

2020 The Personal Data Protection Authority met at the invitation of the President of in a regular meeting via video conference on 19.08.20 in order to examine the case referred to in the history of the present. The President of the Authority, Konstantinos Menudakos, and the regular members of the Authority, Charalambos Anthopoulos, Kon/nos Lambrinoudakis and Spyridon Vlachopoulos, were present as rapporteur. Present without the right to vote were Kalli Karveli, specialist scientist-lawyer, as assistant rapporteur, who left after the discussion of the case and before the conference and decision-making, and Georgia Palaologou, an employee of the Authority's administrative affairs department, as secretary . The Authority took into account the following: With the no. prot. C/EIS/7719/08.11.2019 his complaint to the Authority A complains that while at the beginning of the 2019-20 school year he submitted to the 1st General High School X and specifically to the director of the High School a declaration of responsibility and a corresponding application, requesting based on the circular 12773/D2/23.01.2015 of the Ministry of Education and Religious Affairs that his son, a student of the 1st Lyceum, be exempted from attending religious classes, reciting prayers, participating in church services and in general participating in all kinds of religious activities, citing reasons of religious 1 conscience, the teachers' association decided to reject his request due to the fact that it was not in the statement and the inscription that the student is not H.O. (Christian orthodox). For this reason, as he states in his complaint, he was forced to submit a new declaration, stating that his son was not H.O., but it was still rejected as overdue, as a result of which he was forced to continue attending the mandatory course of religious, by omission of the due legal action that imposed his exemption based on the legal and timely request that had been submitted. Also in no. prot. C/EIS/3046/06.05.20 in his supplementary report to the Authority, the complainant states that a) with the no. 32/20 decision of the 8th Department of the Athens Administrative Court of Appeals, his application for suspension was accepted, which he submitted with an extrajudicial summons to the Lyceum requesting the deletion of his son's data, b) in Law 4692/20 "Upgrading the School and other provisions" and in particular in article 5 thereof, the mention of conduct is reinstated in the degree certificates, without, as he claims, serving any purpose at all, since the conduct is a fact that is kept in the school file and it is not necessary to indicate it in the graduation certificates and c) the Ministry of Education and Religious Affairs in this law, although it regulates issues of the teaching of religious studies, has not included any provision regarding the process of exemption from it, in compliance with the Authority's decision 28/19, but also with the recent decision of the ECtHR of 31.10.2019 in the case of Papageorgiou v. Greece which condemned the country for violating the right to education in light of the right to n religious freedom. For these

reasons, the complainant requests the intervention of the Authority, in order to impose on the Ministry of Education and Religious Affairs the appropriate sanction for the violation of the GDPR. C/EX/1179/12.02.20, In the context of investigating the complaint, the Authority sent the no. prot. G/EX/7719-1/19.12.19, and G/EX/4297/22.06.20 documents to provide clarifications to the Ministry of Education and Religious Affairs, which on no. prot. C/EIS/2143/19.3.20 and C/EIS/4347/23.06.20 his answers stated the following: a) the Ministry has taken all the necessary actions, so that the Director of the school unit C/Εξ/3396/18.05.20 2 be updated and apply the provisions contained in no. 32/20 decision of the 8th Department of the Athens Administrative Court of Appeal on the request for suspension submitted by the complainant, b) because the issue of exemptions is directly related to the general organization of school life (as those who are exempted should be employed differently), the Institute of Educational Policy decided unanimously on 19.12.2019 with no. prot. 3322/19.12.2019 Decision of the establishment of an unpaid seven-member Scientific Committee with the object, among other things, of the recommendation regarding the ways and methods of implementing the decisions of the S.t.E., the ECtHR and the APDPH, regarding all other aspects of these decisions related to the Course of Religious Studies, with an emphasis on maintaining the compulsory course and the process of exempting students c) the Ministry awaits the relevant recommendation of the Institute of Educational Policy and ensures the timely writing and sending of a new circular regarding the issue of exemption from the Religious Studies course in the country's school units, which will be issued by August of this year and will comply with the relevant decisions of the Council of State, the ECtHR and the Authority and will be implemented from the next school term year 2020-21 by definitively resolving the issue that arose and d) with the regulation of article 5 of Law 4692/20, the listing is reinstated the characterization of students' behavior in secondary education qualifications, as was the case continuously in the last decades until the year 2017. The evaluation of behavior is at the core of the mission of education and aims to create free and responsible citizens. In this context, the characterization and mention of the conduct in the study titles has a pedagogical character and optimally responds to the imperatives of article 16 par. 2 of the Constitution. Following the aforementioned, the Authority with no. prot. C/EX/4483/29.06.20 and C/EX/4484/29.06.20 calls respectively invited the Ministry of Education and Religious Affairs and the complainant to attend the meeting of the Plenary Authority on 16.07.2020, in order to discuss the above complaint. During the hearing on 16.07.20, complainant A was present with his attorney Vasilios Sotiropoulos and on behalf of the Ministry of Education and Religious Affairs Spyridon Papagiannopoulos, Vice President of the 3rd Legal Council of the State, Nikolaos Papathanasiou, lawyer and ..., Data Protection Officer of the Ministry of Education and Religion without

the right to express an opinion. The attorney of the complainant V. Sotiropoulos during the above hearing of 16.07.20 and also at no. prot. C/EIS/5229/24.07.20 his supplementary memorandum develops the facts of the case listed in the complaint and his supplementary report and further mentions that he served the aforementioned decision 32/20 of the Athens Administrative Court of Appeal with an extrajudicial statement to the school, requesting that all data that reveal the student's religious beliefs be deleted from the school file, such as attendance, absences, grades, evaluations of all kinds, drawing up a relevant deletion record and communicating it to the Authority, except for the following while allowing the student not to attend the religion course from now on, in the performance check for the academic year 2019-2020 despite the student's right to cancel, the 1st Lyceum X has recorded a grade of 18 in the first quarter for the religion course. Finally, with regard to the mention of students' behavior in secondary education diplomas and certificates, according to the applicant, this mention is not in accordance with and proportionate to the intended purpose, which is the proof of the successful completion of a stage of education, taking into account that the conduct recorded in the diploma at the time of obtaining the degree will reveal in perpetuity elements that can lead to unfavorable evaluation, stigmatization or even unfavorable discriminatory treatment, especially in recruitment procedures. The representatives of the Ministry of Education and Religious Affairs during the above hearing of 16.07.20 and also at no. prot. C/EIS/5485/06.08.20 their supplementary memorandum supported the following: a) the Ministry has committed to comply with the Authority's decision 28/2019 from the next school year 2020-2021, taking all the necessary measures to in this direction, b) the complainant never sent a request to delete his son's data that reveal his religious beliefs, as evidenced by the documents dated 21.07.20 of the Director of the school and the 4 Director of the Directorate D.E. ... Attica. In particular, this fact is confirmed in no. first ... letter from the Director of the Directorate of Secondary Education ... Attica to the Data Protection Officer of the Ministry with which the under no. first ... document of the Director of the 1st GEL X. In this last document, it is confirmed that student B never received a grade in the Religious Studies course for the 1st quarter, that no grade was registered for this course in the myschool information system and/or in any other book/file, and that neither in the 1st GEL X nor at Directorate of Secondary Education ... Attica has filed an application by the complainant requesting the destruction of the declarations from 09.10.2019 which contain the statement that the student is not an X.O., and c) the record of the conduct in the graduation exams and the certificates of secondary education are a pedagogical measure, consistent with the educational role of the school, which is, among other things, in accordance with article 16 par. 2 C the moral education of students and their formation as free and responsible citizens. Finally, with the no. prot. C/EIS/5581/11.0.20 his document, the

Ministry of Education and Religious Affairs forwarded to the Authority the new no. prot. Φ1/104795/GD4/10.08.20 circular of the Deputy Minister of Education and Religious Affairs, according to which exemption from the Religious Studies course is granted after a responsible declaration by the student himself, if he is an adult, or by both his parents if he is minor, in which it will be stated that reasons of religious conscience do not allow me or my child to participate in the religion course, and with its issuance, the no. prot. 12773/D2/23.01.2015 I issued a circular. The Authority, after examining the elements of the file, the hearing and after hearing the rapporteur and the assistant rapporteur, who withdrew after the discussion of the case and before the conference and decision-making, after a thorough discussion, CONSIDERED LAW 5 1. Article 13§1 of the Greek Constitution enshrines as inviolable the freedom of religious conscience, without mentioning, as most European Constitutions do (see e.g. Article 4§1 of the German Constitution, Article 16 of the Spanish of the Constitution, article 41§1 of the Portuguese Constitution), according to the model of the ECHR (article 9§1), and to freedom of conscience in general. However, according to the generally accepted opinion, the freedom of religious conscience according to article 13§1 Comp. also protects the so-called "negative religious freedom", i.e. the right to be irreligious or atheist¹, while, in any case, the general freedom of conscience, which includes all deeply rooted beliefs in a person's conscience, religious, philosophical, moral, ideological or others, which dictate to him a certain way of behavior related to them², is a constituent element of the value of man according to article 2§1 Comp. and the free development of his personality according to article 5§1 Comp.³. A fundamental component of freedom of religious conscience and freedom of conscience in general is the right not to reveal one's beliefs of conscience, which was first established in the Weimar Constitution (Article 136§3) and is expressly enshrined in the Spanish Constitution (article 16§2), as well as in the Portuguese Constitution (articles 41§3 and 35§3). 1 See already under the regime of the 1952 Constitution, A.I. Svolos – G.K. Vlachou, *The Constitution of Greece*, Volume A, Athens, 1954, reprint 1978, ed. Ant. N. Sakkoula, 1978, p.66-68. under the current Constitution, see No. Manesi, *Individual Freedoms*, Sakkoula ed., Athens-Thessaloniki, 19824, pp. 251-252, Pr. Dagtoglou, *Individual Rights*. ed. Sakkoula, Athens - Thessaloniki, 20124, p. 378, K. Chrysogonou - Sp. Vlachopoulos, *Individual and Social Rights*, ed. Law Library, 20174, p. 309-315, G. Sotireli, *Religion and Education*, ed. Ant . N. Sakkoula, 19983, p.215, I.M. Konidaris – G.I. Androutsopoulou, article 13, in F. Spyropoulou- X. Kontiadis - C. Anthopoulou- G. Gerapetritis (Ed.) *Constitution - Article interpretation*, Sakkoula ed., Athens - Thessaloniki, 2017, p.292 2 For the meaning of of conscience from the point of view of constitutional law see C. Anthopoulou, *The constitutional right to freedom of conscience*, Sakkoula ed., Thessaloniki, 1992, p.11-19. Classic on this subject is the

study by E.-W. Böckenförde, *Das Grundrecht der Gewissensfreiheit* (1969) in : *Das Grundrecht der Gewissensfreiheit. Die Rechtsformen der sozialen Sicherung und das Allgemeine Verwaltungsrecht*, in the series *Veröffentlichungen der Vereinigung der Deutschen Staatsrecht*, ed. De Gruyter, reprint 1995, pp. 33 ff. 3 See Pr. Dagtoglou, *Individual Rights*, *ibid.*, p.376 and with a broader foundation X. Anthopoulos, *The constitutional right to freedom of conscience*, *ibid.*, p.17-38, as well as the same, *The freedom of conscience as autonomous right*, in: by the same, *New dimensions of fundamental rights*, Sakkoula ed., Athens - Thessaloniki, 2001, p.103ff., See also D. Tsatsu-M. Stathopoulou-D. Melissa (Opinion), *Freedom of religious conscience and freedom of conscience in Greece 2/2003* p. 355 ff. 6 Today, the right to remain silent on the content of one's conscience is closely linked to the right to the protection of personal data during article 9A Comp., given that these beliefs are included among those personal data that are particularly protected against the risks of recording, processing and circulation (see also article 9 GDPR). Freedom of religious conscience and conscience in general is also closely linked to the right to respect parents' beliefs in the education of their children (Article 2§2 of the First Additional Protocol ECHR). In particular, from articles 13§1, 2§1 and 5§1 Comp. in conjunction with article 2§2 of the First Additional Protocol ECHR, a right to exemption from the Religious Studies course is derived for any student whose parents have different beliefs, religious, philosophical or other than those contained in the curriculum of the course, while this right can be exercised in person by the student himself, based on articles 13§1, 2§1 and 5§1 Comp., as long as he possesses the required maturity for this choice⁴. When exercising the right of exemption, the principle of "minimization of data" applies (Article 5§1c GDPR), so that parents and their children are not obliged to reveal, directly or indirectly, the content of their religious or non-religious beliefs , which enjoy equal constitutional protection regarding the establishment of the right of exemption. It is recalled that the Authority, in its decision number 28/2019, had already dealt with the issues raised from the point of view of Articles 13§1 and 9A Comp. the circular number 12773/D2 of 23.1.2015 of the Ministry of Education and Religious Affairs, which stipulated that the exemption from the Religious Studies course is granted after a responsible declaration by the student himself (if he is an adult) or 4 Specifically for article 2 §2 of the First Additional Protocol ECHR see from the Greek literature, G. Sotireli, *Religion and education*, *ibid.*, p.220 ff., G. Ktistaki, *Religious Freedom and the European Convention on Human Rights*, ed. Ant. N. Sakkoula, Athens-Komotini, 2004, p. 195 ff., and with reference to the most recent ECtHR jurisprudence, Ev. Venizelou, *The ambivalence of recent jurisprudence around religious freedom and the subject of religious studies. The internal dialogue in the CoE and the deviations from ECtHR jurisprudence*, in: *Legal norms*, file 1, 2020, p. 19ff., D.H. Nikolakaki, *The subject of religious studies in*

the public schools of Europe according to the ECHR, in Legislation, vol. 2, 2019, p.31ff. 7 and of his parents (if he is a minor), in which it is stated that the student is not an Orthodox Christian and therefore invokes reasons of religious conscience for his exemption from the Religious Studies course, without the obligation to mention the religion to which he belongs, unless the wish. In its decision, this Authority considered that the disclosure, even indirectly, of sensitive personnel given that the student requesting the exemption is not an Orthodox Christian, was contrary to the "negative religious freedom of students and their parents" according to the article 13§1 Comp., i.e. to the right not to reveal their religious beliefs, as well as to articles 9 ECHR and 2§2 of the First Additional Protocol ECHR in combination with each other for exactly the same reason. The Authority further considered that the specific type of exemption statement was against "the fundamental principle of the necessity of personal data processing". Accordingly, "it would be sufficient to invoke the statement of reasons of conscience and not to refer to belief or non-belief in a specific religion." In the same vein as the Authority's decision 28/2019, the ECtHR's decision of 31 October 2019 in the case of Papageorgiou and others v. Greece⁵, which caused increased international interest⁶, also moved. Among the questions raised at the ECtHR was whether the way of exercising the right of exemption, established by the aforementioned circular of 23.1.2015 of the Ministry of Education and Religion, violated articles 8 and 9§1 ECHR and article 2§2 of the First Additional Protocol ECHR. The ECtHR examined the case mainly from the point of view of respecting the religious or philosophical beliefs of parents during the education of their children (Article 2§2 of the First Additional Protocol ECHR), highlighting, at the same time, as an essential element of the educational religious freedom of parents and students, the silencing of their beliefs (Article 9§1 ECHR). According to the ECtHR, the controversial circular of the Greek Ministry of Education and Religion with its specific content led to "forcing [the parents] to adopt a behavior from which it could 5

See this decision in Greek translation in: Laws, no. 1, 2020, p.122ff. 6 See among others, R. Benigni, *Educazione religiosa scolastica e diritto all' essonero in una società democratica*, in: *associazione dei costituzionalisti.it, Osservatorio Costituzionale*, vol. 2/2020, p.410ff., C.K. Roberts, *The negative aspect of the freedom to manifest religion or belief in the educational context* rwaa007, <http://doi.org/10.1093/ojir/rwaa007> Journal of Law and Religion, in Greece, in Oxford 8 one concludes that they and their children have – or do not have – specific religious beliefs” (sq. 88). For this reason, the ECtHR ruled that the specific circular violated the negative dimension of the freedom of expression of beliefs, "that is, the right of the individual not to manifest his religion or religious beliefs and not to be forced into behavior that may lead to conclusions as to whether he has – or does not have – such beliefs” (sec. 89), against which there is no countervailing right of the state authorities “to intervene in

the sphere of individual conscience and ascertain the religious beliefs of the individual or compel him to reveal the beliefs he has about spiritual matters" (sec. 89 in fine). As has been observed⁷, the ECtHR in its decision adopts, perhaps for the first time, in such a categorical manner, the most advanced version of the exercise of the right of exemption by a simple declaration of non-attendance of the Religious Studies course, without reference not only to reasons of religious conscience, but not even on grounds of conscience in general. The Council of State (Council of State) also dealt with the way of exercising the right of exemption in Plenary decisions 660/2018 and 1749/2019. According to the CoE, due to the fact that the Religious Studies course according to the current Constitution and especially in view of article 16§2 Comp. must have as its main content the transmission of the orthodox Christian doctrine, it is born automatically based on article 13§1 Comp. right of full exemption for heterodox, non-religious or atheist students, upon submission of a statement by their parents or the students themselves, stating that "reasons of religious conscience do not allow [the student's] participation in the Religious Studies course" (StE 1749 /2019, sc. 16). Therefore, and according to the admissions of the CoE, the way of exercising the right of exemption under the regime of circular 12773/D2 of 23.1.2015 of the Ministry of Education and Religion was not in accordance with the Constitution. Given, however, that the freedom of religious conscience according to article 13§1 Comp. is part of freedom of conscience in general, it does not appear that this decision of the CoE precludes the exercise of the right to exemption by invoking grounds of conscience in general. 7 Ev. Venizelos, *The ambivalence of recent jurisprudence*, *ibid.*, p.26 and 24. 9

Meanwhile, with a new circular of the Deputy Minister of Education and Religion, numbered 104795/GD4/10.08.2020, the previous circular 12773/D2 was amended /23.1.2015, under which the facts of the case being judged here are assessed, and it is now stipulated that the right to exemption is exercised with a responsible statement from the parents or students, in which it will be stated that "Reasons of religious conscience do not allow my participation [when the applicant is the student himself] or of my child [when the applicant is the parents], in the religion course". According to what is mentioned above, with regard to the content of the statement in particular, it should be accepted that the reasons that establish the right to exemption do not mean only the beliefs of religious conscience, including the beliefs of Orthodox Christians who disagree with the specific way of teaching of the Religious Studies course,⁸ but also beliefs of a non-religious nature (see also the Authority's decision 28/2019). But regardless of this matter, in the case considered here, there was undoubtedly a violation of articles 13§1 and 9A Synd. and 2§2 of the First Additional Protocol ECHR, since the school administration did not have the right to reject the request presented by the two parents to exempt their child from the Religious Studies course, for the reason that it was not

stated in the declaration that he is not an Orthodox Christian (cf. also ECtHR Papageorgiou and others v. Greece, paragraph 88). In addition, there was also an independent violation of Article 9A Comp. due to keeping it in the school record and not erasing it from that of the sensitive staff given that the student is not Christian Orthodox. In this case, the student's consent cannot be used as a legal basis for the processing of this particular data, since it was given out of necessity, i.e. in order not to oblige the student to attend the Religious Studies course, which exclusively echoed the orthodox Christian doctrine. This data should be deleted from the school file, regardless of whether or not the complainant submits a relevant application. 8 Cf. and L. Papadopoulou, Church-State relations 200 years since the revolution of 1821, in: The Constitution in Progress, Honorary Volume for Antonis Manitakis, Sakkoula ed., Athens-Thessaloniki, 2019, pp. 658-660 . See and the reflections of G. Karavokyris, From identities to graduations: personal data and religious freedom in education, in THPDD, 8/9/2019, p.837 and footnote. 21 10 2. In accordance with par. 5 & 7 of Presidential Decree 104/1979... 5. The annual characterization of the behavior of the students of each high school or high school is carried out at the end of the academic year through a special act of the Teachers' Association by a majority on the basis of the general conduct of the school and outside of it, and of any sanctions or moral rewards entered in the relevant books, duly taken into account at the discretion of the Teachers' Association. Regarding the characterization of a student's behavior as "indecent" or "interfering", according to the above practice of the Teachers' Association, reasons must be given. 7. The characterization of students' conduct, as a purely pedagogical given, is an element for school use only ["and is written on the title"]. The listing of students' behavior on each certificate issued by schools was abolished by paragraph 15 of article 83 of Law 4485/2017, according to which "15. a) The characterization of the behavior of secondary school students has a pedagogical character and aims to identify behavioral problems and to better deal with them in the context of school life. No characterization regarding the behavior of these students is written on the degrees, such as in particular on the graduation certificates, dismissal certificates and all kinds of proofs and certificates of studies. b) Certificates of dismissal and all kinds of proofs and certificates of studies, concerning students who studied in secondary education before the entry into force of this, are issued from now on without mentioning the characterization of the conduct.". Finally, according to the explanatory report on Article 5 of Law 4692/2020: The characterization of student behavior is assessed, as provided in the existing relevant provisions and permanently, as having a pedagogical character and aims to identify behavioral problems in relation to the observance of the rules of school life and in the best pedagogical treatment of them. With the regulation of this article, the mention of the characterization of students'

behavior in the secondary education qualifications is restored, as it was in place continuously in the last decades until the year 2017. The mention in question constitutes 11 purely pedagogical measures, which is consistent with the more global educational role of the school. And as such a given of a pedagogical nature, it is recorded in the relevant degrees. And according to article 5 of the law in question: The characterization of the conduct of secondary school students is indicated on the degrees, including diplomas, dismissal certificates and other proofs and certificates of studies. The characterization of the behavior of secondary school students is indeed pedagogical in nature and aims to evaluate the behavior of students, to reward appropriate behavior or to identify potential problems and to better deal with them pedagogically in the context of school life. Under these conditions, the characterizing a student's behavior and keeping it in the school record serve legitimate purposes and do not conflict with protection legislation personal data. However, high school diplomas and certificates studies, they constitute documents as proof of attendance, achievement and completion of a stage of student education. Consequently, the listing of conduct in secondary education qualifications is inconsistent with the proportionality principle of Article 5 of the GDPR, as far as access to these documents are also granted to third parties/authorities, and the record of the proceedings it is not necessary and proportionate to the intended and served purpose of these titles, which is the certification of their attendance and performance students and the completion of their education.

Furthermore, the mention of the conduct in her degrees secondary education cannot be ruled out to lead to negative evaluations for the personality of students/former students on behalf of third parties who they will have legal access to these titles. Because behavior does not reflect the evaluation of the competent school bodies for the student's behavior during his school life, the record of conduct after the graduation of the student in his degree may create false impressions as to subsequent behavior and

personality of the student that may have changed after graduation from school. In this light, after the student graduates from the school the mention of the conduct in the secondary education qualifications education is now becoming an outdated fact, the maintenance of which cannot

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is justified - according to the extrapolations - on the basis of those intended by them purposes pursued with secondary education qualifications education. It is understood that if the graduating student-subject of data wishes the granting of a certificate for his conduct, he can do so specifically request with his application to the school management and the latter is obliged to grant it.

FOR THOSE REASONS

The beginning:

1. DECIDES that for the exemption from the obligation to monitor course of Religious Studies, it is sufficient to declare that reasons of conscience do not allow the student to participate in the Religious Studies course.
2. CALLS the 1st GEL X in case they have been registered in his file data revealing his son's religious beliefs complainant, such as attendance, absences, score, evaluations for the Religious Studies course, to delete these data and to destroy the associated file. Others have the same obligation services of the Ministry of Education and Religious Affairs, such as the Directorate of Secondary Education ... Attica, in the case in which adhere to these data.
3. CONSIDERS that the description of the conduct in the titles and secondary education certificates are not legal.

The president

The Secretary

Paleologo Georgia

Kon/nos Menudakos