

Athens, 14-07-2021 Prot. No.: 1708 DECISION 31/2021 (Department) The Personal Data Protection Authority met as a Department at its headquarters on 26.05.2021 at the invitation of its President, in order to examine the case refers to the history of the present. The Deputy President G. Batzalexis, who obstructed the President of the Authority K. Menoudakos, and the regular members of the Authority S. Vlachopoulos, X. Anthopoulos and K. Lambrinoudakis, were present as rapporteur. Present without the right to vote were K. Karveli, expert scientist-lawyer, as assistant rapporteur, who left after the discussion of the case and before the conference and decision-making, and E. Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: In no. prot. C/EIS/4053/25.05.2018 complaint to the Authority by A, Director of the Nursing Service of the General Hospital [region] X states the following: On 27.12.16 B, an employee of the TE Nurses branch, belonging administratively in the nursing service, in which the complainant is in charge, on the occasion of the discharge of his duties by ... head of the nursing department, filed a complaint with the Misdemeanor Prosecutor [region] X against the complainant and the Director of the Hospital, for the offense of breach of duty in the performance of their duties and requested that they be prosecuted. After a preliminary examination was carried out, the Prosecutor of First Instance with no. ... her order placed the case in the 1st file, due to the fact that no evidence of the commission of criminal acts emerged during the performance of the duties of the defendants. However, as the complainant states in his relevant complaint to the Authority, when he became aware of the complaint as a defendant, he found that in the state of the attached documents he submitted to his complaint, it also included documents which are personal data of the register, which are kept in the individual official file of the file and it was not legal for the accused to have it in his possession. In particular, these documents were a) the decision of the General Secretary of the Ministry of Health for the secondment of the complainant from ... to the General Hospital [region] X, b) the decision of the Deputy Director C on the temporary assignment of the complainant's duties, c) the decision of the Director on the overtime employment of the complainant in the structures of primary health care, d) the decision of Acting Governor D for the granting of a license to practice private work for a fee, and e) the decision of the Governor of G.N. [region] X to revoke the above license. After being informed about the content of the case file, the complainant requested in writing from the Director of the hospital, firstly, to be informed whether the specific documents had been communicated to the complainant, and if so, by what procedure, and when, and secondly, in the event that have not been legally notified to carry out an EDE, in order to establish how the accused has them in his possession. The Director replied that based on the data kept in the Personnel Department's file, it does not

appear that personal data of the register has been communicated to the complainant. The Authority received exactly the same written response from the Hospital Director in response to a document to provide clarifications regarding the case. In particular, the Director of the Hospital in her response dated 29.11.2018 to the Authority's clarification document dated 9.11.18 stated that: a) no details of the complainant's personal register were shared with third parties and b) no event was reported during her tenure for folder data leak in order to initiate EDE. 2 For these reasons, the complainant asks the Authority to impose sanctions on the complainant and in particular because, as he states in his complaint, the complainant became aware of his personal data kept in his personal register, without being informed and which he possesses illegally, he edited, used and communicated them with the fraudulent intent of obtaining the same benefit and at the same time harming him by causing his criminal prosecution. The complainant in no. prot. C/EIS/1697/05.3.19 his response to the Authority stated that a) all the relevant documents belong to the category of administrative documents to which, according to article 5 of the KDiokDiad, anyone with a reasonable interest and rather as he has a legitimate interest b) he received the first three from POEDIN following his relevant request, while the last two from DIAUGIA and c) they did not contain sensitive personal data and he used them legally for his legal protection. Also POEDIN in no. prot. C/EIS/4145/16.6.20 in its response to the Authority stated that there was never a request by the complainant for the provision of the complainant's relevant information, in which case the relevant information was never given to the complainant. Following these, the Authority with no. first C/EX/846/16.3.21, C/EX/847/16.3.21, C/EX/848/16.3.21 and C/EX/849/16.3.21 calls respectively called the Governor of the General Hospital [ area] X, POEDIN attorney M. Tsipras, complainant A and complainant B to attend the Authority's meeting on 03.24.2021, in order to discuss the above complaint. During the hearing which took place on 07.04.21 following a postponement from the discussion on 24.3.21, the complainant A, the complainant B after the power of attorney of M. Kambyssi, the Governor of the General Hospital [region] X, E and the POEDIN attorney M. Tsipras. During the hearing and also with the nos. prot. C/EIS/3108/25.4.19 and C/EIS/2674/20.4.21 memoranda, complainant A repeated his claims that i.e. the complainant without his 3 prior information and consent received and used details of his official personal registry. The accused B during the hearing and also with the no. prot. 2620/16.4.21 filed his memorandum stated that: a) he received the first three documents from the local executive of POEDIN F, then a member of the Board of Directors. of the Employees' Association of G.N. [area] X., who assured him that he legally possessed them, and the last two from DYAVGEIA b) the disputed items which fall under the category of public documents, he used them for judicial use and the support of his legitimate interest, specifically for his lawsuit against the

complainant for breach of duty, but also for the complainant's lawsuit against him, c) these documents were in the Board of Directors. of the Employees' Association of G.N. [region] X and this is evidenced by the complainant's letter from ... to the Secretariat of the Board, according to which the Board had forwarded documents 3-5 to its members for their information from the end of ..., and d) himself the complainant in his report from ... to the Commander of GN [region] X admits that these documents were already known to POEDIN from ..., and asks the Commander to conduct a disciplinary audit for breach of duty and misappropriation of documents. The attorney of POEDIN M. Tsipras both during the hearing procedure and with the no. prot C/EIS/2641/19.4.21 filed its memorandum stated that F, which the complainant mentioned is not a representative of POEDIN in [area] X and POEDIN never received the complainant's request for the provision of the complainant's relevant information, so and the relevant information was never given to the complainant. The Authority, after the hearing and the examination of the elements of the file 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 THE LAW

4 1. Because in this particular case the relevant provisions of Law 2472/97 apply and must be applied, given that the reported processing and violation took place before the entry into force of the GDPR, i.e. before 25.5.2018, and not continued after its entry into force, in accordance with the relevant internal instructions issued by the European Data Protection Board (EDPB) on 30.6.20 on the subject (see "Internal EDPB Document 2/2020 on how to deal with complaints relating to data protection infringements started before the entry into application of GDPR that continue after 25 May 2018"). 2. Because in particular, according to the provisions of article 4 par. 1 item a' and b' of Law 2472/97, personal data in order to be lawfully processed must: a) be collected in a lawful and lawful manner for specified, clear and lawful purposes and undergo lawful and lawful processing in view of these purposes and b) be relevant, appropriate, and no more than is required in each case in view of the purposes of the processing. Also according to article 5 par. 2 item e' of the same law, processing is exceptionally permitted without the consent of the data subject when the processing is absolutely necessary to satisfy the legal interest pursued by the controller or the third party or third parties to whom the data is communicated and under the condition that this prevails obviously of the rights and interests of the persons in whom

the data are reported and their fundamental freedoms are not affected.

Also according to the provisions of article 21 par. 1 item b' of Law 2472/97,

the Authority may impose on the controllers or any

their representatives, for breach of their obligations arising from this law and from any other regulation concerning the protection of the individual from the processing of personal data, among others, the administrative sanction of the fine.

3. Furthermore, the confidentiality of the personal register of public servants which is provided for in the provisions of decree 178/2004 is not absolute, but can be waived, as the Authority has already judged, when the third party has proven

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legitimate interest to obtain the relevant data for judicial use (see s. decision Authority 75/2011 and Opinion NSK 165/2008).

Also according to article 5 of the Code of Administrative Procedure whoever has reasonable interest and/or legitimate interest is entitled to access to administrative documents and in private documents kept in public ones services and is related to his case pending or processed by they.

4. In the case under consideration, the accused made legal use administrative documents which simply contained his personal data complainant for judicial use. The two of them and in particular a) the one from... decision of Acting Governor D to grant a license to carry out a private project on remuneration and b) the decision of ... of the Director of the G.N. [area] X for revocation of the above license, the complainant received from DIAUGEIA.

There is an issue with the three documents, specifically a) the decision from ... General Secretary of the Ministry of Health for the secondment of the complainant from ... to General Hospital [region] X and b) the from ... Decision of the Deputy Director C for the temporary assignment of duties of the complainant, and c) the from... Governor's decision on the overtime employment of the complainant in the structures

primary health care.

The specific documents, which simply contained his personal data

complainant, while in no. prot. C/EIS/1697/05.3.19 his answer to

At first, the complainant stated that he received them from POEDIN following a relevant request

at his request, then both in the hearing and in the no.

prot. 2620/16.4.21 his registered memorandum stated that he received them from the local

executive of POEDIN ST, then member of the Board of Directors. of the Employees' Association of G.N.

[area] X, who assured him that she was in legal possession of them. Additionally, from

hearing procedure and from the no. prot. C/EIS/4145/16.6.20 and

C/EIS/2641/19.4.21 submitted to the Authority by POEDIN, it emerged that

a) that POEDIN never received the complainant's application for granting the

of the complainant's relevant information, in which case the relevant information was never provided

information to the complainant and b) the F, which the complainant mentioned,

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as the person from whom he received the relevant information is not a representative

of POEDIN in [region] X.

Following these, it appears that the relevant information was obtained illegally from

the complainant from a non-legal and verified source.

5. In view of the above, the Authority, taking into account its gravity

violation that was proven and the insult caused by it to

complainant considers that it should be imposed on the complainant, h

sanction provided for in article 21 paragraph 1 subsection b of Law 2472/1997 which

referred to in the ordinance.

FOR THOSE REASONS

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It imposes on B the proportional and dissuasive fine that is appropriate to

specific case according to its special circumstances, amounting to two thousand (2,000.00) Euro.

The Deputy President The Secretary

George Batzalexis

Irini Papageorgopoulou