

Athens, 26-08-2021 Prot. No.: 1946 DECISION 29/2021 (Department) The Personal Data Protection Authority convened, at the invitation of its President, in a regular meeting in the composition of the Department at its headquarters on 17/2/2020 and 10:00 a.m., in order to examine the case referred to in the present history. The meeting was attended by teleconference by Georgios Batzalexis, Deputy President, in opposition to the President of the Authority, Konstantinos Menoudakos, and alternate members Grigorios Tsolias and Evangelos Papakonstantinou, as rapporteur, attended. They did not attend due to disability, although regular members Charalambos Anthopoulos and Konstantinos Lambrinoudakis were legally summoned in writing. The meeting was attended, by order of the President without the right to vote, by Haris Symeonidou, specialist scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Administrative Department of the Authority, as secretary. The Authority took into account the following: With the no. prot. C/EIS/4465/29-06-2020 his complaint, A reported to the Authority the refusal of the Pedagogical Center for Creative Employment "o Fragolinos" (N. DAMIANIDOU - CH. LIOTSAKI O.E., hereinafter "KDAP") to satisfy his right of access to personal data that he requested and which concern his minor child, B. In particular, according to the complaint, on 18.2.2020 the complainant requested with an out-of-court statement - protest and invitation to KDAP to grant him the document which concerns the initial registration application of his minor child, B. Subsequently, at 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 5.5.2020 the complainant repeated the his above request with a Responsible Declaration, which he sent by email to the same KDAP, and with which he additionally requested detailed tuition payment receipts for each month of his child's accommodation there, as well as information on the billing policy for the period the station was closed in frame of the measures to deal with the Covid-19 pandemic in accordance with the relevant KYA. The complained KDAP refused to satisfy these requests, with its message from 5.5.2020 to the complainant's lawyer, Mr. Oikonomopoulos, in which he stated the following: "we have never had any financial or any other transaction with Mr. A except the of our effort to inform him about the progress and development of his child. He turned this effort into a complaint to the police by calling the hundred to our school while informing parents" and on the grounds that "After the incident we have no relationship with Mr. A nor any obligation to any of his demands, since even before the our own effort, he was never interested in getting to know us and getting to know the environment where his son would study." For the same reasons, the complained KDAP did not satisfy the complainant's later request on 8.5.2020, in which he requested, in addition to the initial registration application, the other amendments and the other individual documents kept in the individual file of his minor child. In its email reply to the complainant dated 8.5.2020, the complained KDAP clarified

that the non-satisfaction of the above request of the complainant is due to the fact that the said documents "do not bear the signature of" the complainant, that he "has no financial transaction has not" with it and expressly stated that it will not share documents unrelated to the applicant on the grounds that "we are obliged to respect the privacy and security of our customers". The Authority, in the context of examining the above complaint, with no. prot. G/EX/4465-2/15-07-2020 its document, requested the complained KDAP to immediately satisfy the above-mentioned right of the complainant in accordance with article 15 par. 1 and 3 GDPR and to inform the Authority accordingly. In more detail, the Authority pointed out, among other things, that the question of the right of access of the parent, who exercises parental care and does not have custody, to the data of his minor child, has already been resolved by the Authority. Specifically, according to the Authority's standing jurisprudence (see for example decisions 4/2020, 24/2009 and 53/2010) the parent exercising parental care has in principle the right of access of the aforementioned article 15 GDPR, in combination with articles 128 and 1510 AK, in the 2 items that refer to his minor child, unless otherwise provided by a court decision, e.g. a decision designating the other parent as exercising parental care, a decision to prohibit communication with the child, etc. The data controller is obliged to immediately satisfy this right. Then, with the no. prot. C/EIS/5275/27-07-2020 and C/EIS/5674/19-08-2020 his supplementary documents to the Authority, the complainant stated that he had not received any response from the complained KDAP. Subsequently, the Authority, with no. prot. C/EX/4465-3/28-09-2020 its reminder document to the complained company, again invited it to respond regarding its actions. Following this, with the no. prot. C/EIS/7286/22-10-2020 his response letter, the complained KDAP stated that since September 2019 he had repeatedly called the complainant to inform him in general about his minor child's schooling, and the complainant, according to with this letter, on some occasions he did not attend (... , on ... and on ...), while on others he appeared either creating a disturbance due to his dispute with his ex-wife and the mother of their minor child (on ...) or persistently asking for various documents and calling the police (at ...). Further, as stated in the above letter, "The school from March 11 to the end of May was closed by public order due to covid-19 and from June to July 17 which was the end of the 2019-2020 school year, no assembly was held so that that Mr. A should be notified and participate. Throughout May, with the school closed, Mr. A bombarded us with threats and demands in an inappropriate manner. [...]" and there is a file with all the updates that have been given or sent by email to Mr. A as requested by the Authority, and it is always available to the Authority, while a tuition certificate has also been issued, which was requested in the context of a legal dispute , as informed by the child's mother. According to the complained Center, "this means that the costs of

the school are not hidden, moreover they are communicated to all parents". With reference to the tax documents - receipts, the KDAP claimed that the receipts "have all the details of the mother and not the child (as directly liable for the payment of tuition fees)" and asked - in its letter of 22.10.2020 - the Authority if it is obliged to communicate them to the complainant. Finally, with its response, the KDAP stated that the complainant was creating a negative climate, characterized the latter's style as "argumentative and disparaging", "not in line" with the philosophy of the Center and, concluding, underlined that the KDAP always acts in the interest of the of minors. 3 Subsequently, the Authority, with no. prot. C/EX/4465-4/19-11-2020 and C/EX/7950/19-11-

2020 Summons invited the parties involved to a hearing, via video conference, at the departmental meeting of 26.11.2020. During the hearing, the parties developed their views and were given a 10-day deadline to submit briefs. During the hearing on 26.11.2020, the complainant, A, and the legal representatives of the complained KDAP, Nikoletta Damianidou and Chariklia Liotsaki, were present via video conference. The above-mentioned attendees, after orally developing their opinions, then submitted their relevant memoranda to the Authority. Both orally during the hearing and with his Memorandum dated 4.12.2020, the complainant argued that the complained Center illegally does not satisfy his right of access to his minor child's data. In particular, he argued that the alleged KDAP never respected the exercise of parental care on his part, on the contrary, it acted disparagingly against him as a father, an argument he based on various facts from the relationship between them. With regard to his request to receive his child's initial registration application at KDAP, the complainant claimed that a) the relevant document was sent to him with a long delay of several months (in ...), b) that this document had covered the details of the former of his wife, in contrast to the child's birth certificate which was sent to him at the same time by KDAP without him having requested it, c) that this document was not, in his opinion, the one requested, as it did not include his correct contact information, had data that was filled in after the fact and had missing fields. The complainant pointed out that, in his opinion, it was questionable why the complained Center was only convinced on 22/10/2020 to send him the relevant document, despite the no. C/EX/4465-2/15-07-2020 response document that he had already received from the Authority and with which he had been asked to satisfy the complainant's request. He also emphasized that KDAP was not interested earlier in clarifying whether it had the relevant obligation, even though the complainant's request had been submitted since February 2020, and as proof of his claims he presented all of his correspondence with KDAP officials. (under no. prot. C/EIS/8339/4-12-2020) the With the memorandum of 4.12.2020 the complainant KDAP claimed that he did not know whether he should have

communicated to the complainant the tax information he had issued for his studies of his child and included personal data (name, tax number and address) of a third person (his ex-wife) and that he finally provided them to the complainant after 4 informing his ex-wife, at the suggestion of the Ombudsman. In fact, after the hearing of the parties before the Authority, with the 4.12.2020 e-mail of the KDAP to the complainant notified to the Authority (prot. no. C/EIS/8338/04-12-2020), the Center satisfied the complainant's right of access to his child's tax documents, covering some of the mother's information (address, VAT number and DOU), accompanied by an explanatory document entitled "CLARIFICATION OF TUITION", which stated the following: "Ms A, on the receipts that you have already received the entire amount is 550 euros less than our already known tuition fees, due to a refund of the above amount for the period of quarantine in the 2019-2020 School Year, due to COVID-19". Following this, the complained Center stated that it had sent all the requested documents to the complainant. It is also noted that to a relevant question of the Rapporteur during the hearing, the representatives of the complained KDAP replied that they have not followed any GDPR compliance procedure so far. The Authority, from the hearing procedure, from the elements of the case file, as well as from the memoranda submitted to the Authority and after hearing the rapporteur and the assistant rapporteur, who left after the discussion of the case and before the conference and the taking a decision and after thorough discussion, CONSIDERED IN ACCORDANCE WITH THE LAW 1. Article 5 of the General Regulation (EU) 2016/679 on the protection of natural persons against the processing of personal data (hereinafter GDPR) sets out the principles that must govern a processing. According to the principle of accountability introduced by the said article and expressly defined in its second paragraph, the controller "bears the responsibility and is able to demonstrate compliance with paragraph 1 ('accountability')". This principle is a central dimension of the new compliance model introduced by the GDPR, in the context of which the data controller is obliged to plan, implement and generally take the necessary measures and policies, in order for the data processing to be in accordance with the relevant legislative predictions. In addition, the data controller, in accordance with this principle, is burdened with the further duty to demonstrate by himself and at all times his compliance with the principles of Article 5 para. 1 GDPR, both to the data subject, and , in particular, before the data protection supervisory authorities 5. 2. According to article 15 par. 1, 3 and 4 of the GDPR "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 to the following information: [...] 2 [...] 3. The controller shall provide 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.' 3. According to article 12 GDPR "1. The controller shall take appropriate measures to provide the data subject [...] with any communication under Articles 15 [...] 2. The controller shall facilitate the exercise of the data subjects' rights provided for in Articles 15 [...] 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 data controller does not act on the data subject's request, the data 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 for the possibility of submitting a complaint to a supervisory authority and bringing legal action." 4. According to Article 3 para. a' of Law 4624/2019, the provisions of said law apply to private entities, among others, if "a) the data controller or the data processor processes personal data within the Greek Territory", while according to article 9 of the same law "the supervision of the implementation of the provisions of the GDPR, this and other regulations concerning the protection of the individual against the processing of personal data in the Greek Territory is exercised by the Authority established with the Law 2472/1997 (A'50)". 5. According to art. 31 GDPR "The controller and the processor and, where applicable, their representatives shall cooperate, upon request, 6 with the supervisory authority in the exercise of its duties." Furthermore, in accordance with the provisions of article 58 paragraph 2 of the GDPR in combination with the provisions of article 15 paragraph 4 et seq. of Law 4624/2019 the supervisory authority has the corrective powers provided for in said provisions against the data controller, when the latter has violated provisions of the GDPR and Law 4624/2019, including the powers "c) to instruct the controller or the processor to comply with the data subject's requests for the exercise of his rights in accordance with this regulation" and "i) to impose an administrative fine pursuant to article 83, in addition to or instead of the measures referred to in this paragraph, depending on the circumstances of each individual case" 6. Because according to established jurisprudence of the Authority (see indicatively relevant decisions 24/2009, 53/2010 and 4/2020 of the Authority, published on the website of www.dpa.gr) the person exercising parental care of his minor child (art. 128 and 1510 AK) in principle, as his legal representative, has the right of access of the above article 15 to the data referring to his minor child (see indicatively relevant decisions 24/2009 and 53/2010 of the Authority, published on the website of www.dpa.gr), unless otherwise provided by a court decision (e.g. a decision defining the other parent as exercising parental care, a decision prohibiting communication

with the child etc). 7. In this case, from the information in the file, and from what emerged from the hearing, the following was established: The complainant, with his requests of 18.02.2020 and 05.05.2020, legally exercised the right of access on behalf of his minor child before the complained KDAP, exercising parental responsibility. Specifically, the complainant requested from the complained Center 1) his child's initial registration application, accompanied by other amendments and other individual documents kept in his son's individual file, 2) copies of tuition payment receipts for all months up to the submission of the request, 3) information on the billing policy during the entire period that the Center did not provide services due to the extraordinary measures to deal with the COVID-19 pandemic. Initially, the Center did not satisfy the above request, on the grounds that it protects the personal data of its customers, as the complainant had no dealings with it and therefore was not its customer. Furthermore, as can be seen from the history of the present, and despite the sending of two documents (on 15.07.2020 and on 28.09.2020) by the Authority to the Center, pursuant to which an order was given to comply, with no. prot. C/EIS/7286/22-10-2020 his response letter, the KDAP did not answer on 7 of the substance whether or not it satisfied the complainant's right of access regarding the requested documents. In particular, with regard to the request for initial registration of the complainant's child, there was no clear explanation, while it was not clearly established whether the position of the complained-about Center regarding the third requested document (billing policy during the pandemic) was that the complainant had been informed about it via e-mail. Especially with regard to the tax documents - proofs of the complainant's child's schooling, the KDAP did not take a clear position in its response letter dated 22.10.2020, on the contrary, it asked the Authority if it has an obligation to notify the complainant of receipts that have been cut in the name mother's. It should be noted that in this case, the complainant requested the relevant documents as regarding his minor child's schooling at KDAP, i.e. exercising the right of access in the context of exercising parental care, on behalf of the child, and without having to invoke the reason for from whom the relevant documents are requested. Since KDAP claims that these are documents that contain (also) personal data of a third party (ie mother of the minor), the judgment on the possibility of granting them to the applicant, as a third party now, it is up to the controller, who will have to decide on the legality of the relevant processing, in accordance with the terms of art. 6 par. 1 GDPR. THE relevant decision of the controller, positive or negative, should be documented in the framework of the basic principle of accountability of no. 5 par. 2 GDPR. Such as,

after all, it was decided in the Authority's decision 4/2020, "even if it is accepted that the relevant tax documents also constitute the mother's personal data, as by paying the relevant amount indicated on them, his right of access father exercising parental care in the data of his child may be limited and therefore to be prohibited, only if the rights and freedoms of others, i.e. the mother, in accordance with article 15 par. 4 GDPR. Simple denial and opposition of the mother for the Center to grant the requested documents combined with the lack of invocation of adverse effect on rights and liberties of the mother, in no case can be an obstacle to satisfaction of the right of access. After all, the Center within its principle accountability, should have considered whether there was a question of adverse effect on rights and the liberties of the mother, in order to justify not satisfying the sub right of access crisis". In this case, the complained KDAP did not satisfy it complainant's right of access to the tax documents, but only afterwards since many months, on 04.12.2020, after the hearing process and in view of submitting

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of his written memorandum to the Authority, covering the postal address, VAT number and the mother's social security number.

8.

Finally, the complained Center, on the one hand, did not comply with the relevant order (under prot. no. C/EX/4465-2/15-07-2020) of the Authority for satisfaction of the right access of the complainant to the personal data of his minor child, on the other hand, he sent his views to the Authority on the first, one month after the mission of the second reminder (prot. no. C/EX/4465-3/28-09-2020) document of the Authority.

9.

Based on the above, the Authority decides that there is a case to exercise them

according to article 58 par. 2 of the GDPR its corrective powers in relation to the established violations and that it should, based on the circumstances established, be imposed, according to application of the provision of article 58 par. 2 sec. i' of the GDPR, effective, proportional and dissuasive administrative fine according to article 83 of the GDPR, both to restoring compliance, as well as punishing illegal behavior¹.

10.

Furthermore, the Authority took into account the criteria for measuring the fine which are defined in article 83 par. 2 of the GDPR, paragraph 5 of the same article that has application to the present case and the Guidelines for the application and the determination of administrative fines for the purposes of Regulation 2016/679 which were issued on 03-10-2017 by the Article 29 Working Group (WP 253), as well as the factual data of the case under consideration and in particular:

a) the nature, gravity and duration of the violation, in view of the nature, extent or the purpose of the relevant processing, as well as the number of subjects data affected by the infringement and the degree of damage suffered, namely: the fact that the complained KDAP did not satisfy until late several months and only after the intervention of the Authority, the right of access exercised by the complainant on behalf of his minor child pursuant to Article 15 par. 1, the fact that the complained Center did not comply with the from 15.07.2020 an order from the Authority to satisfy the complainant's right of access, nor however, he responded within the set deadline to the reminder from 09.28.2020 Authority document.

ii.

i.

¹ See OE 29, Guidelines and the application and determination of administrative fines for

the purposes of Regulation 2016/679 WP253, p. 6

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iii.

iv.

the fact that non-compliance with the order of the Supervisory Authority as well as

violation of the provisions on the rights of subjects subject to

in accordance with the provisions of article 83 par. 5 sec. b', e' and par. 6 of the GDPR in

higher prescribed category of the administrative grading system

finest,

the fact that the right exercised by the complainant was finally satisfied with

delay and wrongfully, as the complained KDAP notified them

tuition receipts with his ex-wife's details blacked out

complainant while he also communicated to him documents that were not requested (registry

birth certificate of his child),

the fact that the infringement in this case concerns a single subject,

b) the fraud or negligence that caused the breach

The long delay in satisfaction on the part of the complained KDAP

of the complainant's right of access was the result of insufficient knowledge

and application of the provisions of the GDPR attributable to negligence and therefore

is taken into account in mitigation in relation to the possibility that it had taken place with malice.

c) the actions taken by the complainant to mitigate the damage that

suffered by the data subjects and the degree of cooperation with the Authority for the

remedying the breach and limiting its potential adverse effects

The complained KDAP after receiving knowledge of the complaint and despite the relevant

from 15.07.2020 order of the Authority did not immediately satisfy the right of access he had

exercised by the complainant nor did he provide any response to the Authority, while and after the

second reminder document from the Authority from 28.09.2020, the KDAP did not comply fully in its relevant mandate, but on the contrary, almost a month later (22.10.2020) addressed questions to the Authority regarding his obligation to notify them tax documents that had been cut from his ex-wife's details complainant. The above demonstrates the Center's lack of cooperation, as data controller, with the Authority and minimal interest in its rectification violation.

d) the increased responsibility of the complained KDAP as data controller due to of insufficient technical and organizational compliance measures and specifically due to

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absence of appropriate procedures to facilitate the exercise of their rights subjects, since he was unable to recognize his request complainant for access to the data of his minor child as such nor to proceed to his satisfaction even after the relevant order of the Authority.

e) the absence of previous violations of the reported KDAP as from a relevant check shows that it has not been imposed on the complained Center to date administrative sanction from the Authority.

f) the fact that the personal data affected by the breach do not fall under the categories of articles 9 and 10 of the GDPR, according to the data provided were brought to the Authority's attention.

g) the fact that the complained KDAP did not respond to the order of 15.07.2020 of the Authority to satisfy the complainant's right and for information about it with her actions but required a reminder letter from her Principle.

h) the small size of the business.

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

reported KDAP as controller or referred to in the ordinance

administrative sanction, which is considered proportional to the gravity of the violation.

FOR THOSE REASONS

THE BEGINNING

1. Mandates the Model Educational Center for Creative Employment "O

FRAGOLINOS" N. DAMIANIDOU - C. LIOTSAKI OE. the effective, proportional

and dissuasive administrative fine appropriate to the particular

case, according to its special circumstances, amounting to three thousand

(3,000) euros for the above found violation of article 15 par. 1 GDPR

and 12 par. 1, 2 GDPR, in accordance with articles 58 par. 2 item. i' and 83 par. 5 item

II GDPR.

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2. Mandates the Model Educational Center for Creative Employment "O

FRAGOLINOS" N. DAMIANIDOU - C. LIOTSAKI OE. the effective, proportional

and dissuasive administrative fine appropriate to the particular

case, according to its special circumstances, amounting to five thousand

(5,000) euros for non-compliance with an order of the Authority in accordance with articles 58

par. 2 item i' and 83 par. 5 item e and 6 GDPR.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

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