

Athens, 09-08-2022 Prot. No.: 2216 DECISION 49/2022 (Department) The Personal Data Protection Authority met as a Department via teleconference on 07-28-2022, postponed from 07-05-2022, after at 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, Constantinos Menoudakos, and the regular members, Spyridon Vlachopoulos, as rapporteur, Charalambos Anthopoulos and Konstantinos Lambrinoudakis, were present. Anastasia Kaniklidou, lawyer and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, attended the meeting as secretary. auditor - lawyer, as assistant rapporteur The Authority took into account the following: The complaint filed by A with the original number C/EIS/2505/12-04-2021 was submitted to the Authority, with which the latter complains a) the refusal of the company "ELMI SYSTEMS HELLENIC ENGINEERING SYSTEMS SA" such as to satisfy the latter's right of access to the data held in its file concerning him, b) violation of the right to limit the processing, as well as c) violation of the right to object. In particular, A complains, among other things, that on ... he asked the complainant to provide him with copies of the applications of each person who requested information about him, copies of the evaluations from ... that concerned him as a partner of the company per year until today, a copy of each certificate granted by the complainant to third parties regarding his person, a copy of every contractual document between the complained-about company and the complainant, while as can be seen from the content of the complaint, he also requested a copy of a court decision or prosecutorial order on the basis of which information was provided regarding the his person. The Authority, in the context of examining the above complaint with no. prot. C/EX/1140/26-04-2021 her document, informed the complainant about the complaint and invited her to present her views on it. The complainant in her response to the Authority with protocol number C/EIS/3325/20-05-2021 stated that she cooperated with the complainant in the form of a fixed fee as a lawyer from ... until ..., when, on her own initiative, the cooperation. He also points out that the complainant is in a dispute with his ex-wife, and in the context of their legal dispute..., the company was notified of a prosecutorial order of the Prosecutor of First Instance of Athens pursuant to article 1445 of the Civil Code by which it was requested (following the relevant request of the ex-wife) of the complainant through her lawyer's power of attorney) certificate of remuneration - fees - compensations received by the complainant. The complainant, complying with the prosecutor's order, handed over the relevant salary certificate to the attorney of the complainant's ex-wife. It claims that apart from the information, nothing else was granted that concerns the complainant and falls within the scope of GDPR 2016/679 and Law 4624/2019. According to the complainant, two years later (on ...) the complainant notified the company out

of court, in which he refers to a letter dated ... (drafted by the Chairman of the Board of Directors of the company) and which, according to the allegations of the complainant, was granted at the request of the complainant's ex-wife. In addition, according to the company's claims, the letter from ... concerns its own personal opinion and in no way contains personal details, personal information or personal data of the complainant. As the complainant states, the letter in question was written by the Chairman of the Board of Directors of the company because the complainant was informed that the complainant was spreading, in the context of the legal dispute with his ex-wife but also to third parties in her wider environment, that, allegedly, the termination of the partnership with him was due to the divorce with his ex-wife, who is entitled to ... of the Board of Directors. the company's. In said letter, which was signed by the President and CEO of the company and dated ..., it was stated that the company terminated the cooperation with the complainant solely for business reasons, as (the company) was dissatisfied with handling of her legal affairs, and the termination of said partnership was not due to the complainant's dispute with his ex-wife, which was between ... her ... and the company. In addition, the complainant states that she responded directly and with reasons to the above to the complainant with her out-of-court response, informing him that the content of the documents he is requesting to be granted to him is already fully known to him in his capacity as a party, while stating to him also that the company does not keep a file of evaluation documents of its partners. Subsequently, the complainant with no. of protocol C/EIS/3894/14- 06-2021 his supplementary document to the Authority, complains that the issuance of the said letter and its transmission was illegal, pointing out that the Chairperson of the Board of Directors of the complainant, B, representing the complainant, intervened in the file of personal data kept by the complained company, since as a legal representative he had access to it, he sought information about the professional career of the complainant, altered it with the letter from ... and issued the said letter, which he circulated and made available for use to his ex-wife and her attorney, who subsequently released it to the court during her trial ..., without having the right to do so, without his consent and without the existence of a court order. Subsequently, the complainant states that the Authority should be taken into account in accordance with the provisions of article 38 of Law 4624/2019. Finally, the complainant reiterates his request to be granted copies of the resolution of the salaried standing order of cooperation from ... as well as requests or decisions submitted by his ex-wife and her attorney-at-law that resulted in the drafting of the letter, which was used in the context of the trial in Following this, the Authority summoned the parties involved before the Department of the Authority on 01-12-2021, with G/EXE/2646/22-11-2021 and G/EXE/2647/22-11-

2021 calls, in order to discuss the mentioned case. At the meeting in question, the complainant was present with his attorney Fotios Giannoulas (AM/Bar Association...), and on behalf of the complainant B, President and CEO of the Board, C Vice-President of the Board, and lawyer Ilias Giugis (AM/Bar Association...). Both parties, after orally developing their views, received at this meeting a deadline of 15-12-2021 to submit memoranda to further support their claims and submitted their memoranda on time, with which they briefly presented, among other things, the following : On the one hand, the complainant, during the above hearing of 01-12-2021, but also with his memorandum No. C/EIS/8191/15-12-2021 with hearing, reiterated that the letter in question was presented in the context of legal proceedings civil courts in support of the allegations of the complainant's ex-wife in her suit and in rebuttal of his own suit. Furthermore, according to the complainant, the letter in question contained false and defamatory allegations that affected his personality and professional standing. Subsequently, the complainant points out that the letter in question referred to a personal data of his, namely his professional career, his personal and social situation, which was included in the file of the complainant as data controller, as well as in the Court file obtained from political case. Therefore, according to his claims, the said letter was unlawfully processed, contrary to the principles of purpose limitation, data minimization, integrity and confidentiality, but also without a legitimate purpose, according to Article 6 GDPR . As a consequence of the above, as the complainant mentions, he filed his summons before the Criminal Prosecutor of Athens for the offenses of defamation, fraud on the Courts and violation of personal data, as well as his lawsuit before the Multi-member Court of First Instance of Athens. Furthermore, as the complainant points out, the document in question was used in a civil dispute, namely in a trial for the custody and maintenance of minors, in the context of which any reference to his professional career was completely unrelated - according to his claims - to the subject of the trial, therefore the defendant exceeded the necessary measure and the provisions of the legality of the processing, given that even if the letter in question responded to his own claim, it would have been sufficient simply to refute said claim and not to use the document. Finally, he complains that his right to information about the processing in question and the right to access data concerning him.her claims states that the Respondent, the complainant's memorandum complained of with the Authority's protocol number C/EIS/8192/15-12-2021 focused on the letter from ..., from the content of which, however, as the complainant claims, it is clear that no censure or suspicion of professional inadequacy of the complainant is mentioned, there is no characterization that affects the honor and reputation of the complainant, nor is there any element that violates his personal data. Regarding the reasons that obliged the Chairman of the Board of Directors. of the company in the drafting of the letter from ..., as the

complainant further claims, the Chairman of the Board of Directors of the company took the above action following a request/request by the complainant's ex-wife herself through her attorney, due to what the complainant was spreading and he falsely argued before the competent courts in which the fierce dispute with his ex-wife was continuing and also before the wider family environment. And according to the claims of the complainant, the President of the Board of Directors. of the company drafted the letter, at the request/request of the complainant's ex-wife, but also to defend her and the company's rights, as well as to defend the honor and reputation of her name. 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 (EU) 2016/679 – hereinafter "GDPR") 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, of 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 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 "ELMI SYSTEMS HELLENIC MACHANOGRAPHIC SYSTEMS S.A.", since the reported violations of the rights of access, opposition and restriction of processing, as well as of the illegal processing relate to personal data, which are included in or come from the filing systems of the company "ELMI SYSTEMS HELLENIC MECHANICAL SYSTEMS S.A." and fall under the regulatory scope of articles 2 par. 1 of the GDPR and 2 of Law 4624/2019. Besides, the supervisory authority cannot legally refuse to exercise its competence to examine a complaint for illegal processing of personal data and, if there is a legal case, to order the appropriate measures or to impose an administrative fine in an effective, proportionate and dissuasive manner, for the reason that an action by the same natural person is pending before the civil courts against the controller or processor based on the same violation¹. 1 See paragraph 10 of no. 561/2022 of the decision of the Council of Ministers (Section D), 1st Publication LAW. 2. Because, with article 5 par. 1 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data (hereinafter GDPR) the principles that must govern a processing are determined. According to paragraph 1 it is defined that: "1. Personal data: (a) are lawfully and legitimately processed in a transparent manner in relation to the data subject ("legality, objectivity and transparency"), [...] (c) are appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization") [...]. In addition, according to the principle of accountability introduced by the second

paragraph of the aforementioned article, it is expressly stated that the data controller "bears the responsibility and is able to demonstrate compliance with paragraph 1 ("accountability")". This principle, which is a cornerstone of the GDPR, entails the obligation of the data controller to be able to demonstrate compliance. In addition, it enables the data controller to be able to control and legally document a processing carried out in accordance with the legal bases provided by the GDPR and national data protection law.

3. Because, article 6 par. 1 sec. s of the GDPR defines the following: "1. The processing is lawful only if and as long as at least one of the following conditions applies: [...] f) the processing is necessary for the purposes of the legal interests pursued by the controller or a third party, unless the interest or the fundamental rights and freedoms of the data subject which require the protection of personal data, in particular if the data subject is a child". Furthermore, according to Recital No. 47 of the GDPR "The legitimate interests of the controller, including those of a controller to whom the personal data may be disclosed or of third parties, may provide the legal basis for the processing, under the condition that they do not override the interests or fundamental rights and freedoms of the data subject, taking into account the legitimate expectations of the data subjects based on their relationship with the controller." In this regard, the CJEU² defined three conditions which must be met cumulatively in order for the processing of data on the basis of "legitimate interests" to be lawful. Specifically, as stated in paragraph 28 "In this regard, Article 7, point f, of Directive 95/46 provides for three cumulative conditions for the lawful processing of personal data and namely, firstly, the pursuit of a legitimate interest on the part of the controller or of the third party or third parties to whom the data is communicated, secondly, the necessity of processing the personal data to achieve the intended legitimate interest and, thirdly, the condition that the fundamental rights and freedoms of the person concerned by the protection do not take precedence of the data".

4. Because, according to the provision of 9 par. 1 of the GDPR "The processing of personal data that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs or membership in a trade union is prohibited, as well as the processing of genetic data, biometric data for the purpose of indisputable identification of a person, data concerning health or data concerning a natural person's sexual life or sexual orientation". And according to paragraph 2 of the same article "Paragraph 1 does not apply in the following cases: [...], f) the processing is necessary for the establishment, exercise or support of legal claims or when the courts act in their judicial capacity". As the Authority has consistently judged, the terms and conditions of the legality of the processing of sensitive personal data are also applied to the processing of simple personal data³. Therefore, as 2 CJEU, C-13/16, *Valsts policijas Rīgas reģija pārvaldes Kārtības policijas pārvalde v. Rīgas pašvaldības SIA "Rīgas satiksme"*, 4 May 2017.

3 See, for

example, the Authority's decisions 27/2001, 75/2001, 61/2003, 8/2005, 75/2005, 25/2006, 148/2011, available on the website of the Authority, www.dpa.gr legitimate interest according to article 6 par. 1 item (f) of the GDPR also means the foundation , exercising or supporting legal claims.

5. Because Article 13 of the GDPR provides with regard to the data subject's right to information that: "1. When personal data concerning a data subject is collected from the data subject, the data controller, upon receiving the personal data character, provides the data subject with all of the following information: a) the identity and contact details of the controller and, where applicable, the representative of the controller, b) the contact details of the data protection officer, where applicable, c) the purposes of the processing for which the personal data are intended, as well as the legal basis for the processing, d) if the processing is based on Article 6 paragraph 1 letter f), the legitimate interests pursued by the controller or a third party, e) the recipients or categories of recipients of the personal data, if any, f) as the case may be, the controller's intention to transfer personal data to a third country or international organization and the existence or absence of a decision of adequacy of Commission or, in the case of the transmissions referred to in Article 46 or 47 or in the second subparagraph of Article 49(1), a reference to appropriate or suitable guarantees and the means of obtaining a copy thereof or where they were made available.' In addition, according to paragraph 3 of the same article, "when the controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the controller shall provide the data subject, before said further processing, information for this purpose and any other necessary information, as referred to in paragraph 2".

6. Because Article 15 GDPR paras. 1, 3 and 4 of the GDPR provides that: "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 so, the right to access the personal data and the following information: [...] 2. [...] 3. The controller shall provide a copy of the personal data being processed. [...] If the data subject submits the request by electronic means and unless the data subject requests otherwise, the information shall be provided in a commonly used electronic format. 4. The right to receive a copy referred to in paragraph 3 does not adversely affect the rights and freedoms of others.' 7. Because, further, Article 18 of the GDPR regarding the right to limit processing states: "1. The data subject is entitled to obtain from the controller the restriction of processing, when one of the following applies: (...) 2. When processing has been restricted in accordance with paragraph 1, the personal data in question, except for storage, are processed only with the consent of the data subject or for the establishment, exercise or support of legal claims or for the protection of the rights of another natural or legal person or for reasons of significant public interest of the Union or a Member State." 8. Because, subsequently, Article 21 GDPR regarding

the right to object provides: "1. The data subject has the right to object, at any time and for reasons related to his particular situation, to the processing of personal data concerning him, which is based on Article 6 paragraph 1 letter e) or f), including profiling under the provisions in question. The controller no longer processes the personal data, unless the controller demonstrates compelling and legitimate reasons for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or support of legal claims." 9. Because, further, in article 77 paragraph 1 of the GDPR it is defined that "Without prejudice to any other administrative or judicial appeals, each data subject has the right to submit a complaint to a supervisory authority, in particular in the member state in which he has the usual his residence or his place of work or the place of the alleged infringement, if the data subject considers that the processing of personal data concerning him infringes this regulation". 10. Because, in this case, the complainant with his complaint complains about: a) non-fulfillment of the right of access, because according to his claims, the complained-about company did not provide him with copies of the requests or decisions of each person who requested information about him, which led to the drafting of the disputed letter by ..., copies of the evaluations concerning him as a partner of the company, a copy of any certification granted to third parties regarding his person, a copy of any contractual document between the complained company and the complainant, b) violation of the right to restriction of processing, as well as c) violation of the right to object. Finally, the complainant complains of illegal processing, arguing with regard to the above letter from ..., that the letter from ... drafted by the president and CEO of the complained company and its issuance to his ex-wife in the context of the pending litigation was done as exceeding the principle of limitation of purpose, minimization and confidentiality, while – according to his claims – the criminal offense of article 38 of Law 4624/2019 is also established. In particular, first with regard to the right of access exercised by the complainant, from all the elements of the case file as well as from the hearing, it appears that the complainant on ... replied to the complainant that the content of the documents he requested was fully known to him in the capacity of a party, while stating that it does not keep a file of evaluation documents of its partners. As regards the requested information, and as specifically specified by the complainant, namely i) the prosecutor's order of Mr. Athens First Instance Prosecutor, ii) the certificate of salaries-fees-compensations that the complainant received from the complainant, and iii) the ... private salaried standing order agreement between the complainant and the complainant, from the data in the file it appears that the complainant does not dispute the above claim of the complainant, nor does he further reinstate the original request for their granting. On the contrary, with his supplementary request to the Authority under Protocol No. C/EIS/3894/14-06-2021, the

complainant only reinstates the request to grant him the termination of the salaried standing order of cooperation, and additionally requests to be granted copies of the applications or "decisions" submitted by his ex-wife and her attorney-in-fact which resulted in the writing of the letter in question. Moreover, from the entire case file and the hearing process, it appears that the alleged violation of the right of access is based on the drafting of the letter from ... by the president and CEO of the complainant, B and its delivery to the complainant's ex-wife in the context of a pending litigation, which is discussed immediately below. With reference to the above requests of the complainant, the Authority judges, taking into account the Guidelines 1/2022 of the European Data Protection Board regarding the rights of data subjects - right of access⁴, that the re-requested by ... solution of the salaried standing order of cooperation, constitutes the complainant's personal data, which the complainant is obliged to provide. On the contrary, the requested copies of applications or "decisions" submitted by his ex-wife through his lawyer's power of attorney, by virtue of which the letter in question was issued, did not appear in principle to be kept in the file of the complainant in order to establish the Authority's competence to check the complaint according to article 2 par. 1 of the GDPR and 2 of law 4624/2019. In the event, however, that the above requested information has actually been submitted in writing and included in a filing system, the complained-about company 4 See Guidelines 1/2022 on data subject rights - Right of access of the EDPS from 18.01.2022 under public consultation, sc. 28, available at https://edpb.europa.eu/our-work-tools/documents/public-consultations/2022/guidelines-012022-data-subject-rights-right_en owes fulfillment of the obligation arising from the article 15 of the GDPR to grant them to the complainant. Secondly, with regard to the alleged violation of the right to restriction of processing as well as the right to object, the complainant does not specify what the violations of said rights consist of, nor does he provide any other information regarding the validity of his claims. Finally, with regard to the alleged illegal processing which consists, according to the complainant's claims, in the illegal granting to his ex-wife and presentation by the latter of the letter in question from ... before the civil courts, as appears from all the elements of the case file but and from the hearing process, taking into account the decision of the Supreme Court 561/2022⁵, it appears that the letter in question contains personal data concerning the complainant, and it came from the filing system of the complained-about company, but it was legally further processed. And this is because the ex-wife of the complainant to whom the disputed letter was granted is a third party, who has a legal interest in accordance with the provisions of 6 par. 1 item f of the GDPR for its grant, for the purpose of exercise and support of her legal rights before the competent courts according to article 5 par. 1

element a' of the GDPR. In particular, the Authority considers that the disputed letter legally was processed in support of the former's ... lawsuit spouse of the complainant before the Single Member Court of First Instance of Athens (with requesting that she be assigned sole custody of the minor children as well as the payment by the complainant to her, on behalf of them minor children, alimony) and to rebut it from ... his counterclaim complainant. Besides, it appears from the entire case file that the complainant in the request for injunctive measures regarding personal regulation of communication with the minor children himself put forward the claim that he had "as soon as he was dismissed suddenly and without reason from a company... [...], ELMI SA, 5 Sk. 10.

where for many years I provided services for remuneration"

(see it

submitted by the accused - with her pleading and with Authority protocol number C/EIS/8192/15-12-2021- relevant 11 excerpt from of the relevant insurance application) and therefore its processing (issuance). of disputed letter was justified in rebutting the allegations which were presented in the context of the above-mentioned request for interim measures, as well as the main trial between the complainant and his ex-wife which followed.

In addition, the claim he puts forward is rejected as unfounded the complainant for violation of the principle of minimization according to article 5 par. 1, subsection (c) of the GDPR, according to which it was sufficient to deny the allegation of the termination of his cooperation with the complained-about company due to relationship of his ex-wife with the Chairman of the Board of Directors of the company, and no it was necessary to include in the letter a mention of the reasons for the termination of the cooperation.

And this because the Authority considers that the rebuttal was justified (according to view of the complainant's ex-wife) of his relevant allegation complaining about sudden and unjustified dismissal from a company relatives of his ex-wife, ELMI SA. which, as stated above, the complainant himself raised the application for injunctive relief on regulation of his personal communication with his minor children.

However, the Authority considers that the complained company, as responsible processing failed to inform the complainant of its granting disputed letter from ... to his ex-wife in violation of the provisions in the provisions of article 13 par. 3 of the GDPR, depriving him, with this omission, the right to object to the controversial processing of data concerning it, in accordance with the provisions of its provisions Article 21 of the GDPR.

The beginning,

(a) Dismisses in part as without merit the complaint of violation of rights of access, restriction and objection, as thoroughly analyzed

FOR THOSE REASONS

company "ELMI

in paragraph 10 hereof.

(b) Gives an order pursuant to article 58 paragraph 2 item c of the GDPR to the complained company "ELMI SYSTEMS HELLENIC ENGINEERING SYSTEMS S.A." such as grant the complainant the from ... solution of the salaried standing order cooperation in fulfillment of the right of access according to Article 15 GDPR to personnel data character included in system archiving and a relevant request has been submitted by the complainant,

as well as, the requested copies of applications or "decisions" submitted by
ex-wife of the complainant through his power of attorney in
reported

SYSTEMS GREEK TYPEWRITER

SYSTEMS SA", pursuant to which the disputed letter was issued, since
they have been submitted in writing and,

(c) finds that the granting of the impugned letter by ..., in which

personal data of the complainant are included, from

reported

SYSTEMS GREEK TYPEWRITER

SYSTEMS S.A." to the ex-wife of the complainant for her purpose

support and refutation of her rights in the judicial context

dispute between them over the custody and maintenance of their minor children,

without prior notification of the complainant, was made in violation of it

provision of article 13 par. 3 GDPR, and addresses the complained "ELMI

SYSTEMS HELLENIC COMPUTER SYSTEMS SA", as responsible

processing, reprimand according to article 58 par. 2 item b for this violation.

The Deputy President

The Secretary

company "ELMI

George Batzalexis

Irini Papageorgopoulou