

PRINCIPLE FOR DATA PRIVACY

FOR OPIC CHARACTER

CORRECT REPETITION

Athens, 12-10-2018

Prot. No.: G/EX/7792/12-10-2018

A P O F A S H A . 59/2018

The Personal Data Protection Authority met, after

invitation of its President, in a regular meeting at its headquarters on 08-05-2018

in order to examine the case referred to in the present history.

The President of the Authority, Konstantinos Menudakos, and the regular members were present

of the Authority Konstantinos Christodoulou, Antonios ymbonis as rapporteur,

Pyridon Vlachopoulos, Konstantinos Lamprinoudakis, Charalambos Anthopoulos

and Eleni Martsoukou. they attended the meeting, without the right to vote

also, by order of the President, Georgios Rousopoulos, expert scientist, as

assistant rapporteur, and Irini Papageorgopoulou, employee of the department

of administrative affairs, as secretary.

The Authority took into account the following:

Submitted to the Authority no. Prot. G/EI /1239/16-02-2017 complaint

of A, journalist of the police/court reporting. according to her,

on Tuesday 14-02-2017 in the outer space of the Court of Appeal of Athens and at the same time

trial of a case concerning "Golden Dawn" was a team

police officers. One of them was seen carrying, integrated in a special case at

his uniform, a device with portable camera features,. To prove her

characteristic photos were also submitted to the complaint, while for the

specific incident there were various publications in the press and the

electronic media.

The Authority, with the no. prot. C/EX/1239-1/20-02-2017 its document,

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sent a copy of the complaint to the Hellenic Police (hereinafter EL.A.),

asking for her views, as well as information on any actions taken for

investigating the validity of the complaint. EL.A. answered with

no. prot. ... (no. prot. Authority G/EI /2924/06-04-2017) her document, with which

stated that he proceeded to a thorough examination of the accused and

found to be a 'power bank' type portable charger, cable

connection, case and Bluetooth device, and put the case on file.

following this document, the Authority, with the no. prot. G/EX/2924-

1/10-05-2017 her document requested more detailed information on the exact

characteristics of said devices. He also asked to be presented to her

any document of EL.A. regarding the investigation of the case. EL.A.

replied to the Authority with no. first ... document (no. first. Authority

G/EI /4844/23-06-2017). with this it is stated that the powerbank type charger was

the TP LINK TL-PB 10400 model, dimensions 88.8 X 44.3 X 44.4

mm, the bluetooth device was the SAMSUNG HM 7100 model (FCC

ID:A3LHM7100) and the corresponding charging case model EB-K7100BE of the same

company, dimensions 70 X 30 X 5 mm. From an examination of the specifications of

of devices on the manufacturer's website¹ the declared ones are confirmed

dimensions of the specific charging device used

exclusively in combination with the specific Bluetooth headset model.

At the same time, EL.A. sent the correspondence regarding the internal

investigation of the incident. As it follows from this, the Police Directorate

of Attica Enterprises, as soon as he became aware of the complaints against the police officer

her, invited him to the building of G.A.D.A. where, in the presence of Mr. General Police

Director of Attica, the Director of the Directorate of Police Operations of Attica and the Commander of the Y.A.T., it was established that it was a portable power type charger bank, connection cable, case and Bluetooth device. The policeman pleaded that he carried them in his uniform because the often difficult wireless communication with the business center of G.A.D.A. necessitates the use of a telephone communication during the performance of his service. It was judged that they did not occur sufficient evidence to establish a disciplinary offense and the case was raised

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and

http://org.downloadcenter.samsung.com/downloadfile/ContentsFile.aspx?CDSite=UNI_AU&CttFileID=5408497&CDCtt
http://www.samsung.com/uk/consumer/mobile-devices/accessories/audio/BHM7100UBECXEU/Type=UM&ModelType=N&ModelName=HM-7100&VPath=UM/201305/20130509174904031/HM7100_UM_Eng_EU_Rev.1.1_130509.pdf&OriginYN=N

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on file, from a disciplinary point of view.

Following the above, the Authority, with the no. prot. G/EX/6775/21-09-2018

her document, forwarded to EL.A. advisory note in which the

submitted data. doubts are raised regarding this note

correctness of the examination of the incident by the services of EL.A.,

mainly due to incompatibility of their characteristics and dimensions

devices with those shown in the photos, as it does not seem possible

to prove the claim that in the case of the uniform was placed o

specific Bluetooth device charger and requested to submit,

in writing, her views.

in response to the above document, EL.A. submitted the no. first...

its document (prot. no. Authority G/EI /1060/06-02-2018), in which it is repeated

that the device was found to be a portable power bank type charger.

He adds, in fact, that in order to maintain transparency to a superlative degree and the

real-time control of the incident, the depicted policeman with

order of the General Police Director of Attica was taken to its offices

G.A.D.A. where he provided explanations in the presence of high-ranking Police officials

and showed off the portable charger, connecting cable, case and device

Bluetooth. He considers that the issue was examined by a multitude of Officers up to and including

higher service level and the finding that it was a charging device did not

is open to dispute, so the case was well put on file.

The Authority, after examining all the elements of the file, after hearing him

rapporteur and the clarifications of the assistant rapporteur, who left after

discussion both before the conference and decision-making, and after thorough

discussion,

1.

THOUGHT ACCORDING TO THE LAW

according to article 2 par. a' of Law 2472/1997 and the recitals

14-17 in the preamble of Directive 95/46/EC, audio and video data,

if they refer to persons, they constitute personnel data

character.

2. With article 15 of Law 3917/2011 issued following the opinions

1/2009 and 2/2010 of the Authority regulates the use of surveillance systems with

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downloading or recording audio or video in public places. As defined

in article 14 of this law, the installation and operation of such

systems is allowed for "... c) the prevention and suppression of crimes i.e

constitute a matter of public order, d) prevention and suppression

violent crimes, drug possession, and dangerous crimes, crimes against emotional security and crimes against her ownership, when, based on factual evidence, there are sufficient indications that such acts were performed or are about to be performed..." (par. 1) only by state authorities provided that the principle of proportionality is observed (par. 2).

paragraph 4 of the aforementioned article provides for the issuance of a Presidential Decree Decree that will specify the regulation. To date it has not carried out. As indeed, it was pointed out repeatedly by the Authority (see annual report of the years 2015 (p. 121), 2014 (p. 105), 2013 (p. 114) and 2012 (p.102 and 103)), despite the fact that since 2012 a plan has been submitted by an established working group, processing has not progressed since competent Ministry with the result that legality cannot be documented of the processing of personal data by any public body, with use of a surveillance system for the purposes of said law.

Article 10 of Law 2472/1997 "The controller must receive the appropriate organizational and technical measures for data security and their protection from ... and any other form of unfair processing. These measures must ensure safety levels commensurate with the risks what the processing entails and the nature of the data it is subject to of processing..."

in this case, the use of a camera by a police officer with features described in the case history will not could be included in the case of exclusively personal or domestic of use, as well, even if the decision to use it is exclusive of the police officer in question, this is done in its context

professional and not of his personal activity and indeed to

space that is public or freely accessible to the public. Such use does not

can be considered legal, since, according to the above, the

regulation that he would assign to EL.A. the authority of use

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portable cameras.

6. EL.A. as a controller must have appropriate measures for

ensuring the legality of any personal data processing

character (article 10. law 2472/97). Necessary organizational measure for

safeguarding this is the existence of complaint investigation procedures which

concern the processing of personal data. Even if initially

the controller has no knowledge of an action by an employee,

who acts within the scope of his duties, as soon as he receives knowledge, such as

after a relevant complaint, must examine the case in more detail

and possibly take appropriate measures. The results of

of these procedures must be documented and not admissible

challenge, even if they are done orally in the first stage.

7. With the documents sent by EL.A., in response to its documents

Authority it is claimed that a thorough investigation was carried out and indeed with

immediacy and from high-ranking officers of the Police, in which

explanations were provided, and the devices in question were demonstrated, and

its conclusions are indisputable. However, it is established that the

COME . did not record investigative actions.

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Besides, when the complaint was submitted to the Authority, the possibility did not exist immediate intervention and on-site administrative control, due to the time that had intervened. Furthermore, apart from the photographs, none exist other evidence of image or sound reception. Therefore, no it can be established with certainty that in the particular incident was carried out processing personnel data character through video recording.

9. Considering the above, and in particular that it cannot be proven

processing of personal data, but its process

COME . to investigate a complaint related to processing

of personal data was not documented in writing, while,

in addition, EL.A. delayed unreasonably to provide the requested

from the Authority information, the Authority considers that it should address to

controller relevant recommendations.

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FOR THOSE REASONS

The Authority issues recommendations, based on art. 19 par. 1 c' of Law 2472/1997, at

Hellenic Police as controller such as:

1. Takes the necessary actions so that the investigation process

complaints related to the processing of personnel data

character to be duly documented.

2. cooperates effectively with the Authority.

The President of the Authority

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou