

Athens, 07-09-2021 Prot. No.: 2020 DECISION 40 / 2021 The Personal Data Protection Authority met, following the invitation of its President, in a regular meeting at its headquarters on 03-03-2020 at 10:00, following the meetings of 23-04-2019, 17-12-2019 and 25-02-2020, in order to examine the case referred to in the history of this case. Konstantinos Menudakos, President of the Authority, the regular members Spyridon Vlachopoulos, Charalambos Anthopoulos, Konstantinos Lambrinoudakis and Eleni Martsoukou, who has been appointed rapporteur, to replace the initially appointed rapporteur alternate member Georgios Nouskalis, whose term of office ended on 30- 07-2019. The meeting, without the right to vote, was attended, by order of the President, the auditor Eumorphia - Iosifina Tsakiridou, specialist scientist - legal, as assistant rapporteur, who left after the discussion and before the conference and the decision-making, and Irini Papageorgopoulou, employee of the Department of Administrative Affairs, as secretary. The Authority took into account the following: With no. prot. C/EIS/9304 and 9305/28-12-2017, 182/09-01-2018, 254, 288 and 296/12-01-2018, 328 and 361/15-01-2018, 1305 and 1306/ 14-02-2018 their complaints to the Authority, A, B, C, D, E, F, Z, H, I, I, K and L (hereinafter complainants), are directed against the Thessaloniki Urban Transport Organization (OASTH) , in the capacity of (former) shareholders, complaining about illegal processing of their personal data by the President of OASTH, with the publication of Kifisias Avenue 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) 1 of their names at a press conference given by the President of OATH on ... and the publication of a list of 29 (former) shareholders, which was included in a relevant OATH press release released on the same day (see email from OASTH Press Office, dated ... and subject "O.A.S.TH Administration Press Interview Material..."). In particular, the following are mentioned in these complaints: In a press conference of the President of the OASTH, which took place in Thessaloniki on ..., after the entry into force of Law 4482/2017, they were made public without their consent or consent and without any prior information their personal data, which in fact were incompletely presented and incorrectly combined as a result of their personal data being illegally published in the press, on the internet and on social media and giving false impressions and information about their person. Specifically, according to the complaints, the details of 29 people, including the complainants, were shared, which, in addition to their names, their percentage of participation in the share capital of OASTH, the acquisition price in euros and the date of the acquisition contract. The Authority, in the context of examining the above complaints against the Thessaloniki Urban Transport Organization, with the no. 12/2019 Decision, invited the OATH to present its views and answer the following questions: a) whether the data of the shareholders disclosed during the aforementioned press conference by the President of the OATH had already been made public or had already become more

widely known, b) if this data previously existed in the file of the OASTH or in another file accessible by the OASTH or was notified to the Organization first with the 06-11-2017 out-of-court declaration - protest - invitation of the complainants, c) the procedural actions, in which either the OATH or the above shareholders had done, before the above interview and the issuance of the relevant press release of ..., d) if the shareholders, whose names were made public, constitute the totality of the shareholders, and in any case to document the reasons for which the specific 29 names were made public, and e) if the complainants, as 2 subjects of the data, exercised any right (right of access support/objection), and in an affirmative case, to send the relevant response of the OASTH or to state the reasons why the Organization did not respond and/or did not satisfy the relevant request. The OASTH, with no. prot. ... /... his document (G/EIS/4292/18-06-2019), first of all states that the issues concerning the operation of OASTH, including the data related to its shareholders, were of great concern to the city of Thessaloniki, especially in recent years. This is not apparent from most publications (see, for example, cited publications from ...). Furthermore, a few months before the OASTH was put into liquidation, the city of Thessaloniki suffered from the multi-day strike of the workers, who were protesting, among other things, about the payment of dividends to the Organization's shareholders and the non-payment of their due salaries. This strike was a central political issue not only for Thessaloniki (where it monopolized interest for understandable reasons) but also for the whole country. In addition, the developments launched under Law 4482/2017 were one of the most discussed issues of ..., while the legal remedies of the interested parties (former shareholders) attracted the most intense journalistic interest, as a result of the engagement of the city's passenger public with the news data. According to the claims of the OASTH, two years after the acquisition of the OASTH by the Greek State, the Organization continues to occupy the central political scene, with relevant publications being almost daily. Under the above circumstances, there was intense public interest in access to information, and the new administration of the OASTH (under M), as he states, immediately perceived this concern and the need of civil society to obtain a clearer picture of the situation of OASTH which is inextricably linked with her everyday life. In this context, OASTH mentions on the first question that the status of the complainants as shareholders of OASTH was already publicized and known in Thessaloniki, just as the conditions of purchase and sale of the 3 shares were equally known; that the shareholders themselves had ensured that their out-of-court statement - protest - invitation from 06-11-2017 (see, for example, cited publications from ... and ...). After all, the former shareholders of OASTH had, immediately after the entry into force of Law 4482/2017, ensured that repeated events were organized and carried out (assemblies, protests in public places, etc.). Furthermore, the OASTH states that during the

entire period of time preceding the controversial press conference of the President of the OASTH, M, which, it should be noted, took place approximately 1.5 months after the notification of the above extrajudicial statement - protest - invitation and under the pressure from the publications of the local press, the press also published relevant reports on a pan-Hellenic scale every day. He adds that he had to explain to the public, especially the city of Thessaloniki, the real amount of the shareholders' claimed and unpaid business profits, which go back to a period before the nationalization of OASTH and would arise after the end of the liquidation. Regarding the second question, the complained Organization points out that the specific details of the contracts by which the shares of OATH were acquired by the interested parties were previously available to OATH and were not disclosed in the first instance with the 06-11-2017 out-of-court statement - protest - invitation them, but, based on article 18 of Law 3721/1957, from the notification of the relevant contract for the purchase of the shares by the Notary to the President of the Organization. Regarding the third question, the OASTH notes that already before the disputed press conference the complainants had organized ("Shareholder Coordination Committee") and promoted their positions both through the media and through judicial and extrajudicial actions. He points out in particular that the shareholders brought legal remedies before the Council of State and the Court of Appeal of Athens, while on the contrary the same Organization did not take any corresponding action. In fact, he clarifies that the legal aid before the Council of the 4 States was rejected, while the other legal aid is pending before the Athens Court of Appeal. On the fourth question, the OATH states that the 29 shareholders, whose names were made public, do not constitute the totality of the former shareholders. He claims that the names were mentioned in the press conference, because they themselves had widely publicized the mission and its content from 06-11-2017 of their out-of-court declaration - protest - invitation, which includes everything that was presented during the disputed press conference, with the exception of the acquisition price of their shares (or shares of shares), as this was announced by them to the OATH when they were acquired . This element was deemed to be absolutely necessary for the correct and complete information of the public, which the complainants themselves also wanted (see in this regard the cited radio interview of K on ...), because a correct conclusion, according to the OASTH, about of the real amount of the performance of a share can only be extracted if two facts are known: the amount of "profits" -which is mentioned in the extradition for the years 2016 and 2017- and the acquisition price of the share, which is not mentioned in the extra-court, but is written in the transfer contracts that the shareholders themselves had previously transferred to OASTH as required by law. Only from the ratio of these two numerical data can, according to OASTH, be deduced the amount of the "yield", about which the public of

Thessaloniki was and still is reasonably interested, especially due to the earlier greater marketability of OASTH's stock, in view of the multitude of publications and registrations related to the value of the shares (which reached official recommendations not to disclose the true asking price of share sales), but mainly of the greater interest, on a moral level, of the "rightness" or otherwise of the nationalization of the OASTH. On the fifth question, the OASTH argues that some of the complainants had submitted applications requesting that the personal data held by the Organization and concerning them be granted to them, to 5 for submission of more detailed information about the data in question and, according to correct interpretation of the requests, to delete the data from the Organization's archives, but the requests were not answered since, regardless of their vagueness, they were not accompanied by the prescribed fee of 5 euros for exercising the right of access or by the 60 euro fee for exercising the right to deletion (see Regulatory Decision of the Authority with no. 122/1957/2001, Official Gazette B´ 1345). Subsequently, the Authority invited the OASTH, as legally represented, to a hearing at the Plenary meeting of 12-17-2019 (see call with prot. no. C/EX/8544/06-12-2019). During this meeting (on 17-12-2019) attorneys Dimitrios Kyriakopoulos (AM ...) and Michael Vakoufaris (AM ...) came and were heard representing the OASTH, who developed their opinions orally and in a written supplementary memorandum that they submitted on the same day (G/EIS/8798/17-12-2019). Also, the OATH requested and received a deadline for a supplementary memorandum, with every necessary element attached to it, which it then filed on time (13-01-2020) for the full development of its claims (see C/EIS/219/13- 01-2020). The OASTH, according to the statements of its representatives and its supplementary memoranda, states that with the new regulatory framework for urban transport in the Regional Unity of Thessaloniki (law 4482/2017), it was foreseen, among other things, the self-righteous transit of the whole of the movable and immovable property of the OASTH to the Greek State, including the Organization's shares (article 22), as well as the latter's position in special liquidation in operation (article 27), a fact which was one of the most discussed issues of the summer of 2017 and the starting point of intense reactions and mobilizations of the old shareholders and public confrontation between the then administration of the Organization and the former shareholders. That since August 2017, M had been appointed as Chairman of the Board of Directors of OASTH, who remained in this position until August 2019 and participated in the public confrontation, which attracted intense journalistic interest, as a result of the interest of the passenger public of the city of Thessaloniki, among others on the issue of acquisition and transfer of the shares of OASTH. That in this context, the then Chairman of the Board of Directors of OASTH M, granted on his own initiative the press conference from ... and published, according to the above, a list of the absolutely necessary data of the shareholders,

with the obvious purpose of providing relevant information to the interested public , except, however, that he did so in excess of his responsibilities and duties and without the knowledge of the board of directors of OASTH, while during the critical period the administration of OASTH had assigned the organization and operation of a press and public relations office to the company with brand "DAILYTHESS INCL. PROJECT". That during the compilation of the table in question with the details of the former shareholders, the details of two former shareholders, who were not among those who had addressed the external court, namely B and D, were inadvertently included, due to the complexity of the share files and the understaffing of the Office of Shares - Shareholders - Vehicles of the Administration Directorate of the OATH and that, as soon as this was noticed regarding (only) B, the then President of the Organization made a clarifying statement. The Authority, after examining all the elements of the file and those discussed in the 17-12-2019 meeting, after listening to the rapporteur and the clarifications of the assistant rapporteur, who (last) left after the discussion and before the conference and the decision-making, and after a thorough discussion, IT WAS CONSIDERED ACCORDING TO THE LAW 1. Regulation (EU) 2016/679 (General Data Protection Regulation - hereinafter GDPR), which repealed Directive 95/56 EC, was implemented by May 25, 2018. In this case, however, Law 2472/1997 is applicable, since all the complaints against the OASTH refer to illegal processing/disclosure of personal data (see the disputed press release 7 of the OASTH), which amounts to time (...) before the implementation of the GDPR, and secondarily (with regard to certain complaints) to non-satisfaction of a right based on Law 2472/1997. 2. The Authority has been repeatedly concerned<sup>1</sup> with cases of conflict between the right to the protection of private life (Article 9 par. 1 sec. b' of the Constitution) and personal data (Article 9A of the Constitution) with the freedom of journalistic information (Article 14 par 1 and 2 of the Constitution) and the citizens' right to information (Article 5A of the Constitution). These rights are constitutionally equal and of equal weight and therefore any conflict between them cannot be resolved by an abstract and fixed ranking of their values. The executive law of article 9A of the Constitution (law 2472/1997) has established certain criteria for harmonizing these rights and resolving conflicts between them within the framework of the principle of proportionality (see article 5 par. 2 letter e) and article 7 par. 2 item g' of Law 2472/1997), on the basis of which, the more special circumstances of each specific case are evaluated. 3. The Authority has judged that the processing of personal data for journalists-informants exists in the public's justified interest in information (Article 5 par. 2 letter e) in conjunction with the criteria set for the exercise of the journalistic function by Article 7 par. 2 item g' of Law 2472/1997, which applies to a greater extent also in the case of simple data). Furthermore, in article 4 of Law 2472/1997, the general conditions for the legality of the processing of personal

data are set, among which is the principle of purpose and proportionality. In particular, the processing of personal data is permitted, and without consent, according to article 5 purposes if 1 See the relevant jurisprudence of the Authority under the thematic SME, for example, the Decisions of the Authority 100/2000, 24/2005, 25/2005, 26/2007, 43/2007, 58/2007, 17/2008, 36/2012, 165/ 2012, 16/2015, 17/2015 and 41/2017. 8 par. 2 items e' of Law 2472/1997, i.e. when there is an overriding legal interest of the data controller or a third party. Such a legal interest also means the right to information, both of the informer and of the informed (Articles 14 para. 1-2 and 5A Cod.) 2. 4. Regarding the disclosure in a press conference by the President of the OASTH of the names and of the disputed list of 29 former shareholders of the Organization (see the from ... press release of the OASTH), which were subsequently published in the press/internet, it is researchable whether the specific processing of personal data was absolutely necessary in order to inform the public about the operation and the future of the public good of transportation in Thessaloniki and to protect the interests of the above Organization, i.e. ultimately the State and the users of the relevant service. Specifically, according to what the representatives of the OASTH supported, the President of the Organization in the disputed press conference from ..., first of all referred to the context of the previous and current Administration, and gave answers regarding the value/performance of the share, as well as 29 names of former shareholders. In particular, in the disputed press release of the OATH, personal data of the complainants are announced, namely their full name, their percentage of participation in the OATH's share capital, the acquisition price in euros and the date of the acquisition contract. First of all, it must be accepted that the whole matter with the OASTH in relation to chronic problems or dysfunction of the Organization that led to its nationalization was a matter of public interest, which occupied the Parliament and remained in the news for a long time (it occupied the pan-Hellenic and local media) . Also, the dispute between former shareholders and the OASTH/Government is part of the issue of the general account of deeds 2 See indicatively the decisions of the Authority 100/2000, 24/2005, 25/2005, 26/2007, 43/2007,58/2007, 17/2008, 36/2012, 165/2012, 16/2015, 17/2015, 41/2017.

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of public interest, which occupied the media. Although the above nominal reference did not concern all former shareholders, it must be done accepted that the publication of the names is justified in respect of those who they sent the disputed extra-judicial and had claims from its value/performance

share and/or appealed to the courts, for the full information of the public, which, and the shareholders themselves, through their coordinating body ("Coordinating Shareholders' Committee"), they actively sought. These former shareholders, moreover, with their own actions had already made public their positions to public opinion of Thessaloniki.

Moreover, from the fact of the assignment of the organization and operation of the office press and public relations of the OASTH to a third company that acted for account of the Organization, it cannot be concluded that its then President of the Board of Directors of OASTH M acted in excess of his powers and of his duties, because, obviously, the assignment in question was not made according to exclusivity to the third company, with a limitation of its powers then President of the Organization.

5. Further, the complainant ... B, as of the year ... is no longer a shareholder thereof OASTH, a fact known to the Organization. Also, the above complainant did not is included among those who have sent an extrajudicial statement to OASTH and, for these reasons, the publication of its details is not justified for the purpose of informing the public as stated in paragraph 4.

As it turns out, the complainant in question, as K, had dealt with the issue of of urban transport and of the OASTH and had hosted on its radio broadcast from time to time representatives of all trends as well as members of the current and former administration of the OASTH. According to the claims of the OASTH, the complainant K granted to ... B a radio interview on ... on the issues of the OASTH, putting himself in the public debate, as a representative of the shareholders (member Coordinating Committee of the former shareholders), and referred to his situation denounced Organization and in the claims of the shareholders (regarding, according to him, very low level of return of the specific shares).

Further, complainant D, listed in his disputed press release

OASTH, is not included in the above extrajudicial declarations, as well

has lost the status of shareholder since ..., a fact known to

Organization and, for these reasons, the publication of them is not justified

of its data for the purpose of informing the public based on what is mentioned

in paragraph 4.

6. Finally, regarding the non-satisfaction of the requests of complainants A, C, E,

F, Z, H, I, K and L, which were submitted to the denounced Organization (see sec

attachments of relevant complaints C/EIS/9304/28-12-2017, 182/09-01-2018,

254, 288 and 296/12-01-2018, 328/15-01-2018, 1305 and 1306/14-02-2018),

it is shown that these were not answered because the prescribed amounts were not paid

parabolas, regardless of their possible indeterminacy. With no. 122/1957/2001

(Government Gazette B´ 1345) Regulatory Decision of the Authority, established for the exercise of

rights of the subjects the obligation to pay a fee to the person in charge

processing, which, as the Organization claims and is not disputed by

the complainants, has not been paid. However, the complained Organization,

did not inform the applicants of the relevant obligation to pay a fee

and failed to send any reply to their applications. In every

case, after the right of access and/or objection has been exercised according to the articles

12 and 13 of Law 2472/1997 by a complainant, as a data subject,

to the OASTH, the Organization had to respond appropriately to each

applicant, and in case the request is not satisfied for any reason,

he should have communicated his answer to the Authority as well.

7. The Authority, taking into account the seriousness of the violations of articles 4, 5, 12

and 13 of Law 2472/1997 which were proven and the offense caused by them



to the data subjects, as detailed above, as well

and the fact that OASTH is loss-making (see its balance sheet dated 15-

02-2019, available on its website), considers that they should be imposed on

Organisation, as data controller, those provided for in article 21 paragraph 1

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soil a' and b' of Law 2472/1997 sanctions referred to in the ordinance and the

which are proportionate to the gravity of the violations and the offense thereof

applicants.

#### FOR THOSE REASONS

The beginning,

a. He considers that the publication of the names of the former shareholders of OASTH B and D

in a press conference given by the President of OASTH on ... and the inclusion

of their own personal details in the relevant press release of the OASTH, which

was made public on the same day, contravenes the provisions of Articles 4 and

5 of Law 2472/1997 for the reasons mentioned in paragraph 5 hereof.

b. It imposes on the OASTH the effective, proportional and deterrent administrative

fine that is appropriate in the specific case, according to

more special circumstances thereof, amounting to three thousand (3,000.00) euros, for the

above under item a' identified violations.

c. It considers that failure to respond to requests for access and/or objection which

were submitted by the applicants A, C, E, F, Z, H, I, K and L and the non

notification of their refusal to satisfy the Authority is contrary to the provisions of

of articles 12 and 13 of Law 2472/1997 for the reasons mentioned in paragraph 6

of the present.

d. Imposes on the OASTH the effective, proportional and deterrent administrative

fine that is appropriate in the specific case, according to

special circumstances thereof, amounting to seven thousand (7,000.00) euros, in total for the above under item c) identified violations.

e. It imposes a warning on the OASTH for its compliance with the provisions in addition to the General Data Protection Regulation and configuration, without delay, procedures, in order to properly satisfy the foreseen rights of the data subjects.

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The president

Konstantinos Menudakos

The Secretary

Irini Papageorgopoulou

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