

Athens, 30-07-2020 AP: C/EX/5349/30-07-2020 GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Tel. Address: KIFISIAS 1-3 115 23 ATHENS TEL.: FAX: 210-6475600 210-6475628 DATE 23/2020 (Department) The Personal Data Protection Authority met as a Department at its headquarters on Wednesday 26.02.2020 at 10:00 a.m. upon the invitation of its President, in order to examine the case referred to in the history of the present. The Deputy President, Georgios Batzalexis, acting as an obstacle to the President of the Authority, Constantinos Menoudakos, and the alternate members Evangelos Papakonstantinou, Grigorios Tsolias, as rapporteur and Emmanuel Dimogerontakis, in place of the regular members Konstantinos Lambrinoudakis, Charalambos Anthopoulos and Eleni Martsoukos, respectively, were present. although they were legally summoned in writing, they did not attend due to disability. Present without the right to vote were Chariklia Latsiu, legal auditor - lawyer, as assistant rapporteur and Irini Papageorgopoulou, employee of the administrative affairs department, as secretary. 2 The Authority took into account the following: With the application dated 14.11.2019 (and with prot. no. APDPCH C/EIS/7859/14.11.2019) A complains that the Human Resources Department of the company Operator of the Hellenic Electricity Distribution Network S.A. (hereinafter DEDDIE S.A. company) did not satisfy the right of access to personal data concerning him. Specifically, he complains that with the from ... and with no. first ... his application requested to receive "(...) a complete updated service change certificate, as specified in the two-page copy of the email (email) and within the time frame specified in this email, to use for my specific posting to EKOME S.A. in a position as defined in the notice No. 19/25-1-2019 - invitation for the staffing of the National Audiovisual Media and Communication Center (EKOME SA)". In response to the above related request, the Human Resources Department of the company DEDDIE SA. with the no. first ... document informed, among other things, that "(...) the aforementioned call for expression of interest is expressly addressed to employees who serve in bodies of the General Government and the Greater Public Sector, as well as first and second grade OTAs. However, PPC S.A., from 20.08.1991, according to the P.D. 360/1991 ceased to be subject to the provisions applicable to the public sector, as it was redefined by par. 1 of article 51 of Law 1892/1990 and by the P.D. 333/2000 has been transformed into a Public Company. DEDDIE SA is a 100% subsidiary of PPC SA, which came from the spin-off of the latter's Distribution Branch (PPC SA), according to article 123 of Law 4001/2011, which has been operating since May 1, 2012 as a Legal Entity under Private Law (Anonymous Company) and its staff is connected to the Company with a private law employment relationship. PPC SA and by extension DEDDIE SA, fall under the provisions of Chapter B of Law 3429/2005, are N.P.I.D., and are supervised by the Ministry of Environment and Energy. Therefore, the staff of DEDDIE S.A. does not identify

with the personnel referred to in the second relevant invitation. Please inform the employee in question." The Authority, during the examination of the case, called the company DEDDIE SA, with the no. prot. C/EX/7859-1/02.12.2019 document, to provide full explanations on the complaints and, in particular, to clarify the reasons why he did not satisfy the right of access of A in his application from The company DEDDIE S.A. in response to the above relevant document, informed the Authority with reference no. 3 prot. ... (and with no. prot. APDPX G/EIS/8769/17.12.2019) document, among other things, that he addressed to the applicant employee a negative response to his request, repeating the content of the aforementioned from ... (and with no. first no. first ... - ...) of response and concluded: "(...) Given that PPC S.A. and by extension DEDDIE S.A. fall under the provisions of chapter B of Law 3429/2005, i.e. they are N.P.I.D. and are supervised by the Ministry of Environment and Energy, it becomes clear that the participation of our complaining employee in the said announcement by EKOME, and even more so the granting of a relevant certificate by the Company for his imminent secondment to the Agency in question, are not consistent with the current legislation framework governing DEDDIE S.A. and its human resources". Subsequently, the Authority with no. prot. C/EX/7859-2/23.12.2019 and C/EX/7859- 3/23.12.2019 documents invited the company DEDDIE S.A., as legally represented, and A, respectively, to attend the meeting Starting on 29.01.2020, in order to discuss the aforementioned complaint of A against the company DEDDIE SA. Following the above-mentioned call to A, the latter informed the Authority with his application from ... (and with no. prot. subject, as well as that until ... he has not received from the company DEDDIE S.A. the requested certificate. During the meeting of the Authority on 29.01.2020 the company DEDDIE SA, through the power of attorney of Chariklias Daoutis (...) and B, External Partner in Privacy matters, informed the Authority of the company's intention to grant A the requested updated certificate of service changes. Subsequently, the company DEDDIE S.A. with her application dated 03.02.2020 (and with application no. C/EIS/865/03.02.2020) she informed the Authority about the satisfaction of A's request and the granting of the requested information. Accordingly, A with his application dated 05.02.2020 (and with no. prot. APDPX C/EIS/922/05.02.2020) informed the Authority about receiving the requested information and thus satisfying the complaint request before the Authority. From the data in the case file, the clarifications provided during the hearing and the relevant memoranda submitted to the Authority, it appears that A, an employee of the Central Greece Regional Office of the company 4 DEDDIE S.A. requested with the under no. first ... his application to receive an updated certificate of service changes, in order to present it to the National Center for Audiovisual Media and Communication (E.K.O.M.E. S.A.), following a relevant request from the Directorate of Administrative Services of of the

Ministry of Digital Governance, which informed him by email that he had been selected for secondment to a position as stated in no. ... notice of invitation for the staffing of E.K.O.M.E. S.A. In particular, the Directorate of Administrative Services of the Ministry of Digital Governance with the aforementioned message invited A to provide, within fifteen (15) days, an updated full certificate of service changes, "(...) in which the following should also be mentioned: a) if to date, the employee has been subject to a disciplinary penalty or there is any pending disciplinary/criminal penalty, b) if the verification of the authenticity of the academic qualifications, certificates and thus personal register data has been completed, as provided for in the provisions of article 28 of Law 4305/2014 and c) the total number of sick leaves he has used in the last five years (...)". According to the no. first ... notice of invitation for the staffing of E.K.O.M.E. S.A. the application for the secondment of the interested parties must be accompanied, among other things, by "(...) c) a certificate of official changes from which basic personal register data will be obtained, including information on their disciplinary status, If the certificate of official changes is not presented by the candidates, will be searched ex officio by our service pursuant to no. DIADP/A/17854/10.07.2007 KYA (B' 1171) (point 6 of the above-mentioned invitation notice)'. The company DEDDIE SA, in response to the above related request of employee A, with the no. first ... (...) document, refused the granting of the requested certificate of service changes, on the grounds that the applicant - employee does not meet the conditions for submitting a secondment application under no. first ... announcement of invitation for the staffing of E.K.O.M.E. S.A., which is addressed exclusively to employees who serve in bodies of the General Government and the wider Public Sector, as well as first and second grade OTAs, while the company DEDDIE S.A. operates, in accordance with article 123 of Law 4001/2011, as a private law legal entity and its staff is connected to the company with a private law employment relationship. According to the no. first ... notice of invitation for the staffing of E.K.O.M.E. S.A.: "(...) employees from organizations who are permanent or have an employment contract under private law for an indefinite period have the right to submit applications⁵ of the General Government or the wider public sector as well as first and second grade OTAs, for whom the obstacles to secondment do not apply and no criminal or disciplinary penalty is pending against them. Detachments are carried out in derogation of the written provisions, in accordance with article 49 par. 3 of Law 4339/2015, as amended by Article 3 par. e of Law 4506/2017 (Government Gazette A' 191) and in force (note 4 of the aforementioned notice of invitation" The Authority, after examining all the elements of the file, the explanations provided during the hearing, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote and left after from the discussion of the case and before the conference and decision-making, after a thorough discussion, IT WAS

CONSIDERED ACCORDING TO 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 human data. Subsequently, from the provisions of articles 57 par.1 item. f of the GDPR and 13 par. 1 item g' of Law 4624/2019 it follows that the Authority has the authority to deal with A's complaint against the company DEDDIE SA. for the non-satisfaction of the right of access to personal data concerning him and to exercise, respectively, the powers granted to him by the provisions of articles 58 of the GDPR and 15 of law 4624/2019. On the contrary, the issue of legality for the submission of a secondment application nomination, following the no. first ... announcement of invitation for the staffing of E.K.O.M.E. S.A., on which the disagreement/controversy between ... and the company DEDDIE S.A. appears to be based, escapes the Authority's jurisdiction. 2. Because 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 subject of the data ("legality, objectivity, transparency"), b) are collected for specified, express 6 and legitimate purposes and are not further processed in a manner incompatible with these purposes (...), c) are appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization") (...)". 3. Furthermore, it is pointed out, taking into account article 8 paragraph 1 of the Charter of Fundamental Rights of the European Union, article 9A of the Constitution and recital 4 of the GDPR, that the right to the protection of personal data is not absolute, but it is assessed in relation to its function in society and weighed against other fundamental rights, according to the principle of proportionality. The GDPR respects all fundamental rights and observes the freedoms and principles recognized in the Charter, as enshrined in the Treaties, in particular respect for private and family life, residence and communications, protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom of enterprise, the right to an effective remedy and an impartial tribunal, and cultural, religious and linguistic diversity. 4. Regarding the right of access, Article 12 of the GDPR provides: "3. The 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 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 controller shall inform the data subject, without delay and at the latest within one month of receipt of the request, of the reasons for not acting and of the possibility filing a complaint with a supervisory authority and taking legal action. 5. The information provided in accordance with Articles 13 and 14 and any communication as well as all actions taken in accordance with Articles 15 to 22 and Article 34 shall be provided free of charge. If the data subject's requests are manifestly unfounded or excessive, in particular due to their repeated nature, the controller may either: a) impose the payment of a reasonable fee, taking into account the administrative costs of providing the information or communication or the execution of the requested action, or b) to refuse to proceed with the request". Subsequently, Article 15 of the GDPR, taking into account Recital 63 of the GDPR, defines with regard to the subject's right of access: "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: (...) 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, (...) g) when the personal data are not collected from the data subject, any available information about their origin, (...). 3. The controller provides a copy of the personal data being processed. (...). 4. The right to receive a copy referred to in paragraph 3 does not adversely affect the rights and freedoms of others.' Finally, Article 33 of Law 4624/2019 introduces, pursuant to Article 23 of the GDPR, restrictions on the right of access as follows: "1. Apart from the exceptions provided for in paragraph 2 of article 29 and paragraph 2 of article 30, the right of access of the data subject, in accordance with article 15 of the GDPR, does not apply when: a) the data subject is not informed in accordance with item bb' of cases a' and b' of paragraph 1 of the previous article; or b) the data, aa) were recorded only because they cannot be deleted due to legal or regulatory provisions of the obligation to preserve them, or bb) serve exclusively protection or control purposes of the data, and the provision of information would require a disproportionate effort and the necessary technical and organizational measures make processing for other purposes impossible. 2. The reasons for refusing to provide information to the data subject must be documented. The refusal to provide information must be justified to the data subject, unless the disclosure of the factual and legal reasons on which the refusal is based would jeopardize the purpose pursued by the refusal to provide the information. (...). 4. The right to information of the subject of personal data in accordance with article 15 of the GDPR does not apply, to the extent that information would be disclosed through the information, which according to provision 8 of the law or due to its nature, in

particular due to the superior legal interests third party, must remain confidential (...)" 5. Because, as the Authority firmly accepts, the data subject has the right to know whether personal data concerning him is being processed, as well as to be aware of them, without the need to invoke a legitimate interest for this purpose (see in particular, decisions of the Authority 32/2019, 144/2017 195/2014 193/2014 and 75/2011, available on the website of the Authority). Furthermore, in accordance with recital 63 of the GDPR, each data subject should have the right to access personal data collected and concerning him and be able to exercise this right freely and at reasonable regular intervals, in order to have awareness and to verify the legality of the processing. 6. Because, in the case under consideration, the certificate of official changes of an employee includes information concerning the subject of the data, in accordance with the provisions of article 4 para. 1 of the GDPR, the employee himself. Thus, information related to the identification details of the employee, information about the employment relationship and any changes thereof, as well as the additional information requested, pursuant to the aforementioned under no. first... notice of invitation for the staffing of E.K.O.M.E. S.A. (note 6 c), recommend in principle personal data of the employee, on which the latter, as data subject, exercising the right of access of articles 12 and 15 thereof GDPR and 33 of Law 4624/2019, is entitled to be informed of them.

7. Because, from the combination of the aforementioned provisions, it follows that, in case under consideration, the company DEDDIE SA, as controller, according to the provisions of article 4 par. 7 of the GDPR, with her application no granted the requested certificate to A, notifying him accordingly for not satisfying his request. The satisfaction of the relevant request presupposes the additional processing of personal data that are maintained in the filing system maintained for the employee in order to produce said certificate. Every time the employee requests the issue a certificate based on the personal data held by the employer for the purposes specified in the law, in essence he requests it on his behalf employer additional processing of his data in order to create a new one

document (certificate) which does not exist and therefore is not included according to

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time of his application. Therefore, the rejection of the certificate request,

i.e. a document that has not yet been created cannot constitute a rejection

request for access to personal data as well as related

provisions the right of the subject to know all of the is protected

his data held in the filing system at the time of the application

in order to check the lawfulness of data collection and retention

according to the above. Considering the importance of the issue that has arisen

and the more general significance of this for the set of related complaints which

are presented before the Authority, the Department decides, pursuant to the provision of the article

5a of the Regulation of Operation of the Authority, as it currently applies (Official Gazette B 336/2000, B

859/2008 and B 989/2011), to refer the matter in question to the Plenary, as

in particular it refers to the ordinance.

The Authority considers that

FOR THOSE REASONS

a) the object of A's complaint against the company DEDDIE SA, as

controller, is now shown as having no object.

b) refers to the Plenary the issue of whether the granting of personnel data

character from a file kept by the controller through certificates,

of coke certificates, i.e. after relevant additional processing from the relevant file which

observes – and in contrast to granting a copy of the entire relevant file –

indeed falls within the concept of right of access as formulated under the

GDPR and Law 4624/2019.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou