

Athens, 29-06-2022 Prot. No.: 1602 DECISION 28/2022 (Department) The Personal Data Protection Authority met at the invitation of its President in a Department meeting via video conference on Wednesday 06.08.2022 at 10:00, in order to examine the case referred to in the present history. The Deputy President of the Authority, Georgios Batzalexis, who was unable to attend the President of the Authority, Constantinos Menoudakou, and the alternate members Maria Psalla, as rapporteur, and Demosthenes Vougioukas, in place of the regular members Grigorios Tsolia and Konstantinos Lambrinoudakis, who, if legally summoned, did not attend due to a disability were present. . Present, without the right to vote, were Chariklia Latsiu, DN – legal auditor, as assistant rapporteur and Irini Papageorgopoulou, employee of the administrative affairs department, as secretary. The Authority took into account the following: With the complaint dated 15.06.2020 (and with no. prot. APD C/EIS/4521/30.06.2020) application, A informed the Authority that the reported child psychologist, B, has since the year ... taken over the psychotherapy of his minor child, C, at the request of the minor's mother, and without his own consent. At the same time, he informed the Authority that he jointly exercises parental care of the minor child with the mother. Subsequently, with his request from 05.05.2020 via e-mail, he asked the complained child psychologist to receive specific information (namely the number of 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www. dpa.gr 1 the duration of sessions and the dates they took place, the type of sessions, copies of the tax documents issued for the above sessions, the internationally accepted protocols and the techniques followed during the interviews) included in the minor's file child. Due to the complainant's non-response to the above-mentioned request, he returned with the 07.06.2020 email request requesting the same information and in addition the following: "I would also like to be informed of the internationally accepted interview protocols and techniques you took against the interviews you conducted with my minor son until today, of whom I have parental custody." Following this, A complains to the Authority that the right of access to personal data concerning him was violated, as the complainant did not satisfy his above requests. The Authority, during the examination of the above complaint, delimiting its competence called with the under no. prot. APDPH C/EX/4164-1/09-07-2020 document the complained child psychologist to provide full clarifications about the complained. Subsequently, A informed the Authority with his supplementary applications dated 27.07.2020 and 21.09.2020 (and with No. prot. APD C/EIS/5288/28.07.2020 and C/EIS/6392/21.09.2020, respectively) that in response to the above-mentioned relevant document of the Authority, he received from the complained child psychologist a number of tax documents, as well as the certificate dated 23.07.2020, in which according to his claims: "it does not mention at any point what his child suffers from and needs trauma therapy for so many

years, what are the scientific findings that cognitive and behavioral therapy techniques are needed. It should also be noted that the mention of the certificate in question to the minor has only 2 ½ rows!". Following this, A complains that after the aforementioned documents were granted by the complainant, he still does not know what his child is suffering from, so that he needs intensive psychological monitoring. Following this, the Authority, with document No. APDPH C/EX/4164-2/13-10-2020, forwarded the above supplementary requests of A to the complainant, inviting her to take a position in writing on the complainant's latest requests. Subsequently, the complainant A with his latest supplementary application dated 24.05.2021 (and with the complainant's no. 2 and additionally informed APD C/EIS/3404/25.05.2021) informed the Authority that the complainant has not responded to the request of being informed of what his child suffers from and needs trauma therapy for so many years, as well as what the scientific findings are so that he needs cognitive and behavioral therapy techniques. Following this, the Authority, with the document No. G/EXE/1599/28.06.2021, forwarded the complainant's latest application to the complainant, invited the complainant to satisfy the right of access to the complainant that, in addition to the complainants, as responsible processing has an independent obligation to cooperate with the Authority, pursuant to Article 31 GDPR. Finally, the complainant A with a supplementary application from 30.03.2022 (and with no. prot. APD C/EIS/5386/31.03.2022) again submitted to the Authority the history of the complaint and reiterated that his complaint before the Authority, after the first response of the complained child psychologist, after the intervention of the Authority, remains active and consists in the fact that until today she has not been informed "what his child suffers from and needs trauma therapy for so many years, what are the scientific findings that he needs cognitive techniques and behavioral therapy". Subsequently, the Authority called under no. prot. C/EXE/947/20.04.2022 and C/EXE/948/20.04.2022 documents B and A, respectively, as presented at a meeting of the Department of the Authority on Wednesday 04.05.2022 in order to discuss the aforementioned complaint, as well as ex officio the general compliance of the complainant with the obligation to cooperate with the Authority of article 31 GDPR, in relation to the fact of her non-response to the under no. prot. G/EX/4164-1/09.07.2020, G/EX/4164-2/13.10.2020 and G/EXE/1599/28.06.2021 documents of the Authority. At this meeting, B attended, after the attorney of Ioannis Papadakis (AM ...) and Elli Dentidakis (AM ...), attorney of the complainant A. During this meeting, those present, after developing their opinions, were given a deadline of on 27.05.2022 for the submission of memorandum documents. Following this, A, through his lawyer's power of attorney, submitted from 3 24.05.2022 (and with prot. no. APD C/EIS/7359/24.05.2022) and B from 25.05.2022 (and with prot no. APD G/EIS/7393/25.05.2022) memorandum. 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. Because, 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 the individual from the processing of personal data. In particular, from the provisions of articles 57 par.1 item. f GDPR and 13 para. 1 item g' Law 4624/2019, it follows that the Authority has the authority to deal with A's complaint against child psychologist B, for a violation of the right of access to his minor child's data, since the requested information concerning the complainant's minor child is included in a structured set of personal data, automated or not, kept by the complainant in the context of the provision of psychological treatment to the minor child and the authority of the Authority is established pursuant to articles 2 par. 1 and 2 of Law 4624/2019 to exercise the above authority. 2. Because, according to the provisions of article 5 paragraph 2 of the GDPR, the data controller bears the responsibility and must be able to prove his compliance with the processing principles established in paragraph 1 of article 5. As the Authority¹ has judged, with the GDPR a new model of compliance was adopted, the central point of which is the principle of accountability in the context of which the data controller is obliged to 1 See Authority decision 26/2019, paragraph 8, available on its website. 4 plans, implements and generally takes the necessary measures and policies, in order for the data processing to be in accordance with the relevant legislative provisions. In addition, the data controller is burdened with the further duty to prove himself and at all times his compliance with the principles of article 5 par. 1 GDPR. 3. Because Article 12 GDPR provides, among other things: "(...) 3. The data 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 the 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 data controller shall inform the data subject, without delay and no later than within one month of receipt of the request, of the reasons for not acting and of the possibility of submitting a complaint to a supervisory authority and legal action. (...)" 4. Because, subsequently, Article 15 of the GDPR regarding the right of access provides: "1. The data subject has the right to receive from the controller confirmation as to whether or not the personal data concerning him is being processed and, if this is

the case, the right to access the personal data and the following information: a) the purposes of the processing, b) the relevant categories of personal data, c) the recipients or categories of recipients to whom the personal data have been disclosed or are to be disclosed, in particular recipients in third countries or international organizations, d) if possible, the period for which the personal data will be stored or, when this is impossible, the criteria that determine said period, e) the existence of the right to submit a request to the data controller for correction or deletion of personal data or restriction of the processing of personal data concerning the subject of data or the right to object to said processing, f) the right to submit a complaint to a supervisory authority, g) when the personal data is not collected from the data subject, any available information about its origin, h) the existence of automated decision-making , including profiling, provided for in Article 22 paragraphs 1 and 4 and, at least in these cases, important information about the logic followed, as well as the importance and foreseen consequences of said processing for the data subject. (...) 4. The right to receive a copy referred to in paragraph 3 does not adversely affect the rights and freedoms of others." 5. Because article 1510 of the Civil Code stipulates, among other things, that: "1. Caring for the minor child is the duty and right of the parents (parental care), who exercise it jointly. Parental care includes the custody of the person, the administration of the property and the representation of the child in any case or legal action or trial, concerning the person or the property (...)". Furthermore, according to the established jurisprudence of the Authority², the parent exercising parental care of the minor child (art. 128 and 1510 Civil Code) has in principle, as his legal representative, the right of access under Article 15 of the GDPR to the data relating to his minor child, except if it is provided otherwise by a court decision (eg a decision that designates the other parent as exercising parental responsibility). 6. Taking into account the above, from all the elements of the case file, the hearing procedure and the submitted memoranda, it appears that the first complainant with his request dated 05.05.2020 to the complained child psychologist exercised the right of access under Article 15 GDPR , asking to receive confirmation from the complained-about child psychologist as to whether personal data concerning 2 See relevant decisions of the Authority 24/2009, 21/2010, 22/2010, 53/2010, 130/2013, 18/2018, 4/2020, 26/2021. 6 to his minor child are being processed and, subsequently, to receive the information requested by this request, namely: a) the exact number of sessions he held with the minor child from ... to date, b) the type of sessions, c) the their content, d) the scientific conclusions of the sessions as well as e) copies of the tax documents issued for the held sessions. Furthermore, it appears firstly that the complained child psychologist with the dated 23.07.2020 (and with no. prot. APDPX C/EIS/5288/28.07.2020 to the complainant informed the complainant through the relevant certificate and the tax documents about the requested information regarding the

exact number of sessions she held with the minor child from September 2013 until today, the type of sessions, their content, as well as the copies of the sessions held. of the provisions of article 12 paragraph 3 of the GDPR of the tax documents that (G/EIS/6392/21.09.2020) were issued in response to and It is also pointed out with regard to the granting of the tax documents that were issued in the name of the mother and the complaint raised by the complainant that their provision was illegal, that this processing escapes the object of the complaint before A principle which consists in the violation of the father's right of access, as well as that it does not appear - as the complainant never provided any information to the Authority - whether the processing of the tax documents was carried out with the mother's consent, or after her prior information, so that for the Authority to be able to check the legality of the specific processing in the context of exercising its ex officio competence³. Furthermore, no complaint is presented by the mother of the minor child, who, as an interested subject of the data of the tax documents bearing her name, would be entitled to address the Authority pursuant to Article 77 GDPR for a possible violation of the provisions of the legislation on protection of the 3 See relevant newer decisions of the Authority 04/2020 and 26/2021, available on its website. 7 (and with no. prot. APD of personal data. For the same reasons, the claim of the complainant, through the power of attorney, in his application from 21.09.2020 to the Authority and C/EIS/6392/21.09.2020,) that "it is surprising to me that he refers to the sessions he has with his ex-wife, about which Mr. A never asked, on the one hand because he did not know that his ex-wife is undergoing psychotherapy, and on the other hand because it does not concern this content" and the his examination. C/EIS/5288/28.07.2020 Secondly, it appears that the complained-about child psychologist with her above 23.07.2020 (overdue) response did not satisfy the father's right to information and access to his request under item d) above, i.e. the scientific conclusions of the sessions. Furthermore, it appears that the complainant's complaint regarding the fact that he has not been informed by the complainant what his child is suffering from and needs trauma therapy is presented belatedly with the application dated 21.09.2020 to the Authority and is repeated with the ones dated 24.05.2021 and 30.03.2022 his applications to the Authority. It is also pointed out, on the one hand, that this belated request has not been submitted to the complained child psychologist, it is, however, forwarded with the above-mentioned under no. prot. APD C/EXE/4164-2/13.10.2020 and no. prot. And on the other hand, in any case, that the complained-about child psychologist in no way suggests or proves that the above belated request is not contained in a filing system that she maintains in the context of the complainant⁴. Additionally, and contrary to the claim put forward by the complained child psychologist, through her attorney, during the hearing, that the complainant has in any case been informed of the belatedly requested information

regarding the condition of the complainant's minor child and the reason for continuing the provision of psychological treatment to the minor child 4 See Guidelines 1/2022 on data subjects rights – Right of access of the EDPS from 18.01.2022, under public consultation, sc. 15 et seq., available at the link https://edpb.europa.eu/system/files/2022-01/edpb_guidelines_012022_right-of-access_0.pdf 8 of this claim, the provision of late treatment through the court system, in the context of the pending intense litigation, on the one hand it was not proven that the belatedly requested information was submitted to the competent judicial authorities in the context of the intense legal dispute both between the parents of the minor, as well as between the complainant and the complainant, and on the other hand, it was precisely assumed that the requested information was submitted to the competent authorities judicial authorities does not justify the non-compliance of the data controller with its independent obligations arising from the institutional framework of data protection and consequently the authority of the Authority to deal with the alleged violation of rights⁵. Finally, the allegation put forward by the accused child psychologist during the hearing and repeated on 25.05.2022 (and with no. prot. APD C/EIS/7393/25.05.2022) memorandum that the complainant called the complainant most of the times to inform him about the requested information regarding his minor child, to his satisfaction

right of access, as the complainant, through the power of attorney

of, categorically denied the allegation during the hearing

this. Following the above, the Authority finds that the complainant

child psychologist owed satisfaction of the right of access according to article 15

GDPR to provide the complainant with the information about the scientific

conclusions of the sessions with his minor child, as well as belatedly

requested information regarding what his child suffers from and needs

trauma therapy, and failure to provide the above information

constitutes a violation of the aforementioned right of access of the complainant

father in data concerning his minor child.

7. The Authority, in relation to the established violation of the provisions of

of articles 12 par. 3 and 15 GDPR for the reported violation of the right

of access deems that there is a case to exercise the rights from article 58 par. 2

GDPR's corrective powers. In particular, the Authority, taking into account

Recital 148 GDPR the fact that the non-compliance of the complainant

5 see SC decision 561/2022 sc. 10.

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of a child psychologist was not intentional, but a byproduct of intense litigation

of a dispute with the complainant, addresses a reprimand, according to article 58 par. 2 item b

GDPR, in the alleged violation of the provisions of articles 12 par.

3 and 15 GDPR and gives an order according to article 58 par. 2 item. c GDPR to satisfy

the complainant's right of access to the party which has been exercised and has not

still satisfied, namely in the information which are scientific conclusions

of the sessions, as well as the late submitted request of what his child is suffering from

and needs trauma therapy.

8. Because, finally, Article 31 GDPR provides: "The data controller and

the processor and, where appropriate, their representatives cooperate,

upon request, with the supervisory authority for the exercise of its duties". THE

this provision introduces an independent general obligation of each controller to

cooperates with the supervisory authority, when a relevant request is submitted during

exercise of the tasks assigned to it by the European legislator, while the

violation of its fulfillment automatically entails the enforcement of the administrative

fine of article 83 par. 4 item. 1 GDPR. It is pointed out that the obligation

this together with the principle of accountability of article 5 par. 2 GDPR strengthens its role

supervisory Authority in the exercise of its powers towards its realization

purpose of effective application of data protection rules

personal character⁶.

C/EX/4164-2/13.10.2020

9. Taking into account the above, from all its elements

case file, the hearing procedure and the submissions

memos show that the accused child psychologist failed to

to respond to the relevant requests of the Authority submitted under no. first

C/EX/4164-1/09.07.2020,

C/EXE/1599/28.06.2021

documents, even when with the aforementioned under no. C/EXE/1599/28.06.2021

document, alongside the Authority's submitted request, was expressly informed of the

independent obligation to cooperate with the Authority. According to the above

continued non-response of the complained child psychologist, as

controller, to the Authority's requests submitted with

6 See decision 33/2021 sc. 9, available on the Authority's website.

and

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her aforementioned documents when considering A's complaint against her

according to article 57 par. 1 item in the GDPR, constitutes a violation of the independent

obligation to cooperate with the Authority according to Article 31 GDPR.

10. The Authority, taking into account the above, considers that for the established

violation of the obligation to cooperate with the Authority according to Article 31 GDPR must,

based on the circumstances established, to be imposed, pursuant to it

provision of article 58 par. 2 sec. i. GDPR, effective, proportionate and

dissuasive administrative fine according to article 83 GDPR in accordance with

Guidelines "for the implementation and determination of administrative

of fines for the purposes of Regulation 2016/679"⁷ of its working group

of article 29 and the Guidelines 04/2022 for the calculation of

administrative fines under the GDPR of the European Protection Board

Data⁸. When evaluating the data, in order to select the

appropriate and corrective measure, the Authority considers that the specific violation constitutes an individual case (article 83 par. 2 letter a), that the complained child psychologist showed disdain for cooperation with the Authority (article 83 par. 2 item b), that the violation was found in the context of investigating a complaint about violation of the right of access to data of a special category of a minor (article 83 par. 2 item g), as well as that the complained-about child psychologist did not complied with the order of the Authority with the aforementioned under no. first C/EXE/1599/28.06.2021 its document (article 58 par. 2 letter c) to satisfy the terminated right of access of A (article 83 par. 2 item i').

The beginning

FOR THOSE REASONS

a) finds that the accused child psychologist B, as responsible processing,

satisfied complainant A's right of access

7 WP 253 from 03.10.2017 available at the link https://www.dpa.gr/sites/default/files/2019-12/wp253_en.pdf

8 Guidelines 04/2022 on the calculation of administrative fines under the GDPR from 12.05.2022 under public consultation, available at https://edpb.europa.eu/system/files/2022-05/edpb_guidelines_042022_calculationofadministrativefines_en.pdf

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overdue and incomplete in violation of the provisions of the articles

12 par. 3 and 15 GDPR, as thoroughly analyzed in paragraph 6 hereof,

b) addresses a reprimand, according to article 58 par. 2 item II GDPR, to the complainant child psychologist, as controller, for the violation of the provisions of articles 12 par. 3 and 15 GDPR,

c) gives an order, according to article 58 par. 2 item 3 GDPR, to the complainant

child psychologist, as controller, to satisfy the right

access of the complainant to the part that has been exercised and not yet

satisfied and

d) deems that the complained child psychologist, as controller,

breached the independent obligation to cooperate with the Authority, according to Article 31 GDPR

and imposes on the complained child psychologist, as controller,

administrative fine of three thousand (3,000) euros

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou