

Athens, 26-10-2022 Prot. No. C/EXE 2703 DECISION 59/2022 (Plenary) The Personal Data Protection Authority met at the invitation of its President via teleconference on Thursday 28-07-2022 at 10:00, adjourned from 21-07-2022 in order to consider the case referred to in the history of the present. The President of the Authority, Konstantinos Menudakos, and the regular members of the Authority, Spyridon Vlachopoulos, Konstantinos Lambrinoudakis, Charalambos Anthopoulos, Christos Kalloniatis, Aikaterini Iliadou and Grigorios Tsolias, as well as the substitute member Nikolaos Livos, were present as a rapporteur without the right to vote. Present without the right to vote were Anastasia Tritaki, auditor - lawyer, as assistant rapporteur, and Irini Papageorgopoulou, employee of the administrative affairs department, as secretary. The Authority took into account the following: With the no. Authority Prot. C/EIS/6553/11-10-2021 complaint to the Authority against the Fire Brigade and the Ministry of Climate Crisis and Civil Protection, the complainant, A, ... and ... of the Fire Services Administration of Prefecture X, complains that, after of his availability status on ... and the subsequent delivery of his official identity card on ..., he received a temporary identity certificate from the Regional Fire Department Ψ with no. first According to his claims, the above certificate explicitly stated the complainant's position as being available, while the applicable legislative provisions for the issuance of the temporary certificate were also mentioned, from which his official status could be deduced. In particular, the above certificate stated the following: "It is certified that the person pictured above, (...) was placed 1 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr in the situation of availability according to no. ... Decision of Mr. Chief of the Fire Department and handed over today, ... the information (..) his Service Identity Card. This is granted in accordance with par. 4 of article 2 of no. 46266 F.303.1/20.12.1994 K.Y.A. (Issue B' 2/9-1-1995) for every legal use of the above until the end of the availability status". According to his claims, the complainant immediately complained to the Head of the Office of Administrative Support of the Regional Fire Department Ψ about the recording of the above information, but, according to the complainant, no modification of the content of his temporary identity certificate took place. With his above complaint, A argued, among other things, that the inscription in no. prot. ... Temporary Identity Certificate of his availability as well as the provisions of article 2 par. 4 of KYA 46266 Φ.303.1/20.12.1994 (B' 2/1995) is a processing act which a) was carried out in an opaque manner and was never disclosed to him by his Service in violation of the provisions of article 13 of the GDPR, b) includes information which is not included in the identification data of article 1 of the KYA 46266 Φ.303.1/20.12.1994 (B' 2/1995) in combination with article 12 of the Royal Decree 3021/19/53/14.10.2005 (B'1440/2005), c) is not necessary for the fulfillment of a duty performed in the public interest or in the exercise of public authority assigned to the Fire Brigade and to the

Ministry of Citizen Protection / Climate Crisis and Civil Protection in general (Article 5 of Law 4624/2019), nor does it fall under another legal basis of Article 6 GDPR, d) constitutes prohibited further processing in a manner incompatible with the purposes for which his data were collected from the beginning, while e) it is not necessary for the fulfillment of the purpose of the attestation of his identity, since the reference of the reasons for issuing the temporary attestation is not required even in the case that it is accepted that the third parties must be informed that is not able to perform a service, as a result of which a violation of the provisions of article 5 par. 1 para. a) to c) GDPR is established. Furthermore, the complainant pointed out that the temporary certificate was the only identification document he had and therefore he was obliged to use it continuously in any transaction with the public sector and with private entities, especially in the context of verifying his identity due to the measures against Covid-19, resulting in the disclosure of his availability position to a large number of persons and the consequent insult to his personality, honor and reputation throughout the spectrum of his daily life and his social and economic life. With the no. Authority letter C/EXE/2388/21-10-2021 its document, the Authority asked the complainants for clarifications on the complaint. Following this, he received in response the no. first ... (under no. first Authority C/EIS/7359/11-11-2021) document from the Headquarters of the Fire Brigade to the Authority, with which the complainant informed the Authority that as of ..., the complainant was summoned with the with no. ... document of the Regional Fire Administration Ψ to deliver the no. ... certificate of identity, in which, according to what is contained in the above document, the service status of the complainant is written by mistake, in order to grant him a new certificate in which no corresponding mention is made. Following this, the Authority again called the Headquarters of the Fire Brigade with the no. Authority C/EXE/2621/17-11-2021 document, to present to the Authority the type of new temporary identity certificate and/or a copy of the certificate granted to the complainant and subsequently, the Fire Brigade Headquarters sent to the Authority (under Authority's No. G/EIS/7649/22-11-2021) copy of the new temporary certificate with no. prot. ... granted to the complainant, as well as a copy of the delivery protocol from the complainant with no. ... of temporary certificate and receipt of the new temporary certificate with no. first At the same time, with the no. Authority letter C/EXE/2622/17-11-2021 its document, the Authority invited the complainant to confirm receipt of the relevant no. first ... Invitation of the Regional Fire Administration Ψ for the granting of a new temporary certificate of identity and its receipt, to present to the Authority a copy of the granted certificate, as well as to state, if he has received a new certificate of identity, if he adheres to the no. Prot. Authority C/EIS/6553/11-10-2021 his complaint. With the no. First Authority G/EIS/7672/23-11-2021 his response, the complainant

confirmed the receipt of the relevant no. first ... Invitation of the Regional Fire Administration Ψ, presented to the Authority the new temporary certificate of identity with no. first ... and stated that, taking into account the time that elapsed until the replacement of the temporary identity card, the fact that the replacement took place only after the intervention of the Authority, he wishes to continue the examination of No. Complaint of Authority G/EIS/6553/11-10-2021. 3 With the no. 5/2021 Decision of the President of the Authority (prot. no. C/EXE/2992/22-12-2021) the complainant's request for the issuance of a temporary order was rejected as having no purpose. Subsequently, the Authority summoned the parties involved before the Plenary Session of the Authority, on 12-04-2022, with summonses C/EXE/855/04-04-2022 and C/EXE/856/04-04-2022. At the meeting in question, which took place via video conference, complainant A was present with his attorney Grigorios Lazarakos (...), and on behalf of the complained-about Fire Brigade was attended by ..., Director of Legal Support of the Fire Brigade Headquarters. Both parties, after developing their views orally, were given a deadline during this meeting to submit written memoranda to further support their claims. Following these, the complainant timely submitted on 05/03/2022 the no. prot. C/EIS/6628/03-05-2022 memorandum, while the accused did not provide a memorandum. During the above hearing of 12-04-2022, but also with the no. prot. C/EIS/6628/03-05-2022 following the hearing of his memorandum, the complainant, after repeating the allegations he raised before the Authority, further argued that with his behavior during the hearing and with the granting of the new temporary identity certificate, the complainant admitted the violation of the personal data legislation. The Authority, after examining the elements of the file and what emerged from the hearing before it and the parties' memoranda, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote, after a thorough discussion, THINKS IN AGREEMENT BY LAW 1. Because it follows 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 (Official Gazette A' 137) that the Authority has the authority to supervises the implementation of the provisions of the GDPR, 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 44624/2019 it follows that the Authority has the authority to deal with A's complaint against of the Fire Brigade, since the reported non-automated processing (retrieval, use and disclosure) concerns personal data, which are included in the filing systems of the Fire Brigade, in which personal details, service changes, disciplinary status, etc. are registered .K. of employees serving in the Fire Brigade, and therefore falls under the regulatory scope of articles 2 par. 1 of the GDPR and 2 of law 4624/2019. 2. Because in

accordance with the provisions of article 4 par. 7 of the GDPR, the data controller determines the purposes and method of data processing. Basic for determining the controller is the functional criterion¹. When it comes to assessing the definition of objectives and manner in order to attribute the role of data controller, the crucial thing is to consider to what degree of detail one must define the objectives and manner in order to be considered responsible for processing. A structural element of the concept of a controller is the influence it exercises by virtue of exercising decision-making power, a power that may be defined by law or may be derived from an analysis of the facts or circumstances of the case. According to the European Data Protection Board's Guidelines 07/2020 on the concepts of controller and processor in the GDPR, in most cases, the "controlling body" can be easily and with due clarity identified by reference to specific legal and/or factual circumstances from which, as a rule, "influence" can arise, unless other evidence suggests otherwise². Furthermore, as pointed out by the above Guidelines, it is common for legislation to establish an obligation or impose a duty on an entity to collect and process specific data, rather than directly appointing the controller or determining the criteria for appointment of. In these cases the purpose of the processing is often determined by legislation. The controller is usually defined by law to achieve this ¹ See on the concept of controller and processor the EDPS Guidelines 07/2020 on the concepts of controller and processor https://edpb.europa.eu/system/files/2021-07/eppb_guidelines_202007_controllerprocessor_final_en.pdf and Opinion 1/2010 of the Article 29 Working Group. ² Guidelines 07/2020 ESPD, paragraphs 20-21. available GDPR, in: 5 purpose, of this public duty. In this case, the legislation implicitly identifies the controller. More generally, legislation may also impose an obligation on public or private entities to retain or provide specific data. The entities in question are generally considered responsible for processing with regard to the processing deemed necessary for the fulfillment of the specific obligation³. ³. Because in the public administration, the hierarchy is a way of its internal organization that aims to ensure the uninterrupted continuity of its work⁴ and the coherence of the rules applied between the units and services that are subordinate to the higher body of the body. Therefore, the functional criterion is concluded in principle with the powers conferred by law on a specific authority, service or legal entity under public law. According to the provisions of Law 3511/2006 (Government Gazette 258/A/27-11-2006), as amended, the Headquarters of the Fire Brigade is the highest staff service of the Fire Brigade, whose competence as a central service extends to the entire Territory and to which the decentralized services with local competence fall (Article 4). In addition, in accordance with article 5 par. 3 of Law 3511/2006 (Government Gazette 258/A/27-11-2006), as amended, the Staff of the Fire Brigade (which falls under article 4 par. 1 of the same law at the Headquarters), handles, among

other things, the issues of recruitment, discipline and in general the service status of the staff. Furthermore, according to article 19 of the P.D. 210/1992 (Government Gazette 99/16-06-1992) "the operation of the offices and the general conduct of the service in them is the responsibility of the Commander, in accordance with the legislation in force and the relevant orders of the Fire Brigade Headquarters". 4. Because it follows from the above that the Headquarters of the Fire Brigade acts in this case as a data controller, which, within the framework of its responsibilities and duties, determines the purpose and/or the essential elements, at least, of the method of processing the data that will it must apply the same, as well as the services and units under it⁵. After all, the position of the complainant on availability and the granting to him of a temporary certificate of identity was ordered by 3 As above, paragraph 24. 4 Ch. , p. 77. 5 See and Decision 24/2022 of the Authority, https://www.dpa.gr/sites/default/files/2022-05/24_2022_anonym.pdf, paras. 15-17. 6 with no. first ... and with no. first ... Decisions of the Chief of the Fire Department. 5. Because article 5 of the GDPR defines the processing principles that govern the processing of personal data and specifically states, in par. 1, that personal data should, among other things, a) be processed lawfully and legitimately in a transparent manner in relation to the data subject ("lawfulness, objectivity and transparency"), b) to be collected for specified, express and lawful purposes and not to be further processed in a manner incompatible with these purposes ("purpose limitation"), c) to be appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization"). In accordance with the principle of proportionality (Constitution, article 25 par. 1 letter c'), the processing is allowed, which is able to achieve the intended purpose (principle of appropriateness/affordability), but only if it is absolutely necessary for it, i.e. the least burdensome for the subject is acted upon, and any further processing is unnecessary, even if it is useful (principle of necessity)⁶. Any processing of personal data that is not convenient and necessary to achieve the intended purpose or is done beyond that, is not legal. 6. Because article 6 par. 1 of the GDPR specifies that "Processing is lawful only if and as long as at least one of the following conditions applies: a) the data subject has consented to the processing of his personal data for one or more specific purposes, b) the processing is necessary for the performance of a contract to which the data subject is a party or to take measures at the request of the data subject before entering into a contract, c) the processing is necessary to comply with legal obligation of the controller, d) the processing is necessary to safeguard a vital interest of the data subject or another natural person, e) the processing is necessary for the fulfillment of a task performed in the public interest or in the exercise of public authority that has assigned to the data controller, f) the processing is necessary for the purposes of the legal interests pursued by the data controller or a

third party, unless the interest 6 APD 51/2014, APD 1/2007, See in Kon/no N. Christodoulou, Personal Data Law, 2nd edition, Law Library, par. 339,341, pp. 111-112. 7 or the fundamental rights and freedoms of the data subject that require the protection of personal data, in particular if the data subject is a child. Item f) of the first paragraph does not apply to the processing carried out by public authorities in the exercise of their duties." 7. Because in order for personal data to be subject to legal processing, i.e. processing in accordance with the requirements of the GDPR, the conditions for applying and observing the principles of article 5 paragraph 1 GDPR must be cumulatively met⁷. The existence of a legal basis in accordance with Article 6 GDPR does not exempt the data controller from the obligation to comply with the principles enshrined in Article 5 paragraph 1 GDPR with regard to legality, necessity and proportionality and the principle of minimization. In case of violation of any of the provisions in article 5 par. 1 GDPR principles, the processing in question appears to be illegal and subject to the provisions of the GDPR, and the examination of the conditions for applying the legal bases of article 6 is omitted⁸. Thus, the illegal collection and processing of personal data in violation of the principles of Article 5 GDPR is not cured by the existence of a legitimate purpose and legal basis (cf. APD 38/2004, APD 43/2019). 8. Because in this case the Joint Ministerial Decision 46266 Φ.303.1/20.12.1994 (B' 2/1995) "Defining the type of identity card of the active firefighter of the Fire Brigade, required supporting documents, procedure for issuing, maintaining and updating the identity file ». In accordance with the provisions of article 1 of the said General Regulations "1. The identity card of the Firefighter personnel, which is considered a public document, is printed on Velvet type paper with an internal raster print of light orange color, dimensions 0.10 X 0.65 m. and has two (2) sides. 2. On one side, on a pale red background, the distinguishing mark of 7 CJEU, C-496/17, Deutsche Post AG v. Hauptzollamt Köln¹, 16 January 2019, sc. 57. 8 Compare CoE 517/2018 para. 12: "[...] in order for personal data to be lawfully processed, it is required in any case that the conditions of article 4 para. 1 of Law 2472/1997 are cumulatively met , which, among other things, stipulates that the data must be collected and processed in a legitimate and legal manner, for clear and legal purposes... As long as the conditions of article 4 par. 1 of Law 2472/1997 (lawful collection and data processing for clear and legitimate purposes), it is further examined whether the conditions of the provision of article 5 par. 2 of Law 2472/1997 [legal bases] are also met. Also, cf. SC in Plenary 2285/2001 par. 10: "[...] Only if the above basic conditions are met, the provisions of articles 5 and 7 of Law 2472/1997 apply, which impose as a further additional, in principle, condition of legal processing of personal data of a specific person, his consent". 8 of the Fire Department as described in article 11 para. 2 of 15269 F. 109.1/9.6.93 of the decision of the Minister of Public Order (B' 505)

and appears in table 2 thereof. On the same side, all the elements of article 2 of Law 1988/91 are written, except for a, f, p, z, i and in addition the rank and serial number of the identity card. On the other side, it bears in the upper left part, the title of the Fire Brigade Headquarters and in the right part the phrase "IDENTITY CARD" and below it the identity number, which is the holder's Registration Number, his photograph, the surname and the name in Latin characters, the blood group, the date of issue, the signature of the Fire Brigade Headquarters Director and the seal of the Fire Brigade Headquarters. 3. The photo is in color, the paper it is printed on is thin, excellent quality with a blue (Sea) background and its dimensions are 0.035 x 0.045 m. The Firefighter in it is wearing the No. 8 winter uniform, without a quotient and his position is exposed with a slight inclination of the trunk to the right, a very slight inclination of the head to the left and a slight inclination of the left arm, so that the insignia of the rank and the Corps can be seen and his appearance must be decent.", while according to the provisions of article 2 par. 4 of the same KYA "The identity cards of those who are made available for misdemeanors that bring down the honor or reputation of the Firefighting personnel, or are serving a holiday with a temporary suspension or a holiday with dismissal, are handed over to the Service and kept with care of the Commanding Officer throughout the availability or service of the sentence. After the end of availability or penalty they are returned to their owners. The above at this time are provided by the Service with a temporary certificate of their identity, with all the information mentioned in it on which their photo is affixed". 9. Because, as the Authority has already pointed out with Decision 21/20049, the indication of the type of penalty on the temporary official identity certificates granted following the imposition of a penalty constitutes processing of personal data, which must be in accordance with the provisions of the law about personal data. 10. Because from the combination of the provisions of articles 1 and 2 par. 4 of KYA 46266 Φ.303.1 /20.12.1994 (B' 2/1995), it does not appear that there is an express legislative requirement to list the reasons for issuance on the temporary certificates identity 10. Furthermore, although it is issued in cases of suspension or imposition of a holiday or other penalty, 9 APD 21/2004, available at:

<https://www.dpa.gr/el/enimerwtiko/prakseisArxis/anagrafi-eidoys-poinis-se-prosorini-ypiresiaki-bebaiosi-taytotitas> 10 As above.

9 the temporary certificate of identity does not serve the purposes of the disciplinary procedure, but its purpose is to confirm the identity of its holder against any third party and to inform any third party that the holder of the certificate is unable to perform service¹¹. Informing a third party that the holder of the certificate has been suspended is not the purpose of granting the temporary certificate of identity¹². 11. Because following the above, temporary identity certificates must include only the information necessary for the purpose for which they are granted, while the listing of any other element that does not meet this

purpose constitutes unnecessary processing and goes against the principles of affordability, of necessity and the minimization of the processing set by the aforementioned provisions of the GDPR¹³. 12. Because from the overview with no. first ... of a new temporary certificate included in both no. First Authority G/EIS/7672/23-11-2021 document of the complainant, as well as in the no. First Authority C/EIS/7649/22-11-2021 response of the data controller, it emerged that the content in no. ... temporary certificate that was initially issued referring to the complainant's position on availability and the provisions in which this is provided for. 13. Because from all the information in the file and what emerged from the hearing, the Authority finds that no guidelines have been issued by the Fire Brigade and/or the Ministry of Citizen Protection regarding the issuance of temporary identity certificates despite the fact that with Decision 21/2004¹⁴, the Authority had addressed a relevant recommendation, warning and appeal to the Ministry of Public Order to issue the necessary instructions to the relevant authorities and services within a reasonable time. 14. Because the Authority, from all the elements of the file and of what emerged from the hearing, finds that the mention of the complainant's position as unavailable and the provisions of article 2 par. 4 of the KYA 46266 Φ.303.1/20.12 .1994 (B' 2/1995) on the no. ... of a temporary identity certificate, constitutes illegal processing, in violation of the principle of minimization guaranteed by the provisions of article 5 paragraph 1 c) GDPR. 11 As above. 12 As above. 13 See and APD 2/2022, APD 3/2022. 14 As above under 9. 10 15. Because, since a lack of compliance with the principle of minimization provided for by article 5 par. 1 c) GDPR is established and since it is required cumulatively to fulfill the conditions for application and observance of the principles of article 5 par. 1 GDPR¹⁵, in order for personal data to be lawfully processed, there is no need to examine the fulfillment of the other principles of lawful data processing based on Article 5, as well as the examination of the conditions for applying the legal bases of Article 6 GDPR¹⁶. 16. Because the Authority considers that in relation to the established violation of the provisions of article 5 par. 1 c) there is a case of exercising its corrective powers from article 58 par. 2 GDPR and enforcement, pursuant to the provision of article 58 par 2 i) GDPR, effective, proportionate and dissuasive administrative fine, in accordance with articles 83 GDPR and 39 of Law 4624/2019, taking into account the Guidelines of the Working Group of article 29 for the application and determination of administrative fines for the purposes of Regulation 2016/679¹⁷. When evaluating the data, in order to choose the appropriate and corrective measure, the Authority takes into account the following: that the specific violation was of limited duration, however due to special concurrent conditions (the temporary identity certificate was the complainant's only identification document at the critical time period, which coincided in time with the implementation of measures against the coronavirus pandemic), had

significant consequences for the person of the complainant, as it was compulsorily used in a large number of transactions, thus making its availability known to a significant number of persons (article 83 par. 2 a) GDPR), that the complainant did not respond to the complainant's repeated requests for a new certificate to be issued with the deletion of the disputed data (article 83 par. 2 c) GDPR),¹⁵ See as above, under 7.

¹⁶ See as above, under 8.

¹⁷ Available at: https://www.dpa.gr/sites/default/files/2019-12/wp253_el.pdf

Additionally taking into account the Guidelines 04/2022 for the calculation of administrative fines under the GDPR of the European Data Protection Board from 12.05.2022 under public consultation, available at the link

[https://edpb.europa.eu/system/files/2022-](https://edpb.europa.eu/system/files/2022-05/edpb_guidelines_042022_calculationofadministrativefines_en.pdf)

[05/edpb_guidelines_042022_calculationofadministrativefines_en.pdf](https://edpb.europa.eu/system/files/2022-05/edpb_guidelines_042022_calculationofadministrativefines_en.pdf)

11

- that the complainant has in the past committed offenses found by the Authority

violations of the legislation on personal data¹⁸ (see Decision

24/2022 of the Authority¹⁹) (article 83 par.2 e) GDPR),

- that the complainant responded in a timely manner to the Authority's requests and in accordance with it

of the Authority's intervention immediately replaced the initial temporary one

certificate of identity of the complainant and its replacement by a new one, from

which all reference to the complainant's availability has been deleted

(article 83 par.2 f) GDPR).

17. Because further, the Authority considers that based on the above facts

that were found, there is a case of exercise of the Article 58 paragraph 2 d) GDPR

authority and calls the Fire Brigade, as well as the Ministry of Protection

Citizen to proceed, until 31/12/2022, to issue guidelines regarding

by issuing temporary identity certificates, informing the Authority about

their actions.

FOR THOSE REASONS

The beginning

a) finds that the listing of the position in availability and the mention of the related to this provision on the temporary proof of identity, constitutes a violation of the principle of the minimization of article 5 par. 1 c) GDPR and imposes, according to article 58 par. 2 i) GDPR to the Fire Brigade, a fine of five thousand (5,000) euros, for the reasons that are extensively analyzed in the reasoning of the present,

b) gives an order, according to article 58 par. 2 d) GDPR, to the Fire Brigade, as well as to Ministry of Citizen Protection to issue, by 12/31/2022 guidelines regarding the issuance of temporary identity certificates, informing the Authority of their actions.

18 See Guidelines of the Article 29 Working Group on the implementation and determination of administrative fines, available at: https://www.dpa.gr/sites/default/files/2019-12/wp253_en.pdf p. 15, as well as Guidelines 04/2022 for the calculation of administrative fines under the GDPR of the European Data Protection Board from 12.05.2022 under public consultation, available at: https://edpb.europa.eu/system/files/2022-05/edpb_guidelines_042022_calculationofadministrativefines_en.pdf, p. 15: where it is pointed out that any kind of violation of the Regulation, although different from the violation examined in the specific case by the supervisory authority, may be "relevant" to the assessment since it may be indicative of a more general deficiency knowledge or disregard of data protection rules.

19 Available at: https://www.dpa.gr/sites/default/files/2022-05/24_2022_anonym.pdf,

12

The president

Konstantinos Menudakos

The Secretary

