of events, so that they correspond to reality, h and inaccuracy is judged each time according to the purpose of processing and the circumstances of each case.

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from

of

complainant, in the already provided

from article 8 of Law 344/76 on notarial acts: "1. Attestation of the municipality

status of the natural person, birth books are kept in each registry office,

of marriages, deaths and exhibitions. (...) 3. The deeds are registered in the registry books, a

having as its object the birth, marriage or death certificate of the natural person,

the change of the content or the correction of such registry act".

Therefore, in view of the specific purpose of processing (keeping an accurate record with

personal data of citizens for their identification and proof of their citizenship

situation, from which rights and obligations are born), it follows that the

addition of the above additional information concerning the correction is necessary

in order to reflect the sequence of events, especially when the error

then corrected, both the correct/corrected information and the

information that the error has been corrected, to be included in the notarial deed

of birth

field of law

Changes/Corrections, upon the declaration of the competent Librarian. And this because its beginning

accuracy in this particular case it is necessary to include any

individual information of the performed correction, so that it reflects the order

of the facts. Therefore, the right of rectification exercised by the complainant was partially satisfied, given that the defendant did respond to it and corrected the incorrect personal data, however, did not register of this change, and did not follow a certain correction filing procedure of this, so that it is clear both to third parties and to the administration itself, so that it respecting the principle of accountability to be able to prove when this correction was made, by which person, with what legal basis and for what reason, especially when - as in art in this case- the previous (erroneous) document may have been circulated or filed with another body or public service⁵.

13. Based on the above, the Authority considers that there is a case to exercise the following article 58 par. 2 of the GDPR its corrective powers in relation to the established violations.

14. The Authority takes into account that the consequences of the complainant's failure to proceed with the registration of the upcoming correction, may cause to of

5 See and Konstantinos N. Christodoulou, "Personal Data Law", 2nd edition, 2020, Publications Law Library, p. 109: "Principle of accuracy: By this term is meant the imperative to correspond to reality, i.e. the data can be proven held, processed and derived from it'.

10 reporting problems in his private and professional life, to the extent that may raise doubts as to the authenticity of his birth certificate and the truth or accuracy of the information it contains. Based on the above, the Authority unanimously judges that according to article 5 par. 1, para. d of the GDPR, the conditions for the controller to exercise his corrective power of article 58 par. 2 b of the GDPR, which is judged to be proportional to the gravity of the violation.

FOR THOSE REASONS

The Authority addresses the complained controller, the Municipality of Nikaia-Agios

Ioannis Rentis, reprimand for the violation of article 5 par. 1, para. d' of the GDPR.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou