

Athens, 09-21-2021 Prot. No.: 2105 DECISION 41/2021 (Department) The Personal Data Protection Authority met as a Department via video conference on 04-21-2021 at 10:00 a.m., following the invitation of its President , in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority Konstantinos Menoudakos, the members Spyridon Vlachopoulos, Konstantinos Lambrinoudakis and the alternate member Grigorios Tsolias as rapporteur and in place of the regular member Charalambos Anthopoulos were present. The meeting was attended, by order of the President, by George Roussopoulos, expert scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: Complaint No. C/EIS/10269/19-12-2018 of the A employee of the Philanthropic - Cultural Association with the name "KOSTOPOULEIOS STEGI - Non-Profit Elderly Care Unit" was submitted to the Authority Character, former Serres Nursing Home "I ANASTASIS"" (hereinafter "Kostopoulis Stegi"). According to the information in the complaint, a video surveillance system has been operating in the facilities of the above-mentioned unit since 2012, which records the inmates-patients, their relatives and its staff, while the supervisors of the employees use the material for long hours of monitoring and evaluation of subordinates their. According to 1-3 Kifissias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 complaint the authorities of the unit have announced to the staff on many occasions that they are being monitored through cameras. Four (4) cameras have sound capability and are located in the Nurses' Wards, while according to what the Administration mentioned, these have been installed in case a patient asks for help. The complainant states that the surveillance devices are located in the supervisors' offices, which are locked after noon. Further, the complainant states that in November 2018, following the establishment of a trade union, staff were asked to accept an additional term in their contract giving their consent to the use of the system in question. The complainant attaches an objection that he has filed on ..., together with other ... employees, against the imposition of a disciplinary penalty of a fine on them, which, according to him, has arisen through the cameras, which are continuously used for surveillance and employee control efficiency. This claim was rejected on ... by the management of Kostopoulis Stegis, which in its response also mentions that it has outsourced its GDPR compliance to a law firm. Also, an "Additional Deed of Contract" is attached, in which it is stated that the operation of video surveillance systems is considered necessary as elderly people with health problems are accommodated in the places where the cameras are installed. From this it follows that the data subject has been informed and gives his consent, agreeing that the download is for the protection of the unit and its occupants and not for the evaluation of

the employees. The Authority, with its letter No. C/EX/1322/18-02-2019, asked Kostopoulis Stegi for its views on the complaint, briefly explaining the applicable institutional framework and specifically in relation to the installation of a video surveillance system in places where health services are provided (Article 20 of Directive 1/2011 of the Authority) and in relation to Article 7 of the said Directive for the surveillance of employees. It was also pointed out that the consent of an employee is not, in the general case, a valid legal basis as it cannot be considered free. Kostopoulis Stegi, provided its views with its G/EIS/2884/16-04-2019 memorandum. In it he briefly states the following: The complainant repeatedly breached his timetable, being absent for extended periods of time during the night shift. In a sample check during the time period ...2018 to ...2018 it was found that the nurses of the night shift were missing several hours from their position. In ...2018, the complainant together with his colleague was unjustifiably on a balcony, while he should have been focused on the safety of the patients' health. For this reason they were fined. It is noted that the memorandum does not make it clear whether the fine is based solely on the video recording. Kostopoulis Stegi reports that the cameras on the balconies had been installed since 2012 for security reasons, following an incident of illegal intrusion, while two (2) later security incidents are also mentioned. The cameras were familiar to all workers, who feel more confident, especially during the night shift. The complainant spearheaded the creation of a union with the aim of avenging the institution for the fine imposed on him, while the workers were already represented by an association of persons. Kostopoulis Stegi claims that this is confirmed by extrajudicial statements of resigned members of the union and oral statements of its members. 18 of the 54 staff members participate in the union. The complainant was dismissed on ... due to poor performance of his duties and malicious behavior to the detriment of the institution's interests. An impact assessment (IIA) was conducted, on the basis of which the legality of each camera is documented. The cameras are classified into those necessary for the protection of persons, goods and for health protection purposes, specifically as follows: 3 A .

Protection of persons and goods Entrances and exits of the unit: These include, in addition to the entrance/exit areas, areas in the kitchen for food preparation that include an entrance as well as an event area. Equipment areas, which are scattered throughout the unit: Includes the 1st and 2nd floor Nurses' Ward area where there is a storage area for drugs of particular value and patient files. Facilities areas (parking, roof, laundries, fencing) B. Protection of patient life and health Occupant movement and movement areas that do not include rooms, such as food halls and floor corridors. Workers' performance is not monitored by cameras. In support of the claim, it is stated that if this was the goal, there should be more cameras covering workplaces (eg rooms). The continued use of the cameras required the documentation of their position by a competent

committee. For this purpose, after the EAPD, the employees were specifically informed and actions were taken to create a committee to judge the places where the cameras will be placed. In a related meeting, the recording was minimized, a check was made that no sound is recorded and that data is kept for 48 hours. The unit accommodates people with disabilities and severe mental or mental illnesses. The control unit is installed in an isolated area and access is given to authorized persons of the medical staff. In addition to information signs, written information is provided to patients or their legal representatives. The memorandum is accompanied by appendices in relation to compliance with 4 of the GDPR and in particular with: 1. Procedure for finding security gaps for the various activities of Kostopoulis Stegi (62 pp.). 2. Data Mapping (64 pp.) 3. Mapping Process (5 pp.) 4. Secure Data Destruction Process (10 pp.) 5. Data Protection Update (9 pp.) 6. GDPR, prepared on ... by ... and ... for the Law Firm "...". EAPD evaluates the use of the video surveillance system. The legal basis of consent is used for the operation of the system. 7. Activity records. It is noted that consent is largely used to document the legality of processing employee data. After the Authority's document was sent and before the Union's memorandum was filed, the complainant submitted with his document No. C/EIS/1977/13-03-2019 additional information for his complaint. These include photos showing the cameras installed in employees' areas (Staff Security), while he cites evidence that proves that in ...2018 and ...2018 he communicated by SMS and e-mail with the lawyers of Kostopoulis Stegis, in order to pass on to them a list with employee comments. According to the complainant, he did not receive a response, but instead the out-of-court letter from ...2018 was served to the employees, after which the employees (including the complainant) sent a response and responsible statements that they do not consent to the recording and processing of their data. He claims that following these actions, Kostopoulis Stegi proceeded to dismiss him on ..., while at the same time sending an informative text to the e-mail addresses of its employees. As can be seen from the attached information text (which was filed by 5 with his memorandum and the foundation) Kostopoulis Stegi informed its employees about the following: 1. About GDPR principles, in general. 2. For the legal bases of the processing, without specifying which legal basis is applied for a specific purpose except with an indicative reference (it is specifically pointed out that there is no reference to the legal basis for video surveillance). 3. For the type of data processed, with a partial connection to specific processing purposes. 4. For the processing of data of special categories. 5. For the purposes of processing, which include the following "... For the safety of tenants and employees, as well as the safety of critical installations of the unit... ... For the management and security of the electronic infrastructure of the Unit and the uninterrupted operation of..." 6. For the recipients of the data. 7. For the retention time, in which it is stated that "Special

data such as the recording of your face from a closed video recording system is kept for a period of 48 hours." 8. For the rights of employees and how to exercise them. Following the initial memorandum, the Authority requested further clarifications with document No. G/EX/2884-1/14-05-2019, specifically for the following: 1. In the memorandum and its accompanying documents it is stated that the documentation of the use of the cameras has been made by a committee made up of competent medical and nursing staff, which decided on the locations of the cameras and their range. In fact, in the attached EAPD it is stated in bold font that this decision was deemed necessary to be revised and it was decided to adjust the coverage of the cameras after consultation with the medical and nursing staff. It was requested to provide both the original decision of the committee in question, as well as each of its latest updates. 2. The memorandum describes the scope of thirty-two (32) cameras to serve the purposes of protecting people and property (19 cameras in total) and protecting the life and health of patients (13 cameras in total). An image sample was requested for each of them, in electronic format and at the highest possible resolution based on the characteristics of the devices, in order to determine the area monitored by the cameras. 3. The memorandum states that the control unit has been installed in an isolated area, to which only authorized persons of the medical staff involved in the monitoring of patients may have access. It was requested to clarify if the control unit is the same for all 32 cameras or if there are two or more control units, to determine in which room the control unit is placed, if there is a possibility of remote access and monitoring via the Internet and for which users, as well as how to ensure that access to camera images is restricted to only appropriately authorized persons. Kostopoulios Stegi provided clarifications with its document No.

C/EIS/4221/13-06-2019. In it he argues the following: The installation and operation of a video surveillance system was decided for the sole purpose of protecting the persons of the Unit and the goods within it after a substantial assessment of the risk sought to be addressed in relation to the magnitude of the impact it will have the collection of personal data in the private life of the persons it concerns (residents-patients and employees) after and from the consent and opinion of both the medical and nursing staff who were informed from 2012 about the placement of the cameras and their range of reception, even adding their observations about what they should record in order to better achieve the security of the 7 space and themselves. This positioning of the nursing and medical staff was not done in writing, but in the context of their cooperation in front of the camera installation technician. In addition, it argues that the legal basis is not the consent of the employees but the superior legal interest of the data controller. The staff was informed in writing by sending a special information form to all employees from 15.12.2018, following the decision of the Board of Directors of Kostopoulio Stegi from 21-11-2018. The complainant's

dismissal was due to a number of unjustified and unconventional actions. They report breaching hours during the night shift, negligent attention to patient safety and repeated absences from workplaces for extended periods of time during the night shift.

The camera control unit is not a single unit but has been separated into two (2) individual separate units. The control unit for the 19 cameras related to the protection of persons and goods of the Unit is located in the office of the Director of the Unit, who is the only (coded) authorized user of it. The control unit for the remaining 13 cameras that concern the protection of the life and health of the Unit's patients is located in the offices of the Heads, who are also the only users of them, as they are considered the only properly authorized persons. With the memorandum, the file of activities in electronic format and image samples regarding the scope of the Unit's thirty-two (32) cameras, with a detailed description of the premises, were filed. From these it follows that certain cameras receive an image from areas reserved exclusively for employees, such as the nurses' wards and the kitchens. In these areas, the image capture does not focus exclusively on entrances and exits, but also includes other areas of staff activity. In the activities file, in relation to the data processing of 8 employees, the employee's consent for activities such as "Employee Card", "Cubes- >Salary", "Detailed Periodic Statement", "Payroll File", "Employee Health Certificate", "Contract Renewal" etc., while for the activity "Closed Circuit Monitoring" it is written: "Additional Deed of Employment Contract (EMPLOYEE) with a special acceptance section of his video recording for security reasons of the area during his work/INFORMATION THAT THE AREA IS VIDEOGRAPHED BEFORE ENTERING THE AREA/ACCESS TO THE CIRCUIT ONLY BY THE COMPETENT EMPLOYEES (WHO BY NAME) IN A LOCKED AREA AND ACCESS TO THE KEY ONLY TO EACH RESPONSIBLE/RESPONSIBLE FOR SENSITIVE PERSONAL DATA (BIOMETRIC)" After the submission of the memorandum, on 6/25/2019, a meeting was held at offices of the Authority of representatives of the Kostopoulis Stegi and the assistant rapporteur for the provision of clarifications and following this, the document No. prot. C/EIS/5296/30-07-2019 was submitted with an update of the harmonization of the Kostopoulis Stegi with the GDPR. In this document it is stated that: The Unit proceeded to form the "informative" text for the employees, with the aim of making it clear that the purpose of processing is the Unit's best interest, namely the safety of the premises and its occupants. The Unit proceeded to a consultation with the medical and nursing staff, with which the scope and method of recording by the video surveillance system was decided. The Unit decided to remove the cameras that were in the nurses' stations (Ephemeria), in order to avoid any suspicion of recording the work of the employees. Also the camera range in the old reception area has been modified to focus clearly 9 now on the rear entrance and exit door of the Unit for security reasons. 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 and left after the discussion of the case and before the conference and decision-making, following a thorough discussion , CONSIDERED ACCORDING TO THE LAW 1. According to art. 4 pc. 1 of the General Data Protection Regulation 2016/679 (hereinafter "GDPR"), audio and video data, as long as they refer to identified or identifiable persons, constitute personal data. Furthermore, the capture as well as the recording of an image of a person, which is collected by a video surveillance system, which operates permanently, continuously or at regular intervals, in a closed or open area of gathering or passage of persons, constitutes processing of personal data in accordance with art. 4 pc. 2 of the GDPR.

2. Article 5 of the GDPR defines the processing principles that govern the processing of personal data. Specifically, it is defined in paragraph 1 that personal data, among others: "a) are processed lawfully and legitimately in a transparent manner in relation to the data subject ("legality, objectivity, transparency"), (...), c) are appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization") (...), f) are processed in a way that guarantees the appropriate security of personal data, including their protection from unauthorized or unlawful processing and accidental loss, destruction or damage, using appropriate technical or organizational measures ("integrity and confidentiality")."

Furthermore, according to the principle of accountability (Article 5 para. 2 GDPR) the controller bears the responsibility and is able to demonstrate compliance with the above principles. 10 3. Article 6 para. 1 GDPR provides, among other things, that: "Processing is lawful only if and as long as at least one of the following conditions applies: (a) the data subject has provided consent for the processing of personal data its character for one or more specific purposes (...) f) the processing is necessary for the purposes of the legal interests pursued by the controller or a third party, unless these interests are overridden by the interest or the fundamental rights and freedoms of subject of the data that impose the protection of personal data (...)". For the assessment of the validity of an employee's consent, a crucial element is whether it can be considered free¹. Given the power imbalance between the employer and its staff members, employees may freely give their consent only in exceptional circumstances, when giving or not giving consent would not have any negative consequences. 4. The Authority has issued Directive No. 1/2011 of the Authority on the issue of the use of video surveillance systems for the purpose of protecting persons and goods, the provisions of which must be applied in conjunction with the new provisions of the GDPR and thereafter on 29/8/2019 and of Law 4624/2019, which defines GDPR implementation measures. The European Data Protection Board issued guidelines No. 3/2019² on the processing of personal data through video download devices. This text provides detailed

guidance on how the GDPR applies in relation to the use of cameras for various purposes. A basic condition for the legality of processing through a video surveillance system is the observance of the principle of proportionality, as specified in articles 6 and 7 of the above Directive, as well as in its Special Part. In particular, Article 7 of the Directive states that the system 1 See "Guidelines on consent under regulation 2016/679" -

https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-052020-consent-under-regulation-2016679_en paragraphs 21 -23 2 https://edpb.europa.eu/our-work-tools/our-documents/guidelines/guidelines-32019-processing-personal-data-through-video_en 11 video surveillance should not be used to monitor employees , except for special exceptional cases as specified in the Directive. In article 27 par. 7 of Law 4624/2019 it is defined that "The processing of personal data through closed-circuit visual recording within workplaces, whether they are publicly accessible or not, is only permitted if it is necessary for the protection of persons and goods. Data collected through closed-circuit visual recording may not be used as a criterion for evaluating employee performance. Employees are informed in writing, either in writing or in electronic form, of the installation and operation of closed-circuit visual recording within the workplaces. Regarding the content of the information, the obligations of the data controller, which are directly related to the principle of transparency, are precisely defined in article 13 of the GDPR and are specified in the aforementioned guidance texts. 5. Regarding the more specific issue of the installation of a video surveillance system in places where health services are provided and for the purpose of protecting people and goods (this purpose includes -see no. 2 section b of directive 1/2011- and the provision of health services , such as monitoring severely mentally or mentally ill patients who are estimated to cause harm to their health or to third parties) in article 20 of Directive 1/2011 it is stated that the installation of video surveillance systems for the purpose of providing health services may be carried out under conditions, only from nursing institutions, psychiatric institutions, institutions for the care of persons with disabilities and similar health service providers. The directive states, among other things, that the controller must: limit surveillance exclusively to the areas where this is necessary to protect the life and health of patients, document the necessity of using cameras for the purpose of providing health services, with a committee consisting of competent medical and nursing staff, who will decide on the locations of the cameras and their range, 12 to install the circuit control unit in an isolated area, to which only authorized medical/nursing personnel will have access staff involved in monitoring patients, to limit the recording to forty-eight (48) hours in order to investigate health events by competent medical personnel. 6. In this particular case, as it appears from the data in the case file, the installation of the cameras since 2012 had been carried out without complying with

the conditions of the previous legislation (e.g. notification). After the implementation of the GDPR, it appears that the data controller acted in the direction of its general compliance with the GDPR and commissioned a consultant (law firm) with relevant services. In the context of these services, actions such as those described in his memorandum from ... are identified, which include data mapping, compilation of information, EAPD study and record of activities. All processing activities concerning employee data and the video surveillance system were, during this time, based on the legal basis of consent. The EDPS and the Authority³ have already thoroughly analyzed that the consent of data subjects in the context of employment relations cannot be considered as free due to the inherent inequality of the parties. The same also applies to video surveillance systems⁴. The data controller recognized his mistake and therefore the violation of Article 6 para. 1 of the GDPR, and with his final memorandum he has addressed the violation and corrected the legal bases. As far as the video surveillance system is concerned, the legal basis is now the existence of an overriding legitimate interest. ³ See indicative decision 26/2019 - <https://www.dpa.gr/el/enimerwtiko/prakseisArxis/parabiasi-arhon-epexergasias-dedomenon-prosopikoy-haraktira-ergazomeno> n ⁴ See Guidelines 3/2019 on the processing of personal data through video devices - paragraph 44 13 7. The data controller, at the time of the complaint, was operating the video surveillance system in violation of the principle of minimization as an image was taken from employee positions (e.g. e. Nurses on call) while this is not necessary for the pursuit of the purpose of the processing. The controller could easily take alternative security measures (e.g. locked areas for medicines) that these areas are not imaged and/or that the cameras focus on protected goods either by repositioning the cameras, or by using personal data protection technologies (masking, obfuscation, etc.). This violation of the principle of data minimization (Article 5 para. 1 c GDPR) was recognized in practice by the data controller, who made corrections by removing the cameras from the staff areas in the Emergency Departments and changing the focus of the cameras on event space. However, there remains surveillance in the kitchen area (which was not the subject of the complaint), which is considered excessive, in view of the purpose of the processing, as employee data is collected without being necessary for the purpose of the processing. ⁸ The installation of the cameras took place without the decision of a committee consisting of competent medical and nursing staff, as stated in Directive 1/2011 of the Authority. Given that the monitored areas include areas related to the provision of health services, taking an image may also reveal health data. Therefore, after the implementation of the GDPR, the documentation of the necessity of surveillance by competent medical and nursing staff is a necessary condition for the processing of health data and the possibility of applying the provision of no. 9par. 2 section h'. The aforementioned violation of Article 9 of the GDPR as

well

dealt with in practice by the controller, by creating it

committee and consultation with appropriate personnel.

9.

The installation and operation of the cameras took place without having

prior notification of the employees in written or electronic form. THE

information provided does not cover the obligations of no. 13, as it is

general and the respective purpose of processing is not linked to the legal basis and

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type of data, therefore there was a violation of Article 13 of the GDPR. Post

the intervention of the Authority, this information was amended with regard to

video surveillance, so that the legal basis is clear for this purpose as well

the violation was addressed. However, it is advisable to improve it so that it is clear

the legal basis for each processing purpose, as well as the type of data that

are processed, for any purpose.

10.

It is not clear whether the imposition of a disciplinary penalty (fine) on

complainants, is based on elements related to labor in general

his behavior (such as spot checks), as argued by

controller, or in material originating from the system

video surveillance as claimed by the complainant. It is pointed out that according to

at the time of the complaint, Law 4624/2019 had not been passed, therefore, while, as

also refers to the Authority's directive 1/2011, the data collected from

the video surveillance system was not allowed to be used as

exclusive criteria for

her

employee efficiency (see also Directive no. 115/2001 on
processing of employees' personal data, section E', par. 6 – 8), o
controller was allowed to use for evaluation
employee data
the system
video surveillance and operated for a different processing purpose, after
weighting based on the criteria of article 6 par. 4 of the GDPR. In this case, as well
the controller denies that such use took place and the complainant does not
provides evidence to prove it, the Authority does not have sufficient evidence to
to determine whether personal data has been used by the system
video surveillance in an illegal way.
which were collected by
of behavior and
evaluation

11.

Based on the above, the Authority considers that there is a case to
exercise its corrective power in relation to Article 58, paragraph 2 d of the GDPR
with the finding described in point number 7 hereof and to
order the complained institution to set up the cameras in accordance with the
defined in the present provision within one (1) month from its receipt
present and to inform the Authority in writing about the execution of the order
of this one. In the event that, despite this arrangement, it is not possible

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to prevent image capture from employee premises, then the person in charge
processing, within the framework of the principle of accountability, should consider
internally the legality of keeping said cameras and in negative

case to decide their uninstallation. Also, as according to operation of said cameras the visual material is observed, albeit for limited time, the Authority considers that, based on article 15 par. 5 of Law 4624/2019, it must ordered to delete data that has been unlawfully collected.

12.

The Authority further considers that the above corrective measure is not sufficient to restore compliance with the GDPR provisions they have violated and that it should additionally⁵, based on the circumstances that were established, to impose the sanction of reprimand, for the violations which were established in paragraphs 6 to 9 hereof.

13.

The Authority takes into account the following:

a) The data controller, already before submitting the complaint, had initiate GDPR compliance actions. Although it was found that the drafted texts and compliance procedures contained errors which led to violations of the GDPR, it turns out that the controller he was acting in good faith in believing that the (mis)direction of the advisers it was right for him.

processing cooperated

b) The person in charge

and

effectively with the Authority to deal with violations, while at

in the past no administrative sanction had been imposed by the Authority, nor had it been submitted related complaint.

practically

quickly,

c) The data controller is a non-philanthropic-cultural association

of a for-profit nature.

d) The difficult situation for the units that provide related services

with health and the elderly, due to the COVID19 pandemic. Yes, like

5 See the 148 recital of the GDPR.

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results from postings in the electronic press, the responsible unit

processing affected by the pandemic⁶.

14.

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

to the reported company as controller or the one referred to

dispositive administrative sanction, which is judged proportional to its gravity

violation.

THESE REASONS

The beginning:

A. Gives an order to the denounced union with the name "KOSTOPOULEIOS

SHELTER - Non-Profit Elderly Care Unit, formerly

Serres Nursing Home "THE ANASTASIS", as controller, as within one (1)

month from the receipt of this, to set up the cameras that are

placed in kitchens to focus exclusively on entry areas and

output, to completely destroy any material collected up until then through

of the above cameras as well as to inform the Authority in writing about the

above.

B. Addresses the complained union under the name "KOSTOPOULEIOS STEGI

- Non-Profit Elderly Care Unit, former Nursing Home

Serres "THE ANASTASIS", as controller, reprimand for his transgressions

article 6 paragraph 1, article 5 paragraph 1 paragraph c, article 9 and article 13 of

GDPR

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

6 See <https://www.protothema.gr/greece/article/1059989/koronoios-serres-50-krousmata-sto-girokeio-kostopouleio-stegi/>