

Athens, 28-12-2020 Prot. No.: 8869 DECISION 52/2020 The Personal Data Protection Authority met, at the invitation of its President, in an extraordinary meeting via teleconference on Thursday 30.07.2020 at 10:00, in order to examine the case referred to in the present history. The President of the Authority, Konstantinos Menudakos, and the regular members of the Authority Spyridon Vlachopoulos, Konstantinos Lambrinoudakis and Charalambos Anthopoulos were present. Grigorios Tsolias, alternate member of the Authority, also attended the meeting, by order of the President, as rapporteur. Present, without the right to vote, were Chariklia Latsiu, legal auditor - lawyer, as assistant rapporteur and Georgia Palaiologou, employee of the administrative affairs department, as secretary. The Authority took into account the following: With the complaint dated 25.09.2020 (and with no. prot. APDPCH C/EIS/6438/25.09.2019) A complains that on ... he received at his home by mail an envelope, abroad of which it is written as sender "..., B, ... DISTRICT [region] X" and on which there were sheets printed in relief writing (braille). Furthermore, with his said complaint to the Authority, A complains that he did not receive any relevant response to his request from ... via e-mail, with which he requested to be informed: "about the source from which these data [sensitive health data ] have come to your attention, as well as the legal basis for their processing." The Authority, during the examination of the complaint, called under no. prot. C/EX/6438-1/04.10.2019 document the political faction ..., by ... head of B, to submit full explanations on 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa. gr www.dpa.gr 1 from 18.10.2019 of the complainants. In response to the above document of the Authority, the complainant, with (and with prot. no. APDPX C/EIS/7136/18.10.2019) her response argued that: "(...) Mrs. C is also a member of our faction, ... ..., having been elected in the year ... as ... with our combination in ... of Region [area] X and also participated as a candidate in the last regional elections of ... (....) We decided as a party to be perhaps the first political body in the country to address our blind fellow citizens with a pamphlet printed in relief with the Braille system (...). So we decided to approach [blind fellow citizens] by mailing to their home address. For this reason, ... , Mrs. C, addressed the National Federation of the Blind, ... and she herself expressed the interest of our faction in sending the brochures to its ... members. Mrs. C had informed us that, during the previous year (...), there had been a discussion at the general assembly of the National Federation of the Blind that there was interest from political factions in granting postal address details and that each member of the Federation was given the opportunity to declares that he does not wish his data to be given to political factions. Therefore, in this process, the data controller, which is the National Federation of the Blind, followed the "opt-out" system defined by the applicable national legislation itself for the direct promotion of products and services, in the sense of article 13 par. 3 of Law 2472/1997 (...) The

National Federation of the Blind provided us with printed names and addresses of its members who had not objected to their use for political communication purposes in the form of stickers. ... and ... of District [area] X Ms. D received the stickers from the Federation of the Blind and all she did was stick each sticker, one by one, in our faction's envelopes containing the Braille brochure , so that they could be mailed to the recipients who had not objected to the granting of their data for political communication purposes (...). Our faction did not receive in electronic form any collection of personal data structured with specific criteria by the National Federation of the Blind, nor did it adhere to any copy of the data provided to us. The only use 2 of them that was made was to manually place the stickers on the envelopes and then mail the envelopes as pre-election political communication material to citizens. We had neither the intention nor, of course, the technical possibility in the midst of the pre-election period to copy the addresses one by one, since in any case, we had not been provided with the personal data for our own archiving purposes, but exclusively for the postal sending the specific pre-election brochure to the members of the Federation of the Blind who had not objected to this use. (...) In the specific case at hand, the personal data was processed by the Federation of the Blind, which keeps them in its file, from which it printed them on stickers and used them for political communication purposes in our faction. Therefore, the purpose and method of processing was determined by the Federation of the Blind, which also carried out the automated processing of the printing of personal data on stickers. As regards the actions of the Federation of the Blind, there is automated processing and the data controller is the Federation in question (...). At the same time, the political faction ..., by ... head of B clarified regarding the information of A in his request from ... that he first became aware of the above-mentioned document of the Authority and then responded to his request. Specifically, it forwards to the Authority the under no. prot. 25/17.10.2019 letter from the faction ... to the above-mentioned, signed by ..., in which it underlines, among other things: "Dear Mr. A, first of all I would like to thank you in advance for the patience you have shown in relation with the fact that you have sent us a document electronic request, to which we have not responded to date. This is an important omission regarding the functioning of the organizational group of our faction, a fact for which I wish to apologize in practice with this letter and ask for your understanding (...)" and concludes: "In summary, our faction did not process data within the meaning of article 2 paragraph 1 of the GDPR and article 3 paragraph 1 of the then applicable Law 2472/1997 and Directive 1/2010 of your Authority. The automated processing was carried out by the Federation of the Blind, which is also the sole controller. Our 3rd unit manually pasted the data already printed by the data controller into postal envelopes, so it did neither automated processing, nor non-automated processing of data included or to be included in a filing

system. Therefore, our party did not violate any provision of the overall institutional framework for the processing of personal data in the context of political communication (point 16)". Subsequently, the complainant A, after receiving the above-mentioned response from the political faction ..., through ... head of B, informed the Authority with his letter dated ... (and with prot. no. APDPH C/EIS/7182/21.10.2019) that : « (...) 1. I am a member of the PANHELLENIC ASSOCIATION OF THE BLIND, which as a primary association is a member of the National Federation of the Blind. The Federation has no natural persons as its members. 2. I was never asked if I consent to the transmission for any purpose of my personal data held by the PANHELLENIC ASSOCIATION OF THE BLIND. 3. According to the Statute of the Association in question, only persons who are blind and generally severely visually impaired are accepted as members. Subsequently, the Authority with no. prot. APDPH C/EX/6438-

2/23.10.2019 document, addressed to the National Federation of the Blind, forwarded an excerpt of the aforementioned response of the political faction ..., by ... head of B to the Authority and invited it to take a written position on the allegations of the complainant and, in addition, to provide clarifications on specific questions. In response to the above-mentioned document of the Authority, the National Federation of the Blind with the relevant letter from ... (and with no. prot. APDPCH C/EIS/7659/07.11.2019) informed the Authority, as follows: "1. A copy of our articles of association is attached. 2) Mrs C is ... of the National Federation of the Blind. 3) The Federation, as it follows from its statutes, has only blind associations as members and not natural persons. 4) We keep a record of our members, which as we mentioned above are unions. 5) As we stated above, the Federation does not have natural persons as members and therefore neither does Mr. A, 6) We were not asked for such information from any faction, since we do not keep such a record in the Federation. 7) We don't have anything else to file in this regard." Then, the Authority with no. first 4 APDPH C/EX/6438-3/24.10.2019 document invited the political faction ..., by ... head of B to provide additional clarifications, following its aforementioned reply letter to the Authority. In response to the above document of the Authority, the attorney of the political faction..., he asked with the relevant letter from ... (and with no. prot. APDPH C/EIS/7790/12.11.2019) extension until ... for the submission of the additional clarifications. After the expiration of the aforementioned date, the Authority with no. prot. APDPH C/EX/6438-4/12.12.2019 document again invited the complainant to submit her views. In response to the last document of the Authority, the political faction ..., by ... of B with the letter from ... (and with prot. no. ) 4.2. (...) So we do not keep a record of "political friends" and we have not sent pre-election material to voters either by e-mail or by traditional mail. 4.3 The only exception where we used traditional mail was

the specific shipment of printed Braille brochures. (...) So we took advantage of this opportunity with the stickers that the National Federation of the Blind gave us together with the printed copies of our pre-election brochure. The stickers had printed names and home addresses of the members of the E.O.T. who had no objection to receive pre-election material, during the internal procedures of the Federation. We stuck the stickers on the postal envelopes, without, of course, collecting or processing data, since we did not create a file, nor did we copy the data, nor did we intend to use it elsewhere except for the purpose determined by E.O.T., granting us in physical sticker form for practical reasons these elements according to the wishes of its members themselves.

4.4. It should be noted that this practice we followed was absolutely appropriate according to the principle of data minimization, but also according to the rule of data protection already by design by default (Article 25 GDPR). The other version was for E.O.T. to send us the data electronically, for us to create a file, to collect it, to process it, to print it ourselves. Under this version, we would also have become data controllers and would have proceeded with unnecessary data processing. The solution that was selected was that the E.O.T. remained until the end the controller, who undertook to print on stickers the personal data of its members who did not object to sending them campaign material during its internal processes, and we would simply stick the stickers on envelopes with no record or system archiving on our behalf and without us determining the purpose and means of processing which were determined by E.O.T. itself.

4.5. Consequently, ... has not collected and processed personal data that was included or was going to be included in a filing system and did not determine the purpose and method of data processing, while these actions were carried out by E.O.T. itself. The fact that a member of ... stuck the stickers on envelopes containing the pre-election material printed by E.O.T. and sent the files by post did not constitute a determination of the purpose and means of this processing since these were determined by the E.O.T. Also, they did not constitute processing on behalf of E.O.T., so that ... is considered "the processor", since this presupposes that the data is included or is going to be included in the filing system of ..., a fact that did not occur in this case at hand (...).

In addition, B forwarded with its above-mentioned reply to the Authority the no. ... invoice for the provision of services of the National Federation of the Blind to ... and dated ..., which bears as justification - description "Processing and conversion into braille of an information form of ..." and "Printing of the information form in ... copies of a total area of ... thousands of ... of pages in braille". Subsequently, the Authority with sub. No. prot. C/EX/1123/11.02.2020, C/EX/1124/11.02.2020 and C/EX/1125/11.02.2020 documents he called the National Federation of the Blind, at the same time sending copies of the case file, A and political faction ..., through B, respectively, as presented at a meeting of the Authority's Plenary on Tuesday

25.02.2020 in order to discuss the aforementioned complaint. At this meeting, during which A, Nikolaos Giallouris, 6 President of the National Federation of the Blind and a lawyer (...) and D, as a representative of the attorney of the complainant, appeared before the Authority, while the Authority accepted the request to postpone the examination of the case submitted by the attorney of the political faction ..., with his application from ... (and with no. prot. APDPX C/EIS/1150/11.02.2020) and set a new meeting date for 17.03.2020. Subsequently, following the under no. prot. C/EX/1961/13.03.2020 of the Authority's announcement on the suspension of its meetings due to the obligation to take measures to limit the spread of the COVID-19 coronavirus, the Authority with no. prot. C/EX/4393/24.06.2020, C/EX/4394/24.06.2020 and C/EX/4395/24.06.2020 documents, called again the political faction ..., A and the National Federation of the Blind, as attend a meeting of the Authority, in order to discuss the aforementioned complaint, on a new date, i.e. Friday 10.07.2020. During the meeting of the Authority on this date, in which A, F, as a representative of the National Federation of the Blind, as well as E, as a representative of the attorney of the complainant, were present, the Authority, due to an extraordinary obstacle in its composition, appointed new date of discussion of the case on 16.07.2020. During the meeting of the Authority on 16.07.2020, A, Nikolaos Giallouris, as President of the National Federation of the Blind and a lawyer (...), as well as Vassilios Sotiropoulos, representative of the political faction ..., represented by the head of B, were present, and Z, ... of the National Federation of the Blind and D, executive of the political faction .... During this meeting, those present, after developing their views, were given a deadline of 24.07.2020 to submit written memoranda. Following this, A with his application from ... (and with no. prot. C/EIS/5158/23.07.2020) and the political faction ..., through ... head of B, through the attorney .. Vasilios Sotiropoulos with (and with its application No. APDPH G/EIS/5206/24.07.2020), submitted their relevant memoranda on time, while the National Federation of the Blind did not submit a relevant memoranda within the deadline. In its said memorandum, the political faction ..., by ... headed by B asserts, among other things, in addition to what it had already argued before the Authority, the following: "(...) That is, Ms. D received, on behalf of ..., a total of boxes from ... lawyer 7 with printed leaflets and the closed envelope with the personal data together and at the same time, from 32 Veranzerou Street, understanding in good faith that he receives everything from E.O.T. That is why in our own communication with Mr. A, but also with your Authority, we refer to the provision of the data by the E.O.T., while before this provision of the data by the E.O.T. the data were provided by P.S.T. (Panhellenic Association of the Blind) in E.O.T. to be given to .... We, that is, received from E.O.T., but the source of the data was P.S.T.

2.4.5. Therefore, the disputed data was finally delivered to ... by E.O.T., although E.O.T. does not officially claim to hold a

membership record of individual blind citizens residing in ... (other than possible auxiliary or honorary members). So we reasonably assume that there was a prior consultation of the P.S.T. with E.O.T. who had been paid and took over the production of the material, in order to serve "..." from E.O.T. , for which the relevant document was issued (...) 4.5 Following all of the above, it is expected that Your Authority will also call the Panhellenic Association of the Blind to a preliminary hearing, in order to examine the conditions under which it made available to ... the aforementioned stickers and the conditions with which he determined the purpose and method of the considered processing. The Panhellenic Association of the Blind as data controller should prove that it has complied with the conditions for the legal granting to ... of the data concerning its members who reside in ... (...). 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 , CONSIDERED IN ACCORDANCE WITH THE LAW 1.

Because, from the provisions of articles 51 and 55 of the General Data Protection Regulation (Regulation 2016/679) and article 9 of law 8 4624/2019 (Government Gazette A' 137) it follows that the Authority has authority to supervise the implementation of the provisions of the GDPR, this law and other regulations concerning the protection of the individual from the processing of personal data. In particular, from the provisions of articles 57 par.1 item. f of the GDPR and 13 par. 1 item g' of Law 4624/2019 it follows that the Authority has the authority to deal with A's complaint against the political faction..., for the mission information brochure in braille writing system by conventional mail without his consent for the purpose of political communication and the non-satisfaction of the right to information at his request and to exercise, respectively, the powers conferred on it by the provisions of articles 58 of the GDPR and 15 of Law 4624/2019. 2. Because Article 5 of the GDPR defines the processing principles that govern the processing of personal data. Specifically, it is defined in paragraph 1 that personal data, among others: "a) are processed lawfully and legitimately in a transparent manner in relation to the subject of the data ("legality, objectivity, transparency"), b) are collected for specified, explicit and legitimate purposes and are not further processed in a manner incompatible with these purposes (...), c) are appropriate, relevant and limited to what is necessary for the purposes for which they are processed ("data minimization") (...) ». 3. Because, according to the provisions of article 5 paragraph 2 of the GDPR, the data controller bears the responsibility and must be able to prove his compliance with the principles of processing established in paragraph 1 of article 5. As the Authority<sup>1</sup> has judged, with the GDPR a new model of compliance was adopted, the central point of which is the principle of accountability in the context of which the controller is

obliged to design, implement and generally take the necessary measures and policies, in order for the processing of data to be in accordance with the relevant legislative provisions. In addition, the data controller is burdened with the 1 See Authority decision 26/2019, paragraph 8, available on its website. 9 further duty to prove himself and at all times his compliance with the principles of article 5 par. 1 GDPR. 4. Because, in accordance with article 8 paragraph 1 of the Charter of Fundamental Rights of the European Union, article 9A of the Constitution and recital 4 of the GDPR, the right to the protection of personal data is not absolute, but must be assessed in relation to its function in society and weighed against other fundamental rights, in accordance with the principle of proportionality. The GDPR respects all fundamental rights and adopts the freedoms and principles recognized in the Charter, in particular respect for private and family life, home and communications, protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, business freedom, the right to an effective remedy and an impartial tribunal and cultural, religious and linguistic diversity. 5. Because the concept of data controller plays a decisive role in the application of personal data protection rules, the proof of compliance with them (principle of accountability, Article 5 para. 2 GDPR) and the assignment of responsibilities in the event of their violation<sup>2</sup>. According to the provisions of article 4 par. 7 of the GDPR as data controller means "the natural or legal person, public authority, agency or other entity that, alone or jointly with others, determines the purposes and manner of processing personal data (...)". Furthermore, according to Opinion 1/2010 on the concepts of "controller" and "processor" of the Article 293 Working Party to determine the controller, according to the aforementioned definition, three main elements are taken into account a) the personal aspect ("the natural or legal person, public authority, agency or other entity"), 2 See regarding Opinion 3/2010 on the principle of accountability of the Article 29 Working Group, wp 173 of 13.07.2010. 3 WP 169 from 16.02.2010. 10 b) the possibility of multiple control ("which, alone or jointly with others") and c) the basic elements for distinguishing the controller from other actors ("determine the purposes and manner of personal data processing") . In this case, from the elements of the case file, the hearing procedure and the submitted memoranda, it emerges that the alleged political faction..., itself determined the purpose and method of processing, namely the sending of pre-election material in braille by conventional mail in order to inform the recipients about its pre-election program, assigning the National Federation of the Blind (EOT), as the operator of the processing, as it appears from the no. ... invoice for the provision of services by EOT to ..., the conversion into braille of an information form of ... and the printing of this in ... copies. Consequently, even if it is considered accurate, her claim presented in her response to the Authority from ... (APDPX G/EIS/7136/21.10.2019) that she simply manually placed the stickers she

received from the EOT in files and in their mailing to the citizens thus becoming the "recipient" of the data, since, however, it itself, at a previous time stage of the pasting, chose and determined the purpose and method of processing, and the EOT took over at her behest, two separate tasks: the conversion of her campaign material into braille and the printing of copies.

Regardless of this, from what N. Gialouris, President of EOT, argued before the Authority, in combination with the content of the aforementioned invoice, the validity of the claim of the political faction..., that EOT was entrusted with the provision of a label printing service with the addresses of individual recipients of the mail, which were then sent to the political party ... only to be pasted into mail envelopes that included braille campaign materials. Finally, the claim of the complainant regarding the non-application of the GDPR, pursuant to article 2 paragraph 1, that in this case there is no case of automated processing or non-automated processing of personal data that was not included in an archiving system, is rejected and that the EOT provided it with printed names and residential addresses of its members who had not objected to their use for communication purposes in the form of stickers, as on the one hand, the validity of the claim in question did not arise according to the above, on the other hand, itself, as mentioned above, defined the purpose of sending the pre-election materials as well as assigned individual tasks. It is irrelevant from this point of view whether the source of the data is the Panhellenic Association of the Blind or the EOT, and therefore the claim raised in the complainant's memorandum after the meeting regarding the need to summon the said Association to a hearing as well, according to which, after all, the complaint under consideration is not directed at. In any case, even assuming that the claim in question is accurate that it did not carry out automated processing or non-automated processing of data that was not included in a filing system, the GDPR applies as the names of the natural persons having the status of its members association of the blind and their postal address, which were sent to it was determined by the same, came from and are included in a personal data filing system with a common characteristic being the status of the blind and a classification criterion their first and last name. Besides, as it appears from the statutes of the EOT (Article 4) but also as argued by the EOT in the aforementioned letter from ..., the latter, as a secondary trade union body, is not entitled in principle to have and does not have natural persons as its members, so that it can legally proceed with further processing of personal data. But also with the version that the data of the members of the Panhellenic Association of the Blind was granted by the Association, as the complainant claims, however unproven, the processing that consists in the use of their data without their consent for the above purpose, which was determined by she is not legal. Following this, taking into account article 1 par. 1 and 5 of Directive 1/2010 of the Authority regarding the 12 processing of personal data for the purpose of



political communication<sup>4</sup> (see below under paragraph 7) the political faction..., led by ... B, as stated in the postal letter "..., B, ..." sent to the complainant A is a data controller, in accordance with the provisions of article 4 par. 7 of the GDPR, of the above processing and sending of political communication by conventional mail in a braille writing system and carries the obligations deriving from the institutional framework for the protection of personal data. 6. Because, according to the provisions of article 4 par. 15 of the GDPR are understood as health-related data "personal data related to the physical or mental health of a natural person of a person, including the provision of health care services, and which disclose information about his health status". Furthermore, Recital 35 of the GDPR provides that personal health-related data should include all data relating to the state of health of the data subject and which disclose information about the past, current or future state of physical health. or mental health of the data subject. Subsequently, according to the definition adopted by the World Health Organization in its Statute since 1946, health means the state of complete physical, mental and social well-being and not only the absence of disease or disability<sup>5</sup>. Furthermore, Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (2007) ratified in Greece by Law 4074/2012 (Government Gazette A' 88) underlines, among other things, that persons with disabilities include those who have long-term physical, mental, intellectual or sensory disabilities which in interaction with various barriers can prevent their full and effective participation in society, on an equal basis with others. 4 Available on the Authority's website. 5 The World Health Organization defines disability as the result of organic or environmental causes that create a set of obstacles in important areas of life, such as self-care, employment, education, recreation and general social participation. 13 Therefore, by and large, the existence of a physical disability, such as in this case the impairment of the ability to see, falls under the concept of health. Consequently, the collection and classification in a data filing system of persons based on the existence of vision problems, such as the complainant<sup>6</sup>, which is intended to send political communication, according to the aforementioned paragraph 5 hereof, by the political faction..., constitutes in principle the processing of a special category of personal data of a health-related nature. 7. Because the above processing, which concerns a special category of personal data, is regulated by article 9 of the GDPR, according to which the processing of a special category of personal data is in principle prohibited, according to article 9 paragraph 1 of the GDPR. It is permitted, exceptionally, in accordance with paragraph 2 of the above provision, when, in particular: "a) the data subject has provided express consent to the processing of this personal data for one or more specific purposes, unless the law of of the Union or a Member State provides that the prohibition referred to in paragraph 1 cannot be lifted by the data subject, (...), e) the

processing concerns personal data which has been manifestly made public by the data subject, (...) 7 ». 6 With his complaint dated 25.09.2019, A states: "I know you that I am 49 years old and I suffer from a serious eye condition, because of which, for the last 15 years or so, I have been unable to read written text in printed form (...)". 7 It is underlined, in this regard, that recital 56 of the GDPR provides that "if, in the context of electoral activities, the operation of the democratic system in a member state requires the collection by political parties of personal data regarding the political opinions of citizens, the processing of said data may be permitted for reasons of public interest, as long as appropriate guarantees are provided". 14 The issue of personal data processing for political communication purposes has long concerned the Authority<sup>8</sup>. With Directive 1/2010<sup>9</sup>, the Authority took a comprehensive approach to the processing of personal data carried out, especially by electronic means (paragraph 11), for the purpose of political communication. Specifically, the Authority considered that political communication is a fundamental means for the functioning of a democratic state and that from the point of view of personal data protection it is of interest, since the methods used require the processing of personal data, such as, among others, names and postal addresses (sec. 3 and 4 of the said Directive). Subsequently, the Authority accepted that the current law reserves different treatment to advertising depending on the medium chosen for its implementation, based on the intensity of the limitation of the individual right and the burden entailed for the recipient by the use of each medium, as well as the reasonable expectations of the sender and recipient. Thus, the sending of advertising content by post is permitted without consent, as long as the data is collected from legal sources and the recipient has not expressed his objection (articles 5 par. 2 letter e), 13 par. 1, 3 and 19 par. 4 item d) Law 2472/1997). Furthermore, the Authority in article 2 par. 1 ruled that personal data processed for the purpose of political communication can be simple, such as name, address, e-mail address <sup>8</sup> Already, the Authority since 2001 with the decision 11/08.02. 2001 regarding the issue of the files of the deputies and the candidates for the parliamentary office decided that the files in question are included, exceptionally, in the provision of article 5 par. 1 sec. e' of Law 2472/1997, the processing of which is absolutely necessary for the needs of the democratic state (communication between the subjects of the active and passive right to vote), without the consent of the data subject, as long as the data is collected by publicly accessible sources, while ruling, further, that the distribution of these files to third parties is prohibited (sections 3 and 5 of the decision in question). Subsequently, the Authority, by decision 32/2008, examining the notification - application for a license to maintain a personal data file, which also includes sensitive data, ruled that "the sensitive personal data for the collection and processing of which a License is requested by the Authority, i.e. information concerning political opinions, membership in associations - unions and

trade unions, health and social welfare, even after the consent of the data subjects, is not deemed necessary and appropriate for the achievement of the purpose of processing which is, according to the critical Notice/Application for Permit, the search for political support from the electorate" and a) rejected the MP's request for permission to maintain/process a file of sensitive personal data for the purpose of seeking political support from the electorate body and b) ordered the MP to delete and destroy any sensitive personal data keeps. 9 Available on the Authority's website. 15 mail, telephone number or even sensitive, such as political opinions, health-related data e.g. data of persons with special needs. Consequently, the Authority in article 10 specified the conditions for the legal processing of personal data for the purposes of political communication by mail. Specifically, the Authority ruled: "1. When the political communication is carried out by mail, the processing of personal data is permitted with the consent of the data subjects or without it, as long as it is simple data, in accordance with article 5 par. 2 item e) Law 2472/1997. In the latter case, the data must come from legal sources, i.e. collected in a legal manner and their use must not be incompatible with the purpose of political communication. (...) 3. The processing of sensitive personal data for the purpose of political communication is only permitted with the consent of the data subjects, which in the case of ordinary mail must be in writing in accordance with article 7 par. 2 item. a) Law 2472/1997. (...) 5. Without the consent of the data subjects the processing of sensitive data is permissible according to article 7 par. 2 item. c) Law 2472/1997, as long as the subject himself publishes the data concerning him. This is the case with publicly known supporters of a political party or member of parliament etc., i.e. the data subject himself should have publicly declared his support or his political views in general, and not just to a closed, even numerous group of people". Subsequently, the Authority during its meeting on 26.03.2019, taking into account Statement 2/2019 of the European Data Protection Board regarding the use of personal data during political campaigns<sup>10</sup>, issued an updated text of guidelines regarding the processing of personal data, taking into account, among other things, the provisions of the GDPR. In article 4 of this text it is provided: "Legal basis for political communication by mail can be: (a) The consent of the subjects (article 6, par. 1 a) of the Regulation 10 Available on the website <https://edpb.europa.eu> 16 (EU) 2016/679) to process their data for this specific purpose. (b) The legal interest of the data controller (Article 6, Par. 1 f) of Regulation (EU) 2016/679) since it is simple data that comes from legal sources, i.e. it was collected in a legal way and its use is not incompatible with the purpose of political communication. (...)". It is further noted that the European Data Protection Board, in the aforementioned Statement 2/2019, underlined as a general principle that the processing of the special category of data is prohibited or subject to certain strict conditions, such as the express, specific, fully

informed and free consent of natural persons , citing, inter alia, as an example that publicly declared data which, like other derogations concerning special categories of data, should be interpreted restrictively, as they cannot be used to legitimize presumptive data. (point 1 p. 2 with relevant footnote of Declaration 2/2019). 8. Since, in the case under consideration, from the data in the case file, it appears that A never provided his express consent, in accordance with the provisions of article 9 par. 2 item. a' of the GDPR, for the processing described above, nor is there any other legal basis from this article for this processing by the political faction..., as a controller, in accordance with the provisions of article 4 par. 7 of the GDPR. The violation of the aforementioned provision of article 9 of the GDPR entails the imposition of the administrative sanctions of article 83 par. 5 item. a' of the GDPR. The Authority, when exercising its corrective authority, in such a way as to impose, if necessary, the effective, proportional and deterrent measure according to Article 83 of the GDPR, in accordance with the Guidelines "for the application and determination of administrative fines for the purposes of Regulation 2016/679" of the working group of Article 29, when evaluating the data in order to choose the appropriate corrective measure, takes into account, 11 WP 253 from 03.10.2017, available on the website <https://edpb.europa.eu> 17 in particular, that the specific violation related to the processing of a special category of personal data (health data) constitutes an isolated case (Article 83 par. 2 letter a), as well as the fact that the political faction ... carried out the specific processing in order to facilitate the exercise of a fundamental instrument for the functioning of the democratic state, that of political communication (articles 29 par. 1, 51 par. 1 and 3 of the Constitution) , from a particularly susceptible/vulnerable population group. 9. Because, further, regarding the right to information, Article 14 of the GDPR states that: "1. The data subject has the right to receive from the controller confirmation as to whether or not the personal data concerning him is being processed and, if this is the case, the right to access the personal data and the following information: a) the purposes of the processing, ... c) the purposes of the processing for which the personal data are intended, as well as the legal basis for the processing, d) the relevant categories of personal data, e) the recipients or categories of recipients of the personal data , possibly, ... 2. In addition to the information referred to in paragraph 1, the controller shall provide the data subject with the following information necessary to ensure fair and transparent processing with regard to the data subject: ... f) the source of which the personal data comes from and, depending on the approx 3. The data controller shall provide the information referred to in paragraphs 1 and 2: a) within a reasonable period of time from the collection of the personal data, but no later than within one month , taking into account the specific circumstances in which the personal data are processed, b) if the personal data is to be used to communicate with the

data subject, at the latest at the time of the first communication with that data subject, or c) if disclosure to another recipient is foreseen, at the latest when the personal data is disclosed 18 for the first time. 4. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the controller should provide the data subject, prior to such further processing, with information on for this purpose and any other necessary information, as referred to in paragraph 2. 5. Paragraphs 1 to 4 do not apply if and as long as: a) the data subject already has the information, b) the provision of such information proves impossible or would entail disproportionate effort, in particular with regard to processing for archiving purposes in the public interest, for scientific or historical research purposes or statistical purposes, under the conditions and guarantees referred to in Article 89 paragraph 1 or if the obligation referred to in paragraph 1 of this article it is likely to render it impossible or to greatly damage it furtherance of the purposes of said processing. In these cases, the controller shall take appropriate measures to protect the rights and freedoms and legitimate interests of the data subject, including by making the information publicly available, c) the acquisition or disclosure is expressly provided for by Union law or of the Member State to which the controller is subject and which provides appropriate measures to protect the legitimate interests of the data subject or d) if the personal data must remain confidential by virtue of an obligation of professional secrecy regulated by Union law or Member State, including the statutory obligation of confidentiality'. In addition, Article 32 of Law 4624/2019 introduces, pursuant to Article 23 of the GDPR, restrictions on the right to information as follows:

"1. The obligation to inform the data subject in accordance with Article 14 paragraphs 1, 2 and 4 of the GDPR does not exist, when the provision of the information: a) in the case of public bodies: aa) would endanger the proper performance of the duties of the data controller , within the meaning of Article 23(1)(a) to (e) GDPR, or bb) would endanger national 19 security or public safety; and therefore, the data subject's interest in providing the information is waived, b) in the case of private entities: aa) would harm the establishment, exercise or support of legal claims or the processing includes personal data from contracts drawn up under private law and aims to prevent damage from the commission of criminal offences, unless the subject of the data has an overriding legitimate interest in the provision of information; or bb) the competent public body has specified to the controller, that the disclosure of the n data would endanger national defense, national security and public safety, in the case of data processing for law enforcement purposes, no determination is required in accordance with the first paragraph. 2. If no information is provided to the data subject in accordance with paragraph 1, the controller shall take appropriate measures to protect the legitimate interests of the data subject, including providing the public with the information referred to in Article 14

paragraphs 1 and 2 of the GDPR in an accurate, transparent, understandable and easily accessible form, in clear and simple language. The data controller shall state in writing the reasons for refraining from providing information. 3. The obligation to inform the subject of personal data in accordance with Article 14 paragraphs 1 to 4 of the GDPR, except for the exceptions mentioned in Article 14 paragraph 5 of the GDPR, does not apply to the extent that through its fulfillment information would be disclosed, the which due to their nature, in particular due to the superior legal interests of a third party, must remain confidential". 10. Because, in the case under consideration, it appears that A, in his letter of 20.05.2019 to the complainant, requested to be informed about the source from which health data came to her knowledge, as well as about the legal basis of the processing. The complainant responded to the aforementioned request of A with the no. prot. 25/17.10.2019 her letter, as according to her reply from 18.10.2019 (and with prot. no. APDPX G/EIS/7136/18.10.2019) the former was informed about the specific request with no. . prot. C/EX/6438-

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1/04.10.2019 document of the Authority. Consequently, it follows that the accused replied to A, late, in violation of the time frame set by provision of article 14 par. 3 of the GDPR, i.e. during the first communication with data subject, as long as the data is used for contact with it. At the same time, none of the exceptions from right to information provided for in paragraph 5 of article 14 of GDPR nor any of the restrictions of Article 32 of Law 4624/2019. THE violation of the aforementioned provision of paragraph 3 of article 14 entails the imposition of the administrative sanctions of article 83 par. 5 item. his b GDPR. The Authority, when exercising its corrective power, in such a way as to be imposed, if applicable, the effective, proportionate and dissuasive measure according to article 83 of the GDPR, in accordance with the Guidelines "for the implementation and determination of administrative fines for its purposes regulation 2016/679" of the working group of article 2912, during the evaluation of the data in order to select the appropriate corrective measure, taking into account,

in particular, that the specific violation related to special processing category of personal data (health data) recommends individual case (article 83 par. 2 letter a) and takes the fact into account that the expiry of the one-month deadline set by the GDPR coincided in time with the pre-election period of the regional elections of 26 May 2019, and that, however, the political faction..., as soon as it received the no. first APDPH C/EX/6438-1/04.10.2019 document of the Authority rushed under no. first 25/17.10.2019 her letter to inform the complainant.

The beginning

FOR THOSE REASONS

a) deems that the sending of an information brochure in a braille writing system to A by conventional mail for the purpose of political communication from political faction ..., was carried out in violation of Article 9 of the GDPR, 12 WP 253 from 03.10.2017, available at <https://edpb.europa.eu>

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and imposes on the latter, as controller, an administrative fine in the amount of two thousand (2,000) euros and

b) considers that the satisfaction of the right to information exercised by A was carried out by the political faction ... late, in violation of it of article 14 par. 3 of the GDPR and imposes on the latter, as responsible processing, an administrative fine of five hundred (500) euros.

The president

Konstantinos Menudakos

The Secretary

Paleologo Georgia

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