

Athens, 03-09-2022 Prot. No.: 617 DECISION 12/2022 (Department) The Personal Data Protection Authority met as a Department via teleconference on 02-08-2022 at the invitation of its President, in order to examine the case referred to in the history of the present. Georgios Batzalexis, Deputy President, in opposition to the President of the Authority, Constantinos Menoudakou, the regular members Charalambos Anthopoulos, Konstantinos Lambrinoudakis and Spyridon Vlachopoulos, were present as rapporteur. The meeting was attended by order of the President, Kyriaki Karakasi, legal auditor - lawyer, as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: With the no. prot. C/EIS/3950/16.06.2021 her complaint A complains that from ... of ... until the date of submission of the contested complaint she provided her work online as a teacher ... (see the individual part-time employment contract submitted by ... after of the form of the relevant recruitment announcement) at the training center of the complainant, delivering the relevant courses through the "ZOOM" platform. According to the complaints, the employer attended the said courses of her employee, intervening in them despite the successive, explicitly expressed objections of the latter. More specifically, in the context of the electronic conversation provided by ... between the employer and the complainant 1-3 Kifisias Street, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr – employee, the latter ascertains the existence of a problem with regard to the continuous attendance of her course by the complainant and emphasizes the necessity of finding a solution by suggesting other ways of dealing with the relevant justifications of the attendance of reasons put forward by the employer. The same opposition to the continuous attendance of her online courses by the complainant was also expressed in the context of the electronic conversation from ..., with the complainant insisting on the necessity of continuous attendance on her part of the online courses delivered to the students of her tutoring school in order to prevent loss of customers due to possible misconduct during the provision of teaching services by the respective teaching staff. And these objections of the complainant are repeated in the electronic conversation of the latter with the complained-about employer, also provided by ..., without, according to the complainant, the continuous attendance of the online courses in question having been interrupted until the date of submission of the complaint in question before the Authority . And the complainant, after invoking articles 5, 6, 12, 13, 21 GDPR, article 7 of Law 4624/2019, Opinion 2/2017 of the Article 29 Working Group as well as ECtHR jurisprudence, excludes consent as well as the legitimate interest of the employer as the legal bases of the disputed processing by the complained-about employer while also mentioning the principle of proportionality with which tele-surveillance must be consistent. The Authority, in the context of examining the above

complaint, with no. prot. C/EX/1913/19-08-2021 her document, asked the said employer for clarifications on the complaints. Following this, with the no. prot. C/EIS/6071/23-09-2021 its reply document (in continuation of the no. prot. C/EIS/5677/09.09.2021 confirmation of receipt of the above document from the Authority on its behalf and the consequent extension of deadline for her relevant response), the complainant, after confirming the fact of the complainant's express objection to the continuous attendance of her course by her as an employer, justifies the possibility of continuous attendance of the online courses on the basis of reasons for safeguarding both satisfaction of the tutoring school's customers, especially the parents of underage students, as well as the technical efficiency of the entire process. He also denies the recording of the 2 conferences concerning the complainant, while he admits that he did not really have time to attend the online courses of all the workers in the tutoring center of the teacher. Subsequently, in the context of further investigation of the disputed complaint, the Authority called before it both parties with the no. prot. C/EXE/2467/01.11.2021 and C/EXE/2468/01.11.2021 Summons, to attend the teleconference of the competent Department on 10.11.2021, giving a deadline to submit Memoranda in further support of their claims until 1.12.2021 . The above parties were represented, the complainant through her lawyer, Despina Skendou, with AM ..., and the complainant through her lawyer, Georgios Diolatzis, with AM B was also present at the said teleconference as a witness of the accused and a working teacher at the latter's tutoring school, to whom questions were submitted in the context of the said hearing. Following the above hearing, both parties filed timely Submissions. In particular, the complainant with no. prot. C/EIS/7831/29.11.2021 Her memorandum briefly mentions, among other things, the following: firstly, she questions the necessity of the continuous presence of the complained-employer during her online courses due to the extraordinary nature of the techniques invoked by the employer problems that arose. The complainant emphasizes that by constantly attending the courses as a participant, the employer did not have the ability to manage the problems in question, while only her capacity as administrator of the platform allowed her to control the course and the attendance of the students, without requiring her continued presence as a participant in the online courses. In addition, the complainant points out that she never consented to the said attendance of her online courses, expressing on the contrary her explicit objection, while the complainant was never informed about the type of personal data collected, with the purpose of the dispute processing, with who has access to this data as well as with its right to access the data concerning it. Finally, it claims that the purposes of continuous monitoring invoked by the employer, i.e. ensuring the quality of the courses, the real presence of the students and the technical functionality of the 3 platform, could be achieved with milder means and therefore the principle of proportionality

in the processing at issue. The complainant with no. prot. C/EIS/7891/02.12.2021 Her memorandum after the relevant documents, which she submitted to the Authority, put forward, among other things, the following: she claims that the complainant was aware of the Privacy Policy of her school and that due to her negligence herself, as an employer, did not sign the declaration of consent signed by the other employees (the relevant declarations are provided as relevant after the above Memorandum). According to the complainant's claims, the reason she installed five computers in her home so that she could attend classes in each of her five classrooms as a participant was to deal with the technical problems that arose but also for general coordination pointing out that it was not possible the simultaneous monitoring of all five teachers. Subsequently, the complainant admits that the relatives of the students either called her or sent her a message on her cell phone (sms) or on the viber application in order to be taken care of when a technical problem arose. The complainant concludes that there is no violation of the complainant's personal data, since she did not follow the latter's words, admitting that her image was nevertheless visible through the computer. In addition, the complainant refers to the complainant's indirect and presumed consent to the processing in question, while she then states that she subsequently consented to her written messages despite not having signed the declaration of consent, which, according to the complainant's admission, she herself had fails to provide it to the complainant for signature. It also points out that from the allegations of the complainant it follows that there was information about the disputed processing on the part of the employer, while, finally, allegations are put forward regarding the questioning of the relationship of dependence that connected the complainant - employer with the complainant - employee for the duration of the disputed processing. The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote and left after the discussion of the case and before the conference and decision-making, following a thorough discussion , 4 CONSIDERED ACCORDING TO THE LAW 1. Because, with article 5 par. 1 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data (hereinafter GDPR) the principles that must be govern a treatment. Especially, in paragraph 1 stipulates that: "1. Personal data: a) are processed lawfully and legitimately in a transparent manner in relation to the data subject ("legality, objectivity and transparency"), b) are collected for specified, explicit and lawful purposes and are not further processed against in a manner incompatible with those purposes; further processing for archiving purposes in the public interest or for scientific or historical research or statistical purposes shall not be deemed incompatible with the original purposes pursuant to Article 89(1) ("purpose limitation"), c) are appropriate, relevant and limited to what is necessary for the

purposes for which they are processed ("data minimization"), d) are accurate and, where necessary, updated; all reasonable steps must be taken to promptly delete or correct personal data which is inaccurate, in relation to the purposes of the processing ("accuracy"), e) are kept in a form that allows the identification of the data subjects only for the period necessary for the purposes of the processing of the personal data; the personal data may be stored for longer periods, as long as the personal data will be processed only for archiving purposes in the public interest, for the purposes of scientific or historical research or for statistical purposes, in accordance with article 89 paragraph 1 and as long as the appropriate technical and organizational measures required by this regulation are applied to ensure the rights and freedoms of the subject of data ("restriction of the storage period"), f) are processed in a way that guarantees the appropriate security of personal data, including their protection against unauthorized or illegal processing and accidental loss, destruction or damage, by using appropriate of technical or organizational measures ("integrity and confidentiality")'. In accordance with the principle of accountability introduced by the second paragraph of the aforementioned article, it is expressly defined that the data controller "bears the responsibility and is able to demonstrate compliance with paragraph 1 ("accountability")". This principle, which is a cornerstone of the GDPR, entails the obligation of the data controller to be able to demonstrate compliance. In addition, it enables the data controller to be able to control and legally document a processing carried out in accordance with the legal bases provided by the GDPR and national data protection law.

2. Because, article 6 par. 1 sec. a', b' and f' of the GDPR defines the following: "1. The processing is lawful only if and as long as at least one of the following conditions applies: 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 whose the data subject is a contracting party f) the processing is necessary for the purposes of the legal interests pursued by the controller or a third party, unless these interests are overridden by the interest or the fundamental rights and freedoms of the data subject who impose the protection of personal data, in particular if the data subject is a child". Paragraph 1 of Article 21 of the GDPR on the right to object provides that: "The data subject has the right to object, at any time and for reasons related to his particular situation, to the processing of personal data concerning him, which is based on Article 6(1)(e) or (f), including profiling under those provisions. The controller no longer processes the personal data, unless the controller demonstrates compelling and legitimate reasons for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or support of legal claims".

6 3. Because, in addition, according to article 4 para. 2 of the GDPR as processing means "any act or series of acts carried out with

or without the use of automated means, on personal data or sets of personal data, such as the collection, registration, organization, structuring, storage, adaptation or alteration, retrieval, retrieval of information, use, communication by transmission, dissemination or any other form of disposal, association or combination, limitation, deletion or destruction".

Article 13 of the GDPR provides the following: "1. When personal data concerning a data subject is collected from the data subject, the controller shall, upon receiving the personal data, provide the data subject with all of the following information:

..... c) the purposes of the processing for which the personal data are intended, as well as the legal basis for the processing,

d) if the processing is based on Article 6 paragraph 1 letter f), the legitimate interests pursued by the controller or by third,

2. In addition to the information referred to in paragraph 1, the controller, when receiving the personal data, provides the data subject with the following additional information necessary to ensure fair and transparent processing: a) the time period for

which the personal data will be stored or, when this is impossible, the criteria that determine the period in question, b) the

existence of the right to submit a request to the data controller for access and correction or deletion of the personal data or

limitation of the processing concerning the data subject or right to object to the processing, as well as the right to data

portability, c) when the processing is based on Article 6(1)(a) or Article 9(2)(a), the existence of the right to withdraw consent of

any time, without affecting the legality of the processing based on the agreement application before its revocation, d) the right

to submit a complaint to a supervisory authority, e) whether the provision of personal data constitutes a legal or contractual

obligation or a requirement for the conclusion of a contract, as well as whether the data subject is obliged to provide the

personal data and what possible consequences would be the non-provision of such data, f) decision-making, the existence of

automated 7 including profiling, referred to in Article 22 paragraphs 1 and 4 and, at least in these cases, important information

about the logic followed, as well as the significance and intended consequences of said processing for the data subject". 4.

Because the processing of personal data should be intended to serve humans. And the right to the protection of personal data

is not an "absolute right", it must be assessed in relation to its function in society and weighed against other fundamental

rights, in accordance with the principle of proportionality¹. 5. Because, according to recital 39 of the GDPR "any processing of

personal data should be lawful and fair. It should be clear to natural persons that personal data concerning them is collected,

used, taken into account or otherwise processed, as well as to what extent the data is or will be processed. This principle

requires that any information and communication regarding the processing of such personal data be easily accessible and

understandable and use clear and simple language. This principle concerns in particular the information of data subjects about

the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in relation to the natural persons in question and their right to receive confirmation and achieve communication of the personal data related to them that are subject to processing. Natural persons should be informed of the existence of risks, rules, guarantees and rights in relation to the processing of personal data and how to exercise their rights in relation to this processing. In particular, the specific purposes of the processing of personal data should be clear, lawful and determined at the time of collection of the personal data. Personal data should be sufficient and relevant and limited to what is necessary for the purposes of their processing. This requires in particular to ensure that the storage period of personal data 1 See App. Sk. 4 GDPR as well as Decision APD 43/2019, sc. 2 8 character to be limited to the minimum possible. Personal data should only be processed if the purpose of the processing cannot be achieved by other means. To ensure that personal data are not kept longer than necessary, the controller should set deadlines for their deletion or for their periodic review. Every reasonable step should be taken to ensure that personal data that is inaccurate is corrected or deleted. Personal data should be processed in a way that ensures appropriate protection and confidentiality of personal data, including to prevent any unauthorized access to such personal data and to the equipment used to process it or the use of this personal data and the equipment in question." 6. 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 of application and observance of the principles of article 5 paragraph 1 of the GDPR must be cumulatively met, as also emerges from the recent decision of Court of Justice of the European Union (CJEU) of 16-01-2019 in case C496/2017 Deutsche Post AG v Hauptzollamt Köln². The existence of a legal basis (art. 6 GDPR) does not exempt the controller from the obligation to observe the principles (art. 5 para. 1 GDPR) regarding the legitimate nature, necessity and proportionality as well as the principle of minimization. In the event that any of the principles provided for in article 5 paragraph 1 of the GDPR is violated, the processing in question is considered illegal (subject to the provisions of the GDPR) and the examination of the conditions for applying the legal bases of article 6 of the GDPR is omitted. Thus, in violation of the principles of 2 "57. However, any processing of personal data must comply, on the one hand, with the principles to be observed in terms of data quality, which are set out in Article 6 of Directive 95/46 or Article 5 of Regulation 2016/679 and, on the other hand , to the basic principles of lawful data processing enumerated in Article 7 of this Directive or Article 6 of this Regulation (cf. judgments of 20 May 2003, Österreichischer Rundfunk and others, C-465/00, C-138/ 01 and C-139/01, EU:C:2003:294, paragraph 65, and of 13 May 2014, Google Spain and Google, C-131/12, EU:C:2014:317, paragraph 71)'. 9

article 5 GDPR unlawful collection and processing of personal data is not cured by the existence of a legitimate purpose and legal basis³. Furthermore, the controller, in the context of observing the principle of legitimate or fair processing of personal data, must inform the data subject that it is going to process his data in a legal and transparent manner⁴ and be in a position per at all times to prove his compliance with these principles (principle of accountability according to art. 5 par. 2 in combination with articles 24 par. 1 and 32 GDPR)⁵. And the recognition and selection of the appropriate legal basis from those provided for in Article 6 para. 1 GDPR is closely linked to the principle of legitimate or fair processing as well as to the principle of purpose limitation, and the data controller must not only choose the appropriate legal basis before the start of the processing, but also to inform by no. 13 par. 1 sec. c GDPR for the use of the data subject, as the choice of each legal basis exerts a legal influence on the application of the rights of the subjects⁶. In particular, the choice of the legal basis for the processing of personal data must take place before the start of the processing, and the controller is obliged based on the principle of accountability (see art. 5 par. 2 in conjunction with 24 and 32 GPA D) to choose the appropriate legal basis from those provided by article 6 para. 1 GDPR, as well as to be able to prove in the context of internal compliance the observance of the principles of article 5 para. 1 GDPR, including automatically and of the documentation on the basis of which it arrived at the relevant legal basis. In addition, with the GDPR, a new compliance model was adopted, the central axis of which is the above-mentioned principle of accountability, in the context of which the controller is obliged to plan, implement and generally take the necessary measures and policies, in order to process the data to be 3 See Decision 26/2019 APD, sc. 5. Compare Decision 38/2004 APD. 4 See related CJEU C496/17 *ibid.* par. 59 and CJEU C-201/14 of 01-10-2015 par. 31-35 and especially 34 as well as relevant reference to Decision 26/2019 APD, sc. 5. 5 See in this regard Decisions APD 26/2019, sc. 6 and APD 43/2019, sc. 5. 6 See Guidelines 2/2019 of the European Data Protection Board "on the processing of personal data under Article 6 (1) (b) GDPR in the context of the provision of online services to data subjects" pp. 4-67 par. 1, 12, 17-20 as well as Decision APD 26/2019, sc. 6. 10 in accordance with the relevant legislative provisions. In addition, the controller is burdened with the further duty to prove by himself and at all times his compliance with the principles of article 5 par. 1 GDPR. It is no coincidence that the GDPR includes accountability (already mentioned above Article 5 para. 2 GDPR) in the regulation of the principles (Article 5 para. 1 GDPR) that govern the processing, giving it the function of a compliance mechanism , essentially reversing the "burden of proof" as to the legality of the processing (and in general the observance of the principles of Article 5 par. 1 GDPR), shifting it to the data controller, so that it can be validly argued that he bears the burden the

invocation and proof of the legality of the processing⁷. 7. Because the Authority, regarding the processing of personal data in the context of labor relations, interpreting the provisions of Law 2472/1997, has issued the no. 115/2001 Directive on the processing of personal data in employment relations, in the context of which it has accepted, among other things, that, as follows from the principle of purpose, the collection and processing of personal data of employees is allowed exclusively for purposes related to directly with the employment relationship and as long as it is necessary for the fulfillment of the obligations of both parties based on this relationship, whether they stem from the law or from the contract⁸. Furthermore, the Authority accepted in the same Directive that the consent of the employees cannot lift the prohibition of going beyond the purpose and that in the case of employment relations, the inherent inequality of the parties and, as a rule, the relationship of dependence of the employees calls into question the freedom of consent of the employees, an element necessary for the validity of the processing⁹. In the context of the application of the GDPR, consent is provided as one of the legal bases for the processing of personal data (Article 6 par. 1 sub. a'), under the conditions of Article 7 of the GDPR, in accordance with the meaning assigned by no. 4 para. 11 GDPR and in compliance with the principles provided by article 5 para. 1 GDPR¹⁰. 7 See in this regard Decisions APD 26/2019, sc. 7 and APD 43/2019, sc. 6. 8 See p.10 of with no. 115/2001 of the Authority's Directive. 9 See similarly p.10 of with no. 115/2001 of the Authority's Directive. 10 See APD 26/2019, sc. 10 11 However, and in the light of the GDPR, the above finding that employees are rarely able to give, refuse or withdraw their consent, given the dependency arising from the employer-employee relationship, still holds true. . Therefore, except in exceptional cases, employers should rely on a legal basis other than consent – such as the need to process the data in the context of their legitimate interest. Accordingly, the European Data Protection Board considers that in any case where the processing is not necessary for the performance of the contract, such processing takes place legally only if it is based on another appropriate legal basis¹¹. 8. It is noted in relation to the above that the monitoring of employees is possible not only due to the use of special technologies but also because employees need to use electronic applications available from the employer, which process personal data. The requirement for proportionality in this context sometimes means that no kind of monitoring can take place¹². Before using any monitoring tool, a proportionality check should be carried out to consider whether all the data is necessary, whether the processing in question undermines the general privacy rights that employees also have in the workplace and what measures should be taken to ensure that violations of the right to privacy and the right to confidentiality of communications are kept to a minimum necessary¹³. The person in charge of processing must weigh each time the existing risks, the extent of these risks,

the existing alternative possibilities for dealing with these risks and, on the other hand, the attacks on human personality and privacy from the use of such methods. Furthermore, as stated above, data processing at work must be a proportionate response to the risks faced by the employer. And the latter must take into account the principle of data minimization when deciding on the use of new technologies¹⁴. 11 See APD 26/2019, sc. 13. 12 See Opinion OE article 29, 2/2017, p. 18. 13 See Opinion OE article 29, 2/2017, p. 28. 14 See OE opinion on article 29, 2/2017, pp. 28-29. 12 9. In the context of the present case, the complainant - employer, who was attending the online courses delivered to the students of her tutoring school by the complainant, has the status of data controller no. 4 para. 7 GDPR, as in the context of the above processing, consisting of the modern processing of personal data by automated means, i.e. video and audio monitoring¹⁵, of the complainant, determines the purposes and the method of processing the above personal data and therefore becomes obliged to first comply with the principles introduced by Article 5 of the GDPR as well as with its other consequential obligations in the context of the regulatory protection of personal data. The complainant objected to the above processing already from the beginning, exercising the relevant right to object as a data subject pursuant to Article 21 para. 1 of the GDPR through written electronic messages (emails and messages through the electronic application viber, as these were presented and are elements of the file under consideration) . In particular, it is noted that from the above written messages it was clear the complainant's opposition to the continuous attendance of her online course by her employer and was expressed in an irrefutable manner, as can be seen from her conversations with the complainant. After all, the relevant objection is directly admitted by the complainant herself in her response to the Authority with the original number C/EIS/6071/2021. It is pointed out, in fact, that the complainant constantly expressed her dissatisfaction and concerns about the possibility of continuous attendance of her course, even suggesting other ways to replace the above-mentioned continuous attendance, as can be seen from all the elements of the file. It is indicatively noted that in the complainant's e-mail message to her employer from ... she directly mentions that the presence of the latter in her online courses makes it difficult for her to express herself and perform while she feels that her freedom of speech and her status as a human being and an educator are being violated . And the fact that it is simply mentioned in the body of the complaint under consideration that it was initially treated with 15 Compare EDPB, Guidelines 3/2019 on processing of personal data through video devices, adopted on 10 July 2019, p. 5, available: (https://edpb.europa.eu/sites/default/files/consultation/edpb_guidelines_201903_videosurveillance.pdf) 13 good faith on the part of the complainant, the disputed processing does not imply the employee's indirect consent, as the complainant wrongly assumes

in no. prot. C/EIS/7891/02.12.2021 Her memorandum, much more so since the complainant's explicit and continuous opposition to the continuous attendance of her online courses by the complainant - her employer. Besides, the fact that the complainant, in the context of the complaint under review, invokes the relationship of dependency in the context of the employment contract that connected her with the complained-of precisely to demonstrate the weakening of consent as a valid legal basis for the disputed processing, cannot, logically necessity, to be taken as her presumed consent, rejecting the allegations to the contrary of the accused. From none of the messages presented to the Authority by the complainant to the employer can it be inferred that she consented to the above processing, much more so when, in the context of exercising her right to object to the complainant - responsible for processing, alternative ways were formulated as milder means, according to the complainant, than the possibility of continuous monitoring to achieve the goals invoked by the employer. In any case, it is noted that even if the employer infers the complainant's consent to the processing from some of her individual proposals in the context of a discussion that undoubtedly has as its central axis the latter's opposition to the disputed processing, she cannot establish consent as a legal basis, as 'as the consent must be express in the sense that there must be no doubt as to the intention of the particular person to provide his consent. In other words, the statement with which the specific person expresses his agreement must not leave room for ambiguity as to his intention¹⁶, while it must be obvious that the data subject consents to the processing in question¹⁷. ¹⁶ See Opinion 15/2011 of the OE of article 29 regarding the definition of consent, WP187, July 13, 2011, p. 25. ¹⁷ See in this regard EDPB, Guidelines 5/2020 on consent under Regulation 2016/679, 4 May 2020, p. 21, (para. 75). ¹⁴ 10. Because, in addition to the above, it is further noted that, during the processing of the employer – from her initial response (prot. no. C/EIS/6071/23.09.2021) before the Authority, that the complainant expressed her her opposition to her continued presence in the online courses, she acknowledged the exercise of the relevant right of opposition by, in fact, responding to it. Therefore, it ruled out consent as the legal basis of the processing in question¹⁸, while it is appropriate to point out at this point that even if consent is ensured, this does not negate or reduce in any way the obligations of the controller to comply with the principles governing the processing, which are enshrined in the GDPR, in particular in Article 5 thereof in terms of objectivity, necessity and proportionality. Therefore, even if the processing of personal data is based on the consent of the data subject, this fact does not legitimize the collection of data that is not necessary in relation to a specific processing purpose and the processing will be fundamentally unlawful¹⁹. However, in any case, consent cannot in this case be considered a legitimate legal basis, since where the consent of an employee is required, and there is

real or potential related damage resulting from the non-granting of consent, the consent is not valid because it is not given freely²⁰. It is noted in this regard that in the context of employment there is a de facto power imbalance. And given the dependency implied in the employer-employee relationship, it is unlikely that the data subject will be able to refuse to provide his employer with consent to the processing of his data without fearing or running a real risk of suffering negative consequences due to ¹⁸ See EDPB, Guidelines 5/2020 on consent under Regulation 2016/679, 4 May 2020, pp. 38-39. ¹⁹ See EDPB, Guidelines 5/2020 on consent under Regulation 2016/679, 4 May 2020, p. 6 (para. 5). ²⁰ See Article 29 EC Opinion 15/2011 on the definition of consent, WP187, 13 July 2011, p. 16 as well as EDPB, Guidelines 5/2020 on consent under Regulation 2016/679, 4 May 2020, p. 5, (par. 4), where it is pointed out that "the opinions issued by the Article 29 Working Group on consent, in cases consistent with the new legal framework, are still relevant, as the GDPR codifies the existing Article 29 Working Party guidance and general good practice and most of the essential elements of consent remain the same under the GDPR." See even the one with no. 43 recital of the GDPR. ¹⁵ of the denial of ²¹. Therefore, in the context of related processing operations, the legal basis cannot be the consent of employees (Article 6 paragraph 1 point a GDPR), due to the nature of the relationship between employer and employee²². And the dependency relationship that exists ex lege on the basis of the relevant employment contract, which was established between the complainant and the complainant, is in no way negated by the relevant allegations of the complainant - employer, in particular by the possibility of the complainant being suspended from work due to her her opposition to the processing in question as well as her preference based on health reasons to continue distance learning in May 2021, when lifelong teaching was now an option. In addition to the above, it is stated that, by virtue of the Policy of the tutoring school presented by the complainant, the processing of personal data of the subjects based on consent requires that this is given in writing and expressly after information, elements which do not appear to exist from the elements of the file of the case under consideration. The complainant, in response to the above expressly expressed opposition of the complainant, presented her refusal to stop the disputed processing of the attendance of the latter's online courses citing, among other reasons, the need to control the quality of the latter's services, and many rather from the moment when the employer herself is judged by both the children and their parents, as explicitly stated in one of the conversations between the two parties involved presented to the Authority. In addition, in no. prot. C/EIS/6071/2021 in her response to the Authority, the complained-employer cites, as it appears in the context of the above-explained history of the case in question, also technical reasons - problems for the treatment of which she attended the online courses between others

and the accused, while he admits that he intervened during the lessons and whenever he considered it appropriate in order to reason with the students. Moreover, with the 21 See in this regard EDPB, Guidelines 5/2020 on consent under Regulation 2016/679, 4 May 2020, p. 10, (para. 21). See and APD 26/2019, sc. 9. 22 See in this regard See opinion 2/2017 (WP249) on data processing at work, 8 June 2017, p. 7 and also EDPB, Guidelines 5/2020 on consent under Regulation 2016/679, 4 May 2020, p. 10, (par. 21). 16 no. prot. C/EIS/7891/02.12.2021 in her memorandum, the complainant reiterates the technical issues she was asked to deal with during the online courses of her employees, also referring to her witness - employee, who confirmed that the complainant met her when there was a problem with its connection (p. 2-3 of the above memo). In fact, the employer herself admits that even though it was possible to attend the online courses continuously, she could not attend them at the same time, which is why, after all, when a problem arose to be solved, she was informed about it either by phone or via message (sms or message in the viber application) (see p. 3 of the Complainant's Memorandum). 11. Because, from the above grounds put forward by the complainant, on which the disputed processing is based, and excluded, according to the above understanding, consent as a legal basis, it follows that they refer to the legal basis of the case in paragraph 1 of article 6 of the GDPR. And yes, in the record of activities presented by the complainant, the legal basis of Article 6 para. 1 b GDPR (performance of a contract) is invoked, but this legal basis refers to the processing of employees' data during the normal use of the zoom platform without it can be accepted, as long as there is no clear and specific description, that it includes the processing entailed by the possibility of continuous monitoring of the employee's image and audio data on behalf of the complainant throughout the online courses. In particular, it follows from the claims of the complained-employer that attending the online courses of the complainant is considered by her to be necessary for the purposes of her legal interests as a data controller which seem to be organized around the core of her managerial right. Therefore, there is a clear reference to another legal basis for said processing. 12. Because, in addition, the Policy submitted by the complained-about employer does not clearly and accurately specify the legal basis for the processing in question, namely the continuous monitoring of the image and sound data of the employees by the complained-employer throughout the online courses. In fact, it is noted in this regard that in the context of a security policy, in addition to the above, the technical and 17 organizational security measures, which should be taken by the data controller, should be specified in a clear manner, in the case of monitoring by the same of the online courses of its employees, in order to ensure the effective protection of the personal data of the latter²³ in accordance with the provisions of articles 25 and 32 GDPR. However, from the foregoing, it appears that there was no information

according to Article 13 of the GDPR, including, consequently, the information about the legal basis of the processing in question, from the employer's side, especially when receiving the disputed personal data of the complainant. This, as far as the record of activities invokes the legal basis of Article 6 para. 1 b GDPR (execution of a contract), without specifically taking into account the disputed processing of the employer's continuous monitoring of its employees' online courses, while at the same time, from the employer's answers presented to the Authority regarding the right of objection exercised by the complainant, the legal basis of the processing in question is its legal interest as superior as such in the context of exercising its managerial right (article 6 par. 1 f GDPR), but without documenting whether the attendance of the complainant's courses by the complainant is indeed an appropriate and necessary means for the exercise of the complainant's managerial right. In no. prot.

C/EIS/7891/02.12.2021 in her memorandum the complainant bases the disputed processing on the legal basis of the consent of the complainant - her employee. In addition, it is noted that in the addenda submitted by the complainant to the individual employment contracts (except for the complainant, which does not exist) regarding the processing of the employees' personal data, there is no reference to the disputed processing and its legal basis. 13. Since, following this, it is quickly established that there is no clarity as to the invoked legal basis for the processing in question, as the employer also refers to the aforementioned legal bases, in violation of the indicative principle (www.dpa.gr: 23 See https://www.dpa.gr/index.php/el/enimerwtiko/thematikes_enotites/asfaleia/asfaleiaepexergasias/tekmiriowsh_asfaleia_proswpikwn/politiki_asfaleia_proswpikwn reference website of the relevant Authority on the 18th of lawful, legitimate and transparent processing according to article 5 paragraph 1 a' GDPR. In particular, the complainant created a false impression as to the legal basis on which the disputed processing was based, with the result that there is no clear and accurate relevant information to the employee - complainant, in violation of the above provisions²⁴ as well as article 13 of the GDPR , as far as the information in the file does not indicate that the complainant was informed by the person responsible for the complaint processing and especially when receiving the aforementioned personal data, and even more so since the disputed processing, which consists in the ability of the employer to monitor image and audio data of its employees, is not mentioned in the context of the Policy presented by the complained ' throughout the course they deliver through the zoom platform. At the same time, this ambiguity deprives the Authority of the possibility of checking the correctness of the choice of legal basis, thus violating the principle of accountability²⁵. 14. Because, in this case, and in accordance with the above, the complained-employer did not satisfy the complainant's right to oppose, while proceeding with the disputed processing in

violation of the provisions of articles 5 par. 1 point a', 5 par. 2 and 13 of the GDPR, as they are specified in detail in the aforementioned considerations and, however, without clearly specifying the legal basis on which the latter is based according to article 6 of the GDPR. 15. Because the violation of the basic principles for the processing in combination with the non-establishment of a legal basis for the latter, as detailed above, entail the imposition of the administrative sanctions of article 83 par. 5 item. a' of the GDPR while the violation of the rights of the data subjects provided for in articles 12-22 of the GDPR entails the imposition of the relevant sanctions according to article 83 par. 5 item. b' of the GDPR. In accordance with the GDPR (App.Sk. 148), in order to strengthen the enforcement of the rules of this Regulation, sanctions, including administrative fines, should be imposed for each violation of this Regulation, additionally or

24 Compare in this regard APD 26/2019, sc. 24.

25 See in this regard APD 26/2019, sc. 24.

19

instead of the appropriate measures imposed by the supervisory authority pursuant to this Regulation.

16. Based on the above, the Authority considers that there is a case to exercise the following article 58 par. 2 of the GDPR its corrective powers in relation to the established violations.

17. The Authority further considers that the imposition of a corrective measure is not sufficient for the restoring compliance with the provisions of the GDPR that have been breached and that must, based on the circumstances established, be imposed, pursuant to it provision of article 58 par. 2 sec. i' of the GDPR in addition to effective, proportional and dissuasive administrative fine according to article 83 of the GDPR both to restoring compliance, as well as sanctioning illegal behavior²⁶.

18. Furthermore, the Authority took into account the criteria for measuring the fine defined in article 83 par. 2 of the GDPR, paragraph 5 item a' and b' of the same article they have 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:

i.

ii.

The fact that the complainant in her capacity as an employer violated those provided by article 5 par. 1 sec. a' GDPR principles of legality, objectivity and transparency, i.e. it violated a fundamental principle of the GDPR for the protection of personal data.

The fact that the observance of the principles provided for by its provision article 5 par. 1 sec. a' of the GDPR is of capital importance, primarily, h principle of legality, so that if it is missing it becomes illegal from the beginning the processing, even if the other processing principles have been observed rather in this case where no one was established with clarity and precision

26 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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v.

iv.

iii.

from the provisions in article 6 of the GDPR legal basis for the dispute processing, as mentioned above.

The fact that the complainant with the aforementioned ambiguity as to determination of the legal basis for the processing in question was simultaneously lacking from the Authority the possibility to check the correctness of the relevant choice thus violating the principle of accountability, while at the same time not managed to prove that he carried out the procedure provided for in Article 13 of the GDPR

its obligation to inform, as specified above.

The fact that the processing of personal data in violation of the GDPR due to the illegal basis and relevant prior information in this case concerned one (1) natural person as the subject of personal data, whose right to object has been exercised was not satisfied.

The fact that the aforementioned violations of the GDPR do not it is proved without doubt that they are attributed to the fraud of the accused employer but in her negligence due to ignorance of the provisions of the GDPR.

The absence of previous violations of the accused employer as a relevant audit shows that it has not been imposed on her until today administrative sanction from the Authority.

The fact that from the data brought to the attention of the Authority and based on which found the above GDPR violations, the person in charge processing did not cause material damage to the complainant.

The fact that the violation of the provisions on the basic principles for the processing as well as with the rights of the subjects subject to, according to with the provisions of article 83 par. 5 sec. a' and b' GDPR, in the upper class prescribed category of the grading system of administrative fines.

19. Based on the above, the Authority unanimously decides that it should be imposed on reported employer as data controller or referred to in the ordinance administrative sanction, which is considered proportional to the gravity of the violation.

viii.

vii.

vi.

FOR THOSE REASONS

The beginning

It imposes on the complained controller C the effective,
proportionate and dissuasive administrative fine appropriate to the particular
case, according to its special circumstances, amounting to two thousand (2,000)
euros for the non-satisfaction of the right to object as well as for the above
established violations of articles 5 para. 1 para. a', 5 para. 2 and 13 GDPR, such as
above were specified, in accordance with articles 58 par. 2 item. i' and 83 par. 5 item a'
and II GDPR.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou