

Athens, 08-10-2019

Prot. No.: G/EX/6778/08-10-2019

PRINCIPLE OF DATA PROTECTION

OF A PERSONAL CHARACTER

A P O F A S H 37/2019

The Personal Data Protection Authority met in composition

(Department)

Department at its headquarters on 13-02-2019 at 10:00 a.m. following an invitation from

Its President, in order to examine the case mentioned in its history

present. They were attended by the Deputy President, G. Batzalexis, who was in his way

President of the Authority, K. Menoudakou, the regular member of the Authority Ant. Simvonis and the

substitute member of the Authority Gr. Tsolia, as a rapporteur, in his place

regular member X. Anthopoulos. The regular member of the Authority K. Lambrinoudakis and the

substitute member E. Papakonstantinou, although they were summoned only in writing,

did not attend due to obstruction. Present without the right to vote were G.

Panagopoulou, special scientific auditor, as assistant rapporteur, who left

after the discussion of the case and before the conference and decision making and E.

Papageorgopoulou, employee of the administrative affairs department, as secretary.

The Authority took into account the following:

The Authority received the no. prot. C/EIS/165/11-01-2017 complaint of A against her

Landscape M&S M. EPE (hereinafter "data controller") regarding illegal

operating a geolocation system in vehicles he used as an employee

as well as illegal operation of a video surveillance system, through the like

workers were monitored. The complainant was an employee

in the reported company from 04-3-2014 to 09-11-2016.

The Authority sent to the person responsible for processing the letter with no. prot. C/EX/165-1/10-02-

2017 document, by which he informed him about the no. 162/2014, 163/2014

165/2014 decisions with which the conditions were specified in specific cases

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and the conditions for the installation and operation of geolocation systems

in the field of labor relations, regarding the protection of personal data

employee data. Also inform about the no. 1/2011 Guide a of

Principle in article 7 of which it is provided that, in principle, surveillance is prohibited

in our workplaces and it is pointed out that it should not be done with him

in this way, the surveillance of employees within the workplaces, except for special ones

special cases. The company's opinions on the above complaint were requested.

Let the person responsible for processing respond with no. prot. G/EIS/1565/24-02-2017

document stating that there were cameras installed at the main entrance,

in the company's warehouse, around the perimeter of the building as well as in the parking area. THE

operation of the geolocation system of the company's vehicles has been assigned to

I ran the processing company and the required security measures were observed against

the access of authorized employees to the system data.

The company had a predetermined daily schedule of routes, which

was drawn up on the basis of the agreed appointments with its clients after committing

in time compared to customers who are waiting at their premises for the transfer of the colleague

for the execution of planting works, site maintenance and public works,

fungicides and insecticides. The complainant is a former employee of Mr

company is in a legal dispute.

Following the Authority's document, the company submitted the application no. first

C/EIS/586/07-03-2017 record keeping notification for the geolocation system

as well as the one with no. prot. C/EIS/566/06-03-2017 announcement about the system

video surveillance.

Then, the Authority with no. prot. C/EX/8683/02-11-2018 call called him

data controller, please attend the meeting of the Department of the Authority on 14-11-

2018, in order to discuss the above issue.

During the hearing on 14-11-2018 they appeared on behalf of the person in charge

edited by B, Administrator, lawyer Eleousa Sakellaropoulou with AMDSA...

and C, employee. The complainant A. also appeared.

After the opinions of the participants were developed orally, then

submitted by the person responsible for processing it with no. prot. G/EIS/ 9378/26-11-2018

reminder also on behalf of the complainant with no. prot. G/EIS/9350/26-11-2018

reminder.

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The person in charge of processing, through his memo, supports the following: According to

period in which the complainant worked in the complained-about company

routes of the company's vehicles were predetermined based on programming

of the day's work. The system data was used for

optimization of routes and cost control as well as response to

extraordinary requests. The company did not use geolocation data as such

were stored after the end of working hours, while the workers did not have

rights to use the vehicles for personal travel. It is clarified that

geo-location data was never used for productivity control and

termination of an employee contract. Regarding system operation

video surveillance, at

as a reminder it is pointed out that the cameras were not

placed in our workplaces, the system met the conditions of our Guide

1/2011 of the Authority, there has been no protest from employees and the supervision of of vehicle parking spaces does not mean surveillance of workplaces. Informative signs were placed at the entrance to the offices and the warehouse.

The complainant states in his memorandum that the geolocation system was used for reprimands in relation to his productivity and that he has not he was informed when concluding his contract about the functioning of the system.

Data from the system about his movements were given to the person and a family incident occurred. He clarifies that there was a work program of colleagues who travel with the company's vehicles, but there was no prescribed itinerary.

Regarding the functioning of the video surveillance system, the complainant states that the cameras received an image from the area surrounding the building on the ground floor where the company is housed. Cameras were also placed on the third floor and could see around the perimeter of the building focusing on the company's parked vehicles. Because maintenance and cleaning of the vehicles' equipment were carried out, o owner of the company let him check the image from the cameras and made observations on them workers. He also mentions that there was no information board. Find attached, finally, testimonies of five former employees who agree with his claims complainant.

The Authority, after examining the elements of the file, the hearing procedure and after listening to the speaker and the assistant speaker, she left after her

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discussion of the case and before the conference and decision making, after thorough discussion

SEVEN E ACCORDING TO THE LAW

1. According to article 2 par. a' of Law 2472/1997, the information regarding geographical location, where a person is located at one or more times moments, it is personal data, as long as the person in question can be identified directly or indirectly by our controller or by reasonable means.

In particular, the above information can lead to the identification and/or tracking the person in real time or not, while through her connection geographic location of a person with specific actions or activities, yes possible to reveal personal data about habits or his preferences, allowing his characterization and creative profile behavior. The determination of the geographical position can be done through electronic geolocation systems based on multiple available technologies, the most common of which was the World Wide Web Position Locator (GPS)¹. Therefore, it is processing in accordance with article 2 item d' of Law 2472/1997. This data includes geographic data location, as well as other location-related data of persons and/or objects that are directly related to individuals whose identity you can directly determine or directly from our controller or third party. The position is also adopted by Opinion 5/2005 of the Article 29 Working Group on the use of location data with for the purpose of providing services of added value, where in par. 2.2 it is requested that the data processing that allows the employer to collect information about him locating the position of the employee, directly (locating the position of his employee) and indirectly (tracking the location of the vehicle used by the employee or of a product or asset that has been charged to him) implies the

¹ The GPS network is a global positioning system based on operating satellites, which revolve around the earth and emit a specific radio signal at every point of their orbit. A GPS receiver can receive the above

radio signals and calculate his approximate geographical position based on them. Such receivers they may be embedded in vehicles and/or digital devices.

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use of personal data and is subject to the provisions of our Guide 95/46/EC.

3. The legality of our processing of personal data through systems

geographical localization is examined based on the provisions of articles 4 and 5 n.

2472/1997 in the context of the legal purpose pursued by the controller and

based on the principle of proportionality. Therefore, the processing in question must

is convenient and necessary in relation to the intended purpose, the person who cannot

to be achieved with gentler and more effective means. The subject of

data must be informed by the controller in advance of

the collection and immediate processing in the context of no. 4 par. 1 sec. a' n.

2472/1997 obligation for legitimate collection and processing, which is borne by the

processing manager no. 4 par. 2 of Law 2472/1997 (CJEU, C-201/14, Smaranda Bara,

decision of 01-10-2015).

When the operation of geographic localization systems concerns their field

labor relations, the main issue that arises, when applying its principle

proportionality, yes, the degree of legitimate monitoring and supervision, in this respect

the employee is allowed to submit during his work (through

tracking its geographic location).

4. The Authority has issued Guideline 115/2001 regarding the processing of

of employees' personal data, in which he has defined the general guidelines

lawful processing of employees' personal data. In particular, according to

section E (protection of workers from the use of control systems and

monitoring) par. 1 of the above Guide, "the collection of personnel data character with the use of employee control and monitoring methods must limited to the data directly linked to the employment relationship and not it extends as far as possible to personal behavior, to personal characteristics in the personal internal and external contacts of the employees. You must also the existence of spaces that are not controlled or monitored is foreseen, as well as h provision of telecommunication means accessible to employees for personal communications their communications". The above also applies to systems geographical location. According to paragraphs 6-8 of the Guide, the data collected through such a system may not be used as

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exclusive criteria for the evaluation of their behavior and efficiency workers.

5. According to Opinion 2/2017 of the Working Group of article 292 span as the an employee may provide valid consent to the employer for the processing a of his personal data (see p. 4) and in such processing as legal basis consent should not be applied due to its nature employment relationship (see pages 6 and 7), as it has been supported by OE29 in under no. 8/2011 (p. 23) earlier Opinion of 3.

With the more specific issue of the legality of operating systems geographical localization in the field of labor relations, the Group has dealt with Work of article 29 in Opinion 5/20054. It states that its legality specific processing should not be based solely on consent of workers and that, possibly, the most appropriate way of securing the of consent would be through collective agreements. This issue is also considered in

latest Opinion 13/2011⁵ of the Working Group, where, since it is recognized that the consent, as a legitimate reason for processing, is problematic in the workplace box 6, requires that employers, instead of seeking consent, should investigate whether they can accept that the supervisor of their exact location of their employees is necessary and serves a legitimate purpose, as well as examine whether this necessity violates fundamental rights and workers' freedoms. In cases where the necessity is justified against adequately, the legal basis of this processing could be based on legitimate interest of the person in charge of our processing (article 7 point f) of our Guide 95/46/EC (see Authority decision 165/2015).

From all of the above it follows that especially in the field of labor relations and in particular in the case of our processing of personnel data of a nature that reveal information such as the geographical location of employees concerning fundamental rights and freedoms, consent constitutes a lawful

2 Opinion 2/17 on data processing at work.

3 Opinion 8/11 on data processing at work

4 Opinion 5/2005 of the Article 29 Working Group on the use of geographic location data for the provision of value added services.

5 Opinion 13/2011 of the Article 29 Working Group on geolocation services provided via smart mobile phones.

6 See and Guideline 115/2001 of the Authority, section C, paragraph 4.

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processing condition no. 5 par.1 of Law 2472/1997 by exception, i.e. after first examine and exclude the application of the other conditions of article 5 par. 2 n.

2472/1997, on the self-evident condition that the other principles are met

of legality provided by the provisions of article 4 of Law 2472/1997.

In addition, from the above and n as from the combination of the above Opinions

of the Working Group of article 29, but also of Guideline 115/2001 of the Authority

it follows that in the concept of processing that is absolutely necessary for it

satisfaction of the legitimate interest pursued by our processor no.

5 par. 2 sec. n. 2472/1997 includes the cases of tracking the transport

people or goods or improving the distribution of resources for services in dispersed

areas or when pursuing a goal that concerns the security of his own

employee or the goods or vehicles assigned to them

employees (see Authority Decisions 162/2014, 163/2014, 165/2015).

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process a

personal

data through system

geolocation is considered excessive when employees are not free to

organize the details of their trip or when it takes place with

for the sole purpose of monitoring the employee's work, if it can

to be carried out by milder means. In any case, he lives that the collection

of personal data must not take place outside working hours,

while employers should not use the devices to locate or

monitoring the behavior or location of drivers or other staff members

(see Authority Decisions 162/2014, 163/2014, 165/2015). They have the above positions

also supports national Personal Data Protection Authorities with it

issuance of similar instructions - guidelines to those in charge

let's work on the same issue⁷.

6. The Authority has issued related decisions 162/2014, 163/2014, 165/2014, the basic

points of which are described in the 2014 Annual Report as follows:

"... the Authority decided that in order for the operation of the geolocation system to be compatible with the

provisions for the protection of personal data, the employee must

follows a predetermined route within specific working hours, o

7 See Decision 66/2006 of the French Data Protection Authority on the installation of systems

geolocation in vehicles. See also, Guidelines of the Swedish Authority

Data protection for geographical localization in the field of labor relations (Positioning

Technology in Working Life, 2011)

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geolocation to take place within the limits of the specific predefined

route and the employee not to use the vehicle outside of working hours.

Furthermore, the data retention time should not be longer than this

which is required for the realization of the processing purpose and in any case to

do not exceed one m. The controller must receive the necessary

security measures to protect data and ensure that access to

maintained data will be done by persons authorized for this purpose. Additionally,

appropriate pseudonymization/encoding techniques must be applied

encryption. The employer must inform the employees about the purpose

processing, the type of recorded data, the time of their use and the

procedure for exercising the right of access by the employee. The update

it must be individual and reasonably authenticated. Finally, the employee has

right of access to the collected data. Accordingly, the Authority granted permission

GPS mode on

company vehicles

of OPAP

(decision 162/2014) and

waste trucks of the Municipality of Piraeus (decision 163/2014), provided that the

vehicles follow a predetermined route and the installation of the system takes

country for the optimization of the route followed and not the monitoring of them

workers. On the contrary, the Authority imposed a strict warning on a pharmaceutical company

for the GPS function in vehicles of medical visitors on the grounds that the route

which is followed by the medical visitors is not predetermined and does not

there is reason to be, since what is requested is the execution of the program

visits during the day. For the nature of the services provided by medical practitioners

visitors, the employer's knowledge of his permanent position is not critical

vehicle they drive. Also, the use of the GPS system is seen in many

cases not to be a convenient means, since from the position in which it has been stationed

the medical visitor's vehicle, the requested information about it does not appear

not carrying out the specific visit. It should, therefore, be responsible

processing to resort to other means, more effective, but less so

burdens that do not violate the privacy of the employee (e.g. control of deliverables,

number of orders, calculation of average execution time of specific routes and

visits). The Authority also ruled that the candidate from the pharmaceutical company

the purpose of serving an urgent order of an urgent appointment is in principle n

legitimate, but the GPS system is being considered for its necessity in general,

given that these extraordinary cases are isolated, and the number of vehicles

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of the fleet is small. Finally, the Authority emphasized that the voluntary provision on his part

employer of the vehicle cannot be a legal reason for mandatory installation

geolocation system, as this is part of its total services

employer to the employee, which are part of his earnings. This one

also applies in the case of the provision of consent by the employee, which when

there is an employee-employer relationship cannot be taken as valid consent

(decision 165/2014)".

7. According to article 5 of the Authority's Guide 1/2011, the legality of our processing

considered in the context of the purpose pursued by the person in charge of processing and in accordance

with the principle of proportionality, which requires video surveillance systems to

is convenient and necessary in relation to the intended purpose, which should

cannot be achieved by milder means (Article 4 of Law 2472/1997). Affordability

and the necessity of video surveillance is assessed based on the risk posed by the person responsible

processing he wants to deal with, in relation to the intended purpose.

Further, the points of installation of the cameras and the way of taking them

data must be identified in such a way that the data collected

not to be more than what is absolutely necessary for its fulfillment

purpose of our processing and that the fundamental rights of persons who

are located in the area that is being monitored and it is not possible to violate this

to be regarded as a "legitimate expectation of some degree of privacy protection" in

specific space.

8. In addition, according to article 7 of no. 1/2011 Guide of the Authority, the

video surveillance system should not be used to monitor them

employees within our workplaces, except in special exceptional cases.

9. Also, according to article 6 of no. 1/2011 Guide of the Authority, "[...] v

the inspection of the perimeter of buildings for the purpose of the safety of persons/and goods (e.g.

damage protection), it is forbidden to take pictures from side streets and

sidewalks, as there is a risk of watching passers-by [...]".

10. Taking into account what was presented by both the complainant and the person in charge

process when they appear before the Department of the Authority and what a

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developed further with the memoranda they submitted, the Authority finds that, according to

period of time in which the complaint refers and the complainant was present

employee of our controller:

a) The functionality of the geolocation system has not been strictly limited

within our working hours, thus violating the principle of legality and

processing relevant and necessary data (principle of relevance,

minimization - limitation of purpose) of the complainant in relation to him

intended purpose no. 4 par. 1 sec. a' and b' n. 2472/1997 since the processing a

personal data of the complainant outside of working hours

was contrary to the purpose of the geolocation system, it was not necessary

the achievement of the purposes of the person in charge of processing and concerned personally

data, unnecessary and related to the purpose of processing.

b) The controller did not appear before the Authority and therefore not

proved on the basis of the obligation of accountability from article 4 par. 2 of law 2472/1997 that

bears, the previous notification of the complainant that he is going to collect and

process personal data through the operating system

geolocation, thus violating the principle of fair processing according to no. 4 par. 1

ed. a' n. 2472/1997.

c) The controller has declared that through the video surveillance system

supervise the parking areas of the company's vehicles, as well as

also park on a public road, thus not being able to exclude the taking of an image from

the pavement and the public road, thus taking an image of passing natural

of persons and cars that may lead to physical identification

persons. Thus, violate the principle of legality and force us to process them

relevant and necessary data (principle of relevance, minimization –

purpose limitation) in relation to the intended purpose no. 4 par. 1 sec. a and b

Law 2472/1997 since the processing of personal data of

of natural persons was contrary to the purpose of the video surveillance system,

was not necessary for the achievement of the purposes of the controller and

it concerned personal data, unnecessary and relevant to the purpose of our processing

FOR THOSE REASONS

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The Authority taking into account the above and that the person in charge of processing

filed a record keeping notice for the geolocation system and for the

video surveillance system addresses at no. 19 para. c' of Law 2472/1997 recommendation for

adaptation of the above systems to the legal requirements described in

point a), b), c) of Opinion 10 hereof.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou

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