

Athens, 10-09-2019 PERSONAL DATA PROTECTION AUTHORITY Prot. No.: C/EX/6122/10-09-2019 A P O F A S I NO.

21/2019 The Personal Data Protection Authority met at its headquarters on Tuesday 04.07.2019 at 09:30, upon the invitation of its President, in order to examine the case referred to in the history of the present. The President of the Authority, K. Menoudakos and the regular members of the Authority S. Vlachopoulos, as rapporteur, K. Anthopoulos, K. Lambrinoudakis, as well as the substitute member of the Authority E. Dimogerontakis in place of the regular member E. Martsoukos, were present. who, even though they were summoned legally and in writing, did not attend due to an obstacle. The regular members of the Authority K. Christodoulou and A. Symvonis and the substitute members G. Nouskalis and P. Rontogiannis did not attend, due to an obstacle, although they were legally summoned in writing. The meeting was also attended by order of the President, L. Roussos and G. Roussopoulos, EEP-Informatics as assistants to the rapporteur, who provided clarifications and left before the conference and the decision-making, and Irini Papageorgopoulou, an employee of the Department of Administrative Affairs of the Authority, as secretary. The Authority took into account the following: The Authority was submitted to the Authority No. C/EIS/{1580/27-02-2017, 1582/27-02-2017, 1064/07-02-2018, 1092/07 -02-2018, 1096/07-02-2018, 2318/22- 03-2018, 3006/19-04-2018, 3009/20-04-2018, 3011/20-04-2018} complaints, as completed (see appendix) by A, regarding the installation of video surveillance systems in school units within the municipality.... The main point of the complaints is that school principals are installing cameras to deal with the problem of graffiti in school buildings. Therefore, 1-3 Kifisias St., 11523 Athens, Tel.: 210-6475600, Fax: 210-6475628, contact@dapa.gr, www.dpa.gr according to the complainant, the purpose of the facilities in question was to protect from graffiti. During the examination of the complaints, the Authority sent documents to the addresses of the school units, with which they requested clarifications regarding the video surveillance systems in question. In the majority of cases, the addresses of the units responded to the Authority, sending various elements, such as screenshots of the images received and information about the procedure followed for the installation of the systems. The Authority with sub no. prot. C/EX/1013/07-02-2019 her document requested the opinions of the Ministry of Education, Research and Religious Affairs regarding the definition of the controller of such systems installed in school units. The Ministry responded with sub no. prot. ... (No. Prot. Authority C/EIS/1976/13-03-2019) his document, specifying the responsibilities of the bodies involved, as provided for in the legislation. According to this document, the management of the school premises during the non-operational period of the school units belongs to the competence of the Municipalities, which have acquired the ownership of the school buildings, as well as of the movable and immovable school property in general, according to par. 1 of

article 5 of Law 1894/1990 (Government Gazette A'110), as amended and in force. Furthermore, the responsibility for the maintenance, cleaning and guarding of school buildings, as well as any other responsibility concerning school buildings, also belongs to the Municipalities in accordance with article 75 of the Code of Municipalities and Communities (law 3463/2006, Official Gazette A) 114), as amended and in force), which defines, among other things, the following: "I. Municipal and community authorities manage and regulate all local affairs, according to the principles of subsidiarity and proximity, with the aim of protecting, developing and continuously improving the interests and quality of life of the local community. The responsibilities of the Municipalities and Communities mainly concern the sectors: (...) f) Education, culture and sports, which includes, in particular: (...) 1. The construction, management and improvement of the logistical infrastructure of the national system of primary and of Secondary Education and especially the maintenance, cleanliness and guarding of school buildings. (...) 14. The formation of a committee for the suitability and selection of a plot of land for the construction of a lecture hall, as well as the selection of a plot of land after a building suitable to be classified as a lecture hall. (...) 15. The expropriation of plots of land for the needs of the school roof, as well as the construction of school buildings. 16. The 2 lease of real estate for the housing of public school units, their housing and co-housing and in the case of co-housing, the determination of the exclusive use of certain areas of the classroom, by each school unit, as well as the shared use of the remaining spaces and its operating hours of each co-located school unit. 17. The availability of tuition for other public benefit uses or for the realization of events of common interest, in collaboration with the School Committee. (...) 25. The allocation of credits to School Committees for the repair and maintenance of school buildings. (..)". The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteurs, who left after discussing the case and before the conference and taking a decision, after a thorough discussion THINKS ACCORDING TO THE LAW 1. Article 4 para. 1 of the GDPR defines as "personal data": any information concerning an identified or identifiable natural person ("data subject"); an identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular by reference to an identifier such as a name, an identity number, location data, an online identifier or one or more factors that characterize the physical, physiological, genetic, psychological, economic, cultural or social identity of the said natural person. Furthermore, in article 77 paragraph 1 of the Regulation it is defined that "Without prejudice to any other administrative or judicial appeals, each data subject has the right to submit a complaint to a supervisory authority, in particular in the member state in which he has his habitual residence or his place of work or the place of the alleged infringement, if the data subject considers that the

processing of personal data concerning him infringes this Regulation.' A similar provision for the definition of the data subject can be found in Law 2472/1997 (see art. 2 par. a'). In accordance with article 19, paragraph 1, subsection (m) of this law, Authority 3 examines the complaints of data subjects regarding the application of the law and the protection of their rights, when these are affected by the processing of data concerning them . 2. In the cases under consideration, the complainant with his documents does not specify whether he is a subject of the data. As can be seen from the contents of these documents, the complaints were submitted out of a general interest in respecting the legality of the processing, especially in view of the graffiti phenomenon, while there is no evidence that the processing affects the complainant, such as by receiving the his own image. Therefore, he is not a data subject and, according to what is mentioned in the previous paragraph, his complaints are not admissible. Besides, no relevant complaint has been submitted to the Authority by data subjects (e.g. students, teachers, parents). However, the Authority decides to examine the case ex officio, to the extent deemed necessary. 3. A data controller is defined, in article 4 par. 7 of the GDPR, "...the natural or legal person, public authority, agency or other entity that, alone or jointly with others, determines the purposes and method of processing personal data; where the purposes and manner of such processing are determined by Union law or the law of a Member State, the controller or the specific criteria for his appointment may be provided for by Union law or the law of a Member State" . Further, the processor is defined in the next paragraph as "the natural or legal person, public authority, agency or other body that processes personal data on behalf of the controller". Moreover, the subjective field of application, in relation to the public sector, of the concept of controller, which is an autonomous concept of EU law, and, in particular, in relation to the content of the terms public authority and public service, is related to the administrative organization of national legal orders, in the context of which the functional criterion is predominant for the determination of the controller. That is, a data controller is the one who determines the purpose and/or the essential, at least, elements of the method

processing (cf. for the concept of the person responsible and performing the

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processing Opinion 1/2010 of the OE of Article 29, in which and

it is mentioned, among other things, that the definition of the objectives and the way

amounts to defining, respectively, the "why" and the "how" of some

processing activities). In the Public Administration the operational

criterion is concluded in principle with the competences of a specific authority, service or legal entity under public law, which, in addition, must in practice to be exercised by their bodies, given that the processing of personal data from a public service must work and to develops its consequences within the framework of the rule of law and principle of legitimacy. As it is not permanently accepted, according to its principle legality, which functions as a limiting limit of administrative action, h administrative action must be in accordance with the rule of law which governs its action.

4. Further, the installation and operation of a video surveillance system by, among others, public authorities, for the purpose of protecting persons and goods, is allowed only in the areas managed by them (article 14 par. 5 of Law 3917/2011) and in accordance with its guidelines

Principle. As the Authority has already defined in Article 2 of Directive 1/2011, the purpose he is justified by his legal interest or legal obligation owner or manager of a site to protect against illegal actions the space as well as the goods that are there and can sought, inter alia, by the relevant public authority that manages or has, according to the current legislation, a relevant authority to someone specific space. In particular, the protection of persons and/or goods with video surveillance systems may be pursued by the relevant public or municipal authority or legal entity under public law (NPDD) that manages or has, according to the current legislation, relevant authority over someone specific space.

5. As it follows from the applicable legislation, in accordance with what is exposed in the response of the Ministry of Education, the Ministry through the schools

units and its other services, is not considered a data controller

for the audio and video data of the video surveillance systems that

they are installed in school premises and operate exclusively outside it

school opening hours because, according to the above,

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has no authority to determine the purpose and manner of processing

of these data, nor does it in fact receive any relevant

decision or carries out relevant processing, given that, according to

aforementioned provisions of the Code of Municipalities and Communities, the

responsibilities for maintenance, cleaning and safekeeping belong to the Municipalities.

Besides, in article 204 par. 8 of Law 4610/2019 (Government Gazette A), it is stipulated that: "The

audio or video recording through such systems, installed in

spaces of the above public school units from the Municipalities, is allowed

in the context of exercising their authority to guard the school buildings,

in accordance with sub-case 1 of case F of Chapter I of it

of article 75 of the Code of Municipalities and Communities (law 3463/2006, A' 114), only

during the non-operational time of the school units.". Therefore, a public

school is not able to use a video surveillance system against

during the hours that it operates, while during the non-operating hours of the school

unit each Municipality has responsibility for the protection of the area and

so only he can be the controller.

6.

In the cases under consideration it is found that most systems

video surveillance systems have been installed without their direct involvement

services of the Municipality.... Therefore, and given that, as set forth

above, only the Municipality in which the public school unit is located

is the controller, he must carry out all of them
actions that ensure compliance with processing legislation
personal data, in particular the provisions of the GDPR and
defined in article 18 of Directive 1/2011 of the Authority.

The beginning:

FOR THOSE REASONS

1.

He deems it appropriate to forward the case files to the Municipality
..., who is authorized to act as a data controller for the
video surveillance systems
of
said public schools.

It is particularly pointed out that data subjects must

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exercise their rights related to these systems towards him
Municipality ... and that the Municipality must satisfy the rights of
subjects deriving from the GDPR.

2.

She files the complaints listed in her history
present as not submitted by a data subject.

The president

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou

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