

No. Fac.: 11.17.001.006.012 - AP 232/2018 April 12, 2019 Sigma Live Ltd. Andi Hatjikosti Ave. corner and 31 Archangelou Ave., 2057, Strovolos, Nicosia Registered Office: 31 Archangelou, 2054, Strovolos DECISION BY THE HAND OF THE PROTECTION COMMISSIONER PERSONAL DATA 1. Facts: Subject: Complaint against Sigma Live Ltd 1.1. In and/or around September 2018, the Mass Media extensively covered the case of the abduction of two minor children from their school in Larnaca. On 26/11/2018 a complaint was submitted to my Office by the law firm Spyros Ioannou D.E.P.E. on behalf of the customer of xxx. (hereinafter the "complainant") against the company Sigma Live Ltd, a member of the DIAS Group (hereinafter "the Complainant"), for displaying the face of their client in a video originally shown by SIGMA TV and which later it was published on the website www.sigmalive.com as well as on the official SigmaLive YouTube account and I inform you of the following. The complainant was the person who helped identify the perpetrator and the abducted students and despite expressing the wish to remain anonymous, his face was seen in the video in question and he was described as the "informant" who helped solve the case . 1.2. Specifically, the complainant's claims related to the following: 1.2.1 On 9/27/2018, the complainant's lawyer sent a letter to Dias Public Publishing House Ltd and IMH C.S.C LTD, in which, among other things, he called on the said means of communication to to all necessary steps to remove all relevant publications that featured the person of the informant (complainant). The said letters were received on 25/10/2018. 1.2.2. My Office located and studied the relevant video, which showed the complainant's face from such a distance that one could make out the person's features and identify him. In addition, we observed an attempt by the complainant to cover his face from the camera with his hand. 1.3. Pursuant to Article 57(1)(f) of Regulation (EU) 2016/679 (hereinafter the "Regulation"), on 7/12/2018 a letter was sent by e-mail to the Data Protection Officer (hereinafter DPO) of DIAS Group, of which Kat'is the complainant is a member, with which she was informed of the above complaint. In the same letter, their positions/opinions were sought regarding the said allegations. 1.4. On 19/12/2018, a letter was sent by the DPA of the DIAS Group, in which the positions of the Complainant were presented, both on issues mentioned in the letter of my Office dated 7/12/2018 and on issues mentioned in letter of the complainant's lawyer dated 9/27/2018, as follows: 1.4.1. They initially apologized for any disturbance they caused and stated that the letter dated 27/9/2018 sent by the complainant's lawyer was addressed to Dia Publishing House and was not communicated to the Complainant, Sigma Live Ltd. These legal entities are different and should be mentioned on the letter separately in order to ensure or receive knowledge on behalf of the Complainant. 1.4.2. In addition, they state that the Complainant, who kept the video in question on the internet, was not informed, and by extension, neither was the Ministry of

Foreign Affairs, about the letter of the complainant's lawyer dated 9/27/2018, until the sending of my Office's letter of 7/12/2018.

1.4.3. After being informed by my Office and although the letter dated 27/9/2018 was not even addressed to SIGMA TV, but due to the reference in the show "Mesimeri and Something", a representative of SIGMA spoke by phone with his lawyer complainant and assured that there will be compliance while, at the same time, always in oral consultation with the lawyer, they considered the issue to be over.

1.4.4. They argue that since the letter of the complainant's lawyer was notified to the Personal Data Protection Authority, it should have been addressed or at least notified to the DPO of the DIAS Group in order to act in a timely manner and as required by the GDPR Regulation.

1.4.5. They deny the allegation made in the complainant's lawyer's letter that they disclosed the complainant's name.

1.4.6. They asked for it to be taken into account that the movement of the complainant in the video does not easily lead to the conclusion that the complainant tried to cover his face. The news in question was top of the news and they focused on covering it as authoritatively and thoroughly as they could. In no case, however, would they ignore anyone's desire not to be seen in their media. In all honesty, as they state, if they had realized or been notified of this desire of the complainant they would have blurred his image. They note that the coverage of the events was live and they had no knowledge of the complainant's wish to remain anonymous.

1.4.7. Also, on the same day of the live broadcast the complainant accepted and granted an exclusive interview with his back turned, a wish which was fully respected. He did not make any complaint regarding the report nor did he report any discomfort with its airing, as stated in the letter.

even, ability to recognize recognition. The

1.4.8. By contrasting the video showing the complainant in long shot with the interview (which he gave with his back turned) in which the complainant's voice can be heard, they concluded that the complainant knowingly consented to, or took the risk of, some of his (complainant's) limited through the video, because of the long shot, it is almost the same as from the recognition of his voice. In particular, he could be recognized by his circle of friends. A TV viewer would not be able to recognize him at all easily through the video or the voice, unless he watched the report over and over again, which, however, is also true of the interview. This claim is not made to justify their position but they consider it unfair to ignore that to some extent the complainant was shown in the media with his consent.

1.4.9. In addition to what they mention above and although their position below is more related to the accusation brought against them by the complainant's lawyer for defamation and not the violation of personal data, they claim that no defamation or damage occurred to the complainant, on the contrary, the report quoted the phrase "life-saving call" verbatim, and they still today believe that this man was exalted in the eyes of society, to the extent that he was recognized, as the savior of the

kidnapped minors and was in no way connected to the perpetrators, nor there was a distortion of the facts. Therefore, the claims for damages and apology for defamation are redundant and not warranted by the facts of the case. 1.4.10. The receipt of the complainant's lawyer's letter by the IMH C.S.C. Ltd in no way concerns them, as there is no connection whatsoever with the company in question. 1.4.11. They requested that the complaint be examined taking into account the above facts and with the greatest possible understanding and pledged that in the future they will do everything possible to avoid such incidents and in any case, if a complaint arises, they will ensure that the internal procedures are respectfully followed so that it ends close to the DIAS Group's Ministry of Internal Affairs and the issue to be handled immediately, timely and efficiently. 1.5. On 18/02/2019 I sent a letter to the Complainant stating that based on the facts before me and the legal analysis of them, I judged prima facie a violation of Article 6 par. 1(a) of the Regulation and invited her, to within the framework of the right to be heard, to submit its positions and opinions regarding possible violations on its part of these provisions, as well as for what reasons it believes that it should not be imposed any corrective measure or administrative fine based on the powers granted to me by articles 58 and 83 of the Regulation, no later than March 15, 2019. 1.6. On 12/3/2019 I received the response of the Complainant, which states the following: 1.6.1. They reiterate all the points they made in their original letter dated 19/12/2018 to the extent they were not refuted or contradicted, as they state they are all true and honest comments on the complaint being investigated. 1.6.2. They took very seriously the suggestions of my Office as contained in the prima facie decision dated 2/18/2019 and will adapt them to their internal procedures. 1.6.3. The findings mentioned in prima facie were accepted decision dated 18/2/2019 except point 12.b) which states as follows: "in the letter dated 19/12/2018, state that on the same date, i.e. 25/9/2018, the complainant agreed to grant an exclusive interview on SIGMA TV with my back turned. His action of asking to speak with his back turned indicates his desire to remain anonymous and his non-consent for his face to be seen,' as they believe that someone who wanted so strongly to avoid media and public recognition simply he wouldn't even give an interview with his back turned. 1.6.4. They reiterate that if the correct controller had been notified by the complainant's solicitor in the letter dated 27/9/2018, compliance would have been immediate, ie from the moment the complainant's solicitor's letter was received. 1.6.5. The said complaint was the occasion to re-evaluate and adopt more effective internal procedures in dealing with similar incidents. 1.6.6. They pledged to comply with the letter of the Law, Regulation and the guidelines of my Office, with the main concern being the protection of citizens' personal data. 1.6.7. They had no intention of screening the complainant without his consent and would not have videotaped him if they had known or been informed or aware of his

refusal to be screened by the media. 1.6.8. Once informed of the filing of the complaint, they complied promptly and fully. It is understood that they had no intention to insult, defame or damage the complainant and do not accept the similar accusations from his lawyer. 2. Legal Basis: 2.1. The provisions of Article 6(1)(a) of the Regulation refer to the following: "1. The processing is lawful only if and as long as at least one of the following conditions applies: a) the data subject has consented to the processing of his personal data for one or more specific purposes,...." 2.2. As stated in Article 4(11) of the Regulation, the term consent is defined "as any indication of will, free, specific, explicit and fully aware, by which the data subject expresses that he agrees, by statement or by a clear positive action, to the personal data concerning it are the subject of processing;...." 2.3. In Reference 32 of the preamble of the Regulation, it is stated, among other things, that "consent should be provided with a clear positive action which constitutes a free, specific, explicit and fully informed indication of the agreement of the data subject in favor of the processing of the data they concern it, for example by written statement, including by electronic means, or by oral statement". It is further explained that silence or inaction should not be construed as consent. 2.4. According to Article 58(2) of the Regulation, I have the authority to impose administrative sanctions, which include an administrative fine under Article 83, on a controller, in this case the Complainant, for violating the provisions of the Regulation. In the case of an administrative fine, the provisions of Article 83(2) of the Regulation should be duly taken into account. 3. Rationale: 3.1. In this case, it is examined whether the Complainant had secured the consent of the complainant, when the video in question about the kidnapping of the two (2) children, (in which the complainant is shown and is recognized as the whistleblower for the investigation of the case), as well as later when they posted and shared it on the website www.sigmalive.com as well as on the official SigmaLive YouTube account. 3.2. In the video in question, an attempt can be seen on the part of the complainant to cover his face from the camera with his hand, and Kat's complaint asserts that it cannot easily be concluded that the complainant tried to cover his face with the movement of his hand and that to a certain extent the complainant was voluntarily exposed to the media with his consent, since he gave an interview to SIGMA TV the same night, with his back turned, of the facts of the kidnapping case and they had no knowledge of the complainant's wish to preserve his anonymity. The place, time and circumstances of the videotaping of the complainant are not in dispute. What is being examined is whether the Complainant had secured the express and free consent of the complainant, when the video in question was shown. 3.3. The complainant on 25/09/2018 agreed to grant an exclusive interview to SIGMA TV with his back turned and Ms. the complaint alleges that someone who so desperately wanted to avoid the media and public recognition simply would not give an interview either even with my back

turned. The strength of a proposition or argument depends on the evidence that supports (or refutes) it, not on the lack of evidence for its opposite or contradictory proposition. In the present case, the complainant herself admits that the complainant ACCEPTED to grant an exclusive interview to SIGMA TV with his back turned. His action of asking to speak with his back turned clearly demonstrates his desire to remain anonymous and his non-consent for his face to be seen. As stated below, silence or inaction should not be construed as consent. 3.4. Based on the above, the required and legal express and free consent of the complainant had not been obtained. 3.5. It is admitted that the service of the letters by the complainant's lawyer was not done to the correct data controller but to other legal entities and that the video in question remained available online until 7/12/2018. 3.6. The claim by the Complainant is that if the complainant's attorney's letters were served on the correct controller, then her compliance would have come sooner, ie on and/or around 10/25/2018, but this does not negate the fact that they do not seem to have had the express and free consent of the complainant in the first place to videotape him and to post the video in question on www.sigmalive.com as well as on SigmaLive's official YouTube account. The length of time that the video in question has been posted online, in the event that an infringement is found, will be taken into account in relation to the circumstances and facts. 4. Conclusion/Conclusion: 4.1. Taking the above into account, I have come to the conclusion that the video that was first shown by SIGMA TV and later published on the website www.sigmalive.com as well as on the official SigmaLive YouTube account was about the abduction of 2 minor students from their school in Larnaca on 25/9/2018, the controller, Sigma Live Ltd, did not secure the consent of the complainant in breach of Article and 6(1)(a) of the Regulation. 4.2. Taking into account the provisions of article 83 of the Regulation, which concerns the General Conditions for imposing administrative fines, when measuring the administrative fine I took into account, when measuring the penalty, the following mitigating factors (a - e) and aggravating factors (f - j) factors: (a) the fact that the video recording was done in the context of live coverage of a case involving the complainant and not on purpose, he proceeded to video recording and posting the video, (b) the fact that the Complainant, as the law controller, proceeded immediately to alter the image of the complainant, as soon as he was informed by the Commissioner's Office, (c) the fact that the Complainant's DPO cooperated fully with my Office to remedy the violation and limit the of its possible adverse effects, (d) the fact that the Defendant in the complaint proceeded to update and change the structure of the procedures governing the internal data regulations of a personal nature, with the aim of fully harmonizing it with the Regulation (e) the fact that the service of the initial letter of the complainant's lawyer dated 27/9/2018, was made to the wrong controller and was not communicated as stated to the Commissioner's Office and the

processing time of the complainant, (f) the nature of the violation affects the personal and professional life of the complainant, (h) the extent of the violation that concerns a large number of viewers, up to and including 7/12/2018 when the complaint was made by the Defendant in blurring the face of the complainant, (i) the number of data subjects affected by the breach, i.e. directly the complainant and indirectly his family and the timeliness and due to ignorance of the process on the part of the lawyer of the desire (j) the fact that on 22/02/2011 a decision was issued against Sigmalive, for publication of data concerning data subject vs

violation of the principle of proportionality and the following were imposed on Sigmalive

administrative sanctions: a fine of €3,000 (three thousand euros) and

interruption of processing and destruction of relevant data.

Based on the above, I decided to impose the complaint on Kathis,

fine of €5,000 (Five Thousand Euros).

Irini Loizidou – Nikolaidou

Commissioner of Protection

Personal Data