

Athens, 24-12-2019 Prot. No.: C/EX/31-1/24-12-2019 PERSONAL DATA PROTECTION AUTHORITY A P O F A S I 47/2019

(Department) The Personal Data Protection Authority met in the composition of the Department at its store on Wednesday 18.12.2019, following the invitation of its President, in order to examine the case referred to in the history of the present.

Georgios Batzalexis, Deputy President of the Authority's President Konstantinos Menoudakos and the alternate members Grigorios Tsolias, Evangelos Papakonstantinou and Emmanouil Dimogerontakis were present as a rapporteur in place of the regular members Charalambos Anthopoulos, Konstantinos Lambrinoudakis and Eleni Martsoukomos respectively, who, although duly elected in writing they did not attend due to disability. The meeting was also attended by order of the President, E. Maragou, special scientist - auditor as assistant rapporteur, and E. Papageorgopoulou, employee of the Department of Administrative Affairs of the Authority, as secretary. The Authority took into account the following: A, a Bangladeshi national (born ...), with the no. of protocol A/EIS/31/29.03.2019 his appeal, as supplemented with protocol nos. the National List of Undesirable Aliens (hereinafter, E.K.ANA.). With its letter No. A/EX/31-1/07.08.2019, the Authority invited the Directorate of Aliens of Attica of the Ministry of Citizen Protection to inform it about the existence of an entry in the above list. The Directorate of Aliens, with its letter No. ... (with the Authority's No. A/EIS/62/04-09-2019), informed the Authority about the details of the registration of the foreigner in question by attaching the relevant documents . As can be seen from the above document of the Directorate of Aliens to the Authority, the applicant A was arrested on ... to be deprived of legal documents to stay in the country in violation of art. 76 of Law 3386/2005 in conjunction with Art. 21 of Law 3907/2011 "about foreigners". Therefore, an administrative return decision was issued against him with the number ... of ... by the competent officer of the Directorate of Aliens and was registered only at the E.K.ANA.A. until Afterwards, he was re-registered with E.K.ANA.A. until ..., as a result of the issuance of an administrative return decision by the competent officer of the Directorate of Aliens with number ... from In particular, according to the above decision, the applicant was arrested on ..., "as he lacks legalizing documents to stay in the country in violation of the provisions of article 76 par. 1b, and c and 3 of Law 3386 ["entry, residence of third country nationals"] in conjunction with art. 21 of Law 3907/2011". Further in the administrative return decision, it is stated that she was initially arrested on... for violation of Law 1650/1986 "on environmental protection", Law 1892/1990 "prohibition of dumping materials or waste in forests and forest lands", Law 2696/1999 "regarding KOK- revocation of driver's license" as a result of which he was sentenced by the Three-member Misdemeanor Court of Athens (with its decision no. ...) to a prison sentence of eight (8) months with a three-year suspension against which he appealed. The decision also mentions that as a reason that at the

critical time of its issuance, on the one hand, he was already registered with E.K.ANA.A. remaining in our country in violation of the provisions of Law 3907/2011 and Law 3386/2005 and on the other hand, that, on the other hand, the return decision numbered ... from ... was pending, which did not 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr 2 was executed, as he was released by the decision no. On ... the applicant A submitted a request for deletion which was rejected by the decision no. Also, until today the foreigner in question has not submitted any evidence for the removal of the reasons for the registration which are still valid". On ... the appellant again submitted a deletion request which was rejected on the same grounds as the decision no. ... of the Director of the Aliens Directorate from Due to the above-mentioned rejection decisions, the appellant submitted to the Authority the above-mentioned request for deletion, citing, among other things, that initially, the appellant had registered with E.K.ANA.A. by virtue of an administrative deportation decision until ... , although from ... until the end of 2015 he was the holder of a special asylum seeker card, a fact that requires the suspension of the administrative measure of return until the final decision on the request for international protection status (see . article 41 par. 1 para. d' of Law 3907/2011). However, in the present return decision no.... from ... mention is made of a pre-existing entry in E.K.ANA.A. although the previous one, as mentioned above, had expired... Furthermore, the appellant disputes the rationale of the rejections in requests to delete the decisions of the Director of the Directorate of Aliens of Attica due to the fact that he has not submitted evidence for the removal of the reasons for registration since he had already submitted to the Attica Decentralized Administration - Directorate of Foreigners an application for the granting of a residence permit for exceptional reasons, which was known to the Directorate of Foreigners and on the basis of which the issuance of a return decision is blocked until the final decision on the request. Finally, the appellant submits a copy of the appeal he has submitted against the rejection decision of the Autonomous Tier of Amygdaleza Attica for the granting of international protection status with the number The appeal is expected to be considered on 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr 3 The Authority, after examining the aforementioned information, heard the rapporteur and the clarifications from assistant rapporteur and after a thorough discussion, IT WAS CONSIDERED IN ACCORDANCE WITH THE LAW 1. In Greece, the maintenance of the National List of Undesirable Foreigners is provided for in article 82 of Law 3386/2005, which states that "The Ministry of Public Order maintains a list of undesirable foreigners. The criteria and the procedure for registering and deleting foreigners from this list are determined by a decision of the Ministers of the Interior, Public Administration and Decentralization, Foreign Affairs, National Defense, Justice and Public Order". On the

basis of the above authorizing provision, Decree No. 4000/4/32-la'/17.10.2012 KYA was issued, as replaced and valid with Decree 4000/4/32-n'/31.03.2017, articles 1 and 3 of which respectively provide for the conditions for the registration of foreigners in the E.K.A.N.A. and the ex officio review of each registration every three years. Specifically according to article 1 thereof: "1. In the National List of Undesirable Aliens (E.K.A.N.A.) are registered: a. Aliens against whom a judicial or administrative decision of expulsion from the country or a return decision was issued, as long as they have not complied with the obligation to return. b. Foreigners, whose presence on Greek soil constitutes a threat to national security, public safety or public order...", while according to article 3: "1. The duration of validity of the registration in E.K.A.N.A. is determined by the body deciding on the registration, based on the reasons for which it is imposed and does not exceed five (5) years. The above registration period in E.K.A.N.A. it is possible, to exceed five years in the event that the foreigner poses a serious threat to national security, public safety or public order, as well as in the event that a criminal court decision imposes deportation and a ban on re-entry of the foreigner to the Country, for as long as is specified in it (par. 3 of article 74 of the Civil Code, as applicable). Every case of registration in E.K.A.N.A. is reviewed ex officio every three years...". In addition, according to article 6 of the above KYA, for the observance of the E.K.A.N.A. and the processing of the corresponding 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr 4 the relevant provisions of Law 2472/1997 apply , and in particular of art. 4 and 13 thereof whereas, article 83 of Law 4624/2019 states that "where in provisions of the current legislation reference is made to Law 2472/1997 it is understood as a reference to the relevant provisions of the GDPR and this one". 2. Since, from the combined interpretation of the above and article 76 par. 1 item. a' of Law 3386/2005 it follows that "serious criminal acts" mean not only those that carry a penalty of deprivation of liberty of at least one year but also those expressly listed in the provision of article 76 par. 1 item. a' of the above law (see Official Gazette No. 3/2012). 3. Since, from the combined interpretation of the above and article 76 par. 1 item. c' of Law 3386/2005 it follows that the registration of a foreigner in EKANA is allowed, as long as his presence on Greek territory is dangerous for the public order or national security.

4. Because, for the legality of registration both in case of conviction and and in the event of the existence of nuanced indications of the commission of a "serious crime deed", from the above mentioned, the body responsible for the registration will must take into account and take into account all the circumstances in its decision

execution of the criminal act and to deliver a specially reasoned judgment on it

"threat" constituted by the presence of a foreigner on national territory (see previous thought).

5. In the case under consideration, from the information in the file and the clarifications from the Directorate of Aliens of Attica, it emerged that the applicant A registered with E.K.A.N.A. by virtue of the administrative decision to return him competent officer of the Directorate of Aliens of Attica with number ... for reasons of public order and security on ... until His entry was made, because was caught lacking legal residence documents in the country. Therefore, registered for violation of the provisions of Law 3386/2005 on entry, residence and social integration of third country nationals in the Greek Territory as well and for the reason that the decision with number ... from ... was pending against him of return, which was not executed and because it was already registered with E.K.A.N.A.

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Consequently, in accordance with the aforementioned provisions, its registration applicant to E.K.A.N.A. is legal, as it was registered to the above lists for reasons of public order and security, in view of being arrested to he lacks legal documents to stay in the country while he has been sentenced to a prison sentence of eight months and a previous decision is pending against him return. It is noted that three years have not passed since the last one under review registration so that a review of the registration is required. In sequence, the his appeal must be dismissed as unfounded.

For those reasons

The Authority rejects A's appeal for the deletion of his data from E.K.A.N.A.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou

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