Athens, 08-05-2023 Prot. No.: 1165 DECISION 17/2023 (Department) The Personal Data Protection Authority met as a Department via teleconference on 22-02-2023 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 the absence of the President of the Authority, Constantinos Menoudakos, attended, as well as the alternate members Demosthenes Vougioukas and Maria Psalla in place of the regular members, Konstantinos Lambrinoudakis and Grigorio Tsolias, respectively, who, despite being legally summoned in writing, did not attend due to obstruction. Nikolaos Livos was also present as a rapporteur, without the right to vote. The meeting was attended, by order of the President, Eleni Kapralou, 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: Submitted to the Authority under no. prot. C/EIS/11507/03-11-2022 application of A, with which the complainant requests the review of no. Prot. C/EIS/6207/28- 09-2021 of his complaint, for which the deed of recommendation was issued from 13-10-2022 (notified to him with Prot. No. C/EX/2551/13-10 -2022 document of the Authority). 1-3 Kifissias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 In particular, it was submitted to the Authority under no. prot. C/EIS/6207/28-09-2021 complaint of A, who, in his capacity as an employee of the Service ... of Municipality X, complained before the Authority that the aforementioned Service requested from the T.E.E. the deactivation of his personal passwords to the Electronic Building Permits System "e-Permits", without his prior information or consent, by notifying T.E.E. the decision to grant him a two-year leave without pay. The Authority, after examining the above complaint, issued the above-mentioned deed of recommendation from 13-10-2022, addressed to Municipality X (Service Address...), with notification also to the Data Protection Officer of the said Municipality, with which it appealed to him the attention in order to take the appropriate technical and organizational measures, as controller, to fulfill the legal processing conditions mentioned therein. In particular, as stated in this act of the Authority, "In this case, as it appears from all the above relevant documents, the Service ... of Municipality X made a request to deactivate the complainant's personal access codes to the Electronic Building Permits System "e-Permits " of T.E.E., applying article 16 par. 5 item a') of Ministerial Decision YPEN/YPRG/48123/6983 (Government Gazette B' 3136/ 31-7-2018), according to which: "a) In the case of competent officials of public bodies, they are identified through the corresponding procedure applied for the Section D of Law 4495/2017, at least with confidence level 2, as defined in Appendix III of YAP/F.40.4/1/989/2012 (Government Gazette B'1301). In particular, the access of the executives of the competent Services will be with a combination of access codes (user name - password) that will be assigned by the system provider,

upon written request of the head of each service. Employees are registered and given access rights according to their responsibilities. Given that the codes are personal, in the event of an official transfer of the employees, the system provider is informed in writing of the change by the head of the corresponding service. (…)". Therefore, it submitted the above request in compliance with its legal obligation under Article 2 6 para. 1 c GDPR, while the further processing of the complainant's personal data is in principle considered permissible based on Article 5 para. 1 b GDPR. On the contrary, from the above provision, there is no requirement for the communication of the body of the decision to grant the complainant's leave to the T.E.E., but only a requirement for written information about the official travel of the employee. (…) Consequently, the body's announcement of the decision to grant the complainant unpaid leave was not in accordance with the principle of data minimization, based on article 5 par. 1 item. 3 GDPR". Finally, the Authority pointed out in its above-mentioned act that in the event that a newer relevant complaint is submitted to the Authority against the said service, the Authority may review, together with the newer, said complaint. Subsequently, the complainant submitted against the above act the case under review with no. prot. C/EIS/11507/03-11-2022 application (treatment), with which he claims that the no. prot. 2551/13-10-2022 Act of the Authority errs in the formulation of the major reasoning that the granting of leave without pay to an employee falls under those cases for which there is a legal obligation to process his personal data before the T. E.E., while according to the law the granting of leave without pay does not constitute his placement or transfer from the Service ... of Municipality X in which he serves, nor does it constitute his secondment, or his transfer, stating that the granting of leave without pay does not constitute legitimate reason for processing personal data. In particular, he claims that the Authority erroneously did not proceed with an examination of the issue of whether the unpaid leave granted to him constitutes official travel according to the law, which - according to his claims - renders unfounded the Authority's judgment that the further processing of the of the complainant's personal data is in principle considered permissible based on article 5 par. 1 b GDPR, as well as that the Authority judging that from the provision of article 16 par. 5 item. a' of the Ministerial Decision YPEN/YPRG/48123/6983 (Government Gazette B´ 3136/31-07-2018), there is no requirement for the notification of the body of the decision granting the complainant's license to the T.E.E., but only a requirement for 3 written notification of the employee's business travel, incorrectly considered that the unpaid leave granted to him constitutes business travel. Finally, it is requested that the request for treatment be accepted, that the above act of the Authority be amended, by examining the substance of his complaint from 09-28-2021 regarding the lack of legal grounds for the processing of his personal data, as well as that of those responsible for the illegal processing of his

personal data the penalties provided by law. The Authority, after examining the elements of the file and after hearing the rapporteur and the clarifications of the assistant rapporteur, who withdrew after the discussion and before the conference and decision-making, and after thorough discussion, DECIDED ACCORDING TO LAW 1. Because, article 2 par. 8 of Law 3051/2002 on the "Constitutionally enshrined independent authorities, amendment and completion of the public sector recruitment system and related regulations" issued in implementation of article 101 A of the Constitution states that "8. Against the executive decisions of the independent authorities, a petition for annulment may be filed before the Council of State, as well as the administrative appeals provided for in the Constitution and the legislation. Legal aid against the decisions of the independent authorities can also be exercised by the relevant Minister". Article 24 par. 1 of Law 2690/1999 (KDiad.) stipulates that "If the relevant provisions do not provide for the possibility of exercising, according to the following article, a special administrative or interlocutory appeal, the interested party, for the restoration of material or moral damage to his legal interests caused by an individual administrative act may, for any reason, upon his application, request, either from the administrative authority which issued the act, its revocation or amendment (remedial request), or, by the authority that is in charge of the one that issued the act, its annulment (hierarchical appeal)". According to the true meaning of the provision, the treatment request aims to revoke or modify the 4 individual administrative act in question for its legal or factual defects which go back to the regime under which it was issued. And the aforementioned under no. Prot. 2551/23-10-2022 act of the Authority constitutes an enforceable administrative act, as long as it produces legal results for the applicant. Based on the aforementioned, the admissible application for treatment is brought and brought before the Authority. Therefore, it must be judged in terms of its essential reliability. 2. Because, with the above provisions of article 24 KDDiad. establishes the right of every "interested" administrator, who has suffered material or moral damage from an individual administrative act, to appeal against the authority that issued the said act before resorting to judicial protection (simple administrative appeal, otherwise a request for treatment). This is an "informal" administrative appeal in contrast to the standard "special" and "individual" appeals of article 25 of the Civil Code. The appeal in question requests the revocation or modification of the above-mentioned individual administrative act, in order to restore the material or moral damage to the legal interests of the applicant caused by the administrative act, in those cases where the law does not provide for the possibility of exercising of his above appealsarticle 25 KDDiad.

3. In this case, the issues raised with the request for treatment,

as set forth above in the history of the present, have been examined in context

issuance of the contested deed of establishment of the Authority. In particular, the Authority in

contested act of rightly does not formulate a judgment on the issues if the

leave without pay that the applicant had received is, according to the law, official

movement or not and if it falls under those cases for which

there is an obligation by law for the processing of personal data

of his data before the T.E.E., given that he is not authorized to formulate

such judgement, lacking the relevant authority. On the contrary, however, competently

considered that the service complained of carried out the processing in question,

complying with its legal obligation according to article 6 par. 1 c GDPR, while the

further processing of the complainant's personal data was decided

in principle permissible based on article 5 par. 1 b GDPR. Further, the applicant

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mistakenly assumes that the processing carried out by the complainant

of his personal data is illegal for the reason that the unpaid

permission he had received does not constitute a legal reason for processing, insofar as

claims- does not constitute official posting, transfer or transfer. However

The illegality of this processing lies, in this case, in the fact that it does not

the conditions of application and observance of its principles are cumulatively met

of article 5 par. 1 GDPR, namely the principle of data minimization (article 5

par. 1 item 3 GDPR). Moreover, not the issue that falls within the scope of protection

of personal data, which the Authority legally and competently considered, no

consists of whether or not personal codes were disabled correctly

of the applicant's access to the electronic Building Permits System "e-Permits",

but to whether the application conditions are cumulatively met and

compliance with the principles of article 5 par. 1 GDPR, when sending the electronic

message from the Service ... of Municipality X to T.E.E. (under no. prot. Authority

C/EIS/6993/29-10-2021), with the request to deactivate the codes. In every

case, the applicant does not plead or provide new material evidence or

documents to support his claims of unlawful processing

personal data at his expense. Because, the Authority with the aforementioned

its act, which is requested to be amended, addressed a recommendation to Municipality X and

drew attention to him in order to receive the appropriate technical and

organizational measures, as a controller, to fill the

legal processing conditions. With the considered application for treatment o

interested party reports the same facts again, and denies it

act of the Authority for lack of judgment as to whether the leave without pay he has

receive whether or not it constitutes official secondment, transfer or transfer, persisting

to the exact same allegations he had made in his complaint. Because,

from the above it follows that the complained processing did not comply

cumulatively the conditions of article 5 par. 1, item 3 GDPR and for the reason

the Authority has sent a recommendation to the data controller with the above

its act, which is requested to be modified by the considered treatment application.

Therefore, the considered treatment application of the interested party, which does not contain

other elements beyond those that have already been examined by the Authority and have

base its judgment on the above act, it must be rejected as unfounded

in its essence.

4. Therefore, the Authority adheres to the act dated 13-10-2022 that was forwarded to

already applicant with the with no. prot. C/EX/2551/13-10-2022 document, in its reasons

of which it is mentioned.

FOR THOSE REASONS

Rejects A's treatment request.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

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