Athens, 12-10-2021 No. Prot. 2291 A P O F A S H 33/2021 (Department) The Personal Data Protection Authority convened, at the invitation of its President, in a regular meeting in the composition of the Department at its headquarters on 15/4/2020 at 10.00, in order to examine the case referred to in the present history. The meeting was attended by Georgios Batzalexis, Deputy President, in opposition to the President of the Authority, Constantinos Menoudakos, and the alternate members Grigoris Tsolias, as rapporteur, Evangelos Papakonstantinou, and Emmanuel Dimogerontakis. They did not attend due to disability, although regular members Konstantinos Lambrinoudakis, Charalambos Anthopoulos and Eleni Martsoukou were legally summoned in writing. The meeting was attended, by order of the President without the right to vote, Maria Alikakou, legal expert, as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's Administrative Department, as secretary. The Authority took into account the following: With his appeal No. C/EIS/7439/17.9.2018, as supplemented by No. C/EIS/5089/17.7.2019, A reported the Center for Disease Control and Prevention - KE.EL.P.NO. (now National Public Health Organization - EODY) and the Special Infection Control Center Employees Union (hereafter S.E.K.E.L.E.) for illegal processing and failure to satisfy access and erasure rights. In particular, the appellant complained with his appeal No. G/EIS/7439/17.9.2018 that the KE.EL.P.NO. posted on the website (www.sekeel.gr) of S.E.K.E.L. a) the invitation numbered by the President 2 of the Board of Directors of KE.EL.P.NO. as an agenda item, the taking of disciplinary measures against the complainant and b) the incoming document with number ... of the Directorate of Administrative Support of the Ministry of Interior and Administrative Reconstruction, with which it was notified to the KE.EL.P.NO. document from the Prosecutor's Office of First Instance [region] X, by virtue of which the complainant was prosecuted for an offense allegedly committed by the complainant. Furthermore, with his above appeal, the appellant complained that the KE.EL.P.NO. did not satisfy the right of access that he exercised before him and this because he did not respond to his request from ..., with which he asked the KE.EL.P.NO., as controller, to receive information regarding the posting of the above documents on the website of S.E.K.E.L.E.L. and in particular, to be informed about whether the documents in question have been requested and obtained legally by S.E.K.E.L. as well as to grant him the relevant correspondence, from which the above grant results. In the context of investigating the present complaint, the Authority requested the opinions of the audited KE.EL.P.NO. on the accused. The KE.EL.P.NO. did not respond to the above document and for this reason, the Authority proceeded to send a new document providing opinions (prot. no. C/EX/1258/14.2.2019), to which it again did not receive any response. Following this, the Authority invited the involved bodies to the Department meeting on 11.7.2019. At the meeting in question, the appellant attended after

the power of attorney of his lawyer, Sofias Petritsi with AMDS..., while the accused did not attend and did not inform the Authority about it. During the discussion of the meeting in question, the need to further investigate any responsibility of the Employees' Union KE.EL.P.NO. (hereinafter S.E.K.E.L.), on whose website, as mentioned above, the disputed documents were posted. Subsequently, the Authority postponed the examination of the case in order for the applicant to contact S.E.K.E.L. with his relevant request, in accordance with the procedures provided for in articles 12, 15 and 17 of the GDPR, to be informed about the post in question and to request its removal from the website of S.E.K.E.L.E.L. following them, respectively. Subsequently, the appellant addressed his request from ... document to S.E.K.E.L., in which he requested to receive information regarding the method of 2 3 acquisition from S.E.K.E.L. .E.L. of the disputed documents, the reason for their posting on the association's website and, in addition, to remove the disputed documents from the website. In his above application, the appellant did not receive a response from S.E.K.E.L.E.L. Following this, the appellant submitted to the Authority the supplementary complaint No. G/EIS/5089/19.7.2019 against S.E.K.E.L.E.L. for illegal processing as well as for failure to satisfy the right to erasure. Subsequently, the Authority sent to S.E.K.E.L. the document with original number G/EX/5091/25.10.2019 to provide opinions on the accused. S.E.K.E.L. did not respond to the Authority's above document. S.E.K.E.L., in the meantime, did not take any other action regarding the complaints. For the above reasons, the Authority invited those involved to the meeting of the Department on Wednesday 18.12.2019. During the hearing, the appellant A and Georgios Dellis, president of the complained S.E.K.E.L., were present, who, after developing their views orally, were then given a deadline and submitted within the deadline the first C/EIS/264/14.1.2020 and C/EIS/291/15.1.2020 their respective memoranda to the Authority. The complainant during the above hearing, but also with his relevant memorandum, pointed out that on ... he addressed S.E.K.E.L.E.L. requesting information regarding the reasons for the acquisition and posting on his website of the disputed documents as well as their de-posting. In addition, the complainant developed the reasons that, according to him, S.E.K.E.L.E.L. proceeded with the post in question, claiming, among other things, that the controversial publication took place for political expediency, causing his "slander" shortly before his "pre-decided dismissal", emphasizing that the main purpose of the above actions of S.E.K.E. .E.L. was the pursuit of his dismissal. The reported S.E.K.E.L. during the above hearing, but also with his memorandum, he argued that the disputed documents were granted to him by the complainant himself, arguing, in addition, that the complainant provided S.E.K.E.L.E.L. his consent for use and publication ("public use") of the disputed document in the context of supporting the complainant's rights vis-à-vis the KE.EL.P.NO. In fact,

S.E.K.E.L. claimed that both the granting of the documents and the aforementioned consent are recorded in the minutes of the meeting of the Board of Directors of S.E.K.E.L., without, however, presenting such minutes or any relevant evidentiary document before the 3 4 Authority. Contrary to the allegations of the complainant, S.E.K.E.L. pointed out that the sole purpose of his above-mentioned actions was to prevent the possible dismissal of the complainant, which S.E.K.E.L. states that with his actions he managed to succeed at least until ..., when the complainant's dismissal finally took place. Finally, S.E.K.E.L. assured that he removed the disputed post after the meeting of the Authority on 18.12.2019. The Authority, from the hearing procedure, from the elements of the case file, as well as from the memoranda submitted to the Authority and after hearing the rapporteur and the assistant rapporteur, who left after the discussion of the case and before the conference and the taking a decision and after a thorough discussion, IT WAS 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- GDPR) and article 9 of law 4624/2019 (Government Gazette A ΄ 137) it follows that the Authority has the authority to supervise the application of the provisions of the GDPR, of this law and of 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 shows that the Authority has the authority to deal with the complaint of B against the KE.EL.P.NO. (now EODY), as it was supplemented with the complaint numbered G/EIS/5089/17.7.2019 by the same complainant against S.E.K.E.L.E.L. for illegal processing and non-satisfaction of access and erasure rights regarding personal data concerning him and to exercise, respectively, the powers granted to him by the provisions of articles 58 of the GDPR and 15 of Law 4624/2019. 2. Because according to article 5 par. 1 GDPR "1. Personal data: a) are processed lawfully and legitimately in a transparent manner in relation to the data subject ("legality, 4 5 objectivity and transparency"), b) are collected for specified, explicit and legitimate purposes and are not subjected to 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 Article 5 par. 2 GDPR: "The controller bears the responsibility and is able to demonstrate compliance with paragraph 1 ("accountability")". According, in particular, to the principle accountability, which constitutes a cornerstone of the General Regulation for the protection of personal data, the controller is obliged to plan, implement and generally take the necessary measures and policies, in order for the processing of personal data to be in accordance with the relevant legislative provisions . In addition, the data controller is charged with the more specific duty of proving his own compliance with the

above-described principles of Article 5 para. 1 GDPR, both to the data subject for reasons of transparency of the processing, and, in particular, before of the Supervisory Authority. 4. Because, regarding the processing of data related to criminal offences, including criminal prosecutions, it is pointed out that the GDPR does not include them in the special categories of data, as defined in article 9 paragraph 1 GDPR. For the category of data in question, the GDPR now reserves a more specific regulation for their processing. In particular, with regard to the processing of personal data relating to criminal offences, the GDPR provides in Article 10 "The processing of personal data relating to criminal convictions and offenses or related security measures based on Article 6 paragraph 1 shall only be carried out under the control of an official authority or if the processing is permitted by Union law or the law of a Member State which provides adequate guarantees for the rights and freedoms of data subjects. A complete criminal record is kept only under the control of an official authority.' Furthermore, the Authority with its Opinion 1/2020 pointed out the following regarding this: "Whereas from the provision of article 10 5 6 GDPR it follows that authorization is provided ("opening-specification clause") to the national legislator to take the necessary measures with the provision adequate guarantees for the processing of personal data related to criminal convictions and offences, however, no relevant measures are taken by law, nor does the explanatory statement reveal the reason for this omission. In any case, even if the intention of the national legislator was to take measures implementing Article 10 GDPR in specific sectoral legislation, contrary to its choice in relation to Article 9 GDPR, such measures have not been taken to date with as a result of which the application of the provision of article 10 of the GDPR becomes impossible to a large extent"1. From the above it follows that the provisions of Article 10 GDPR do not introduce special legal bases for processing, distinct and independent from those of Article 6 GDPR and therefore there is no question of superseding or replacing said legal bases. In addition, the provisions of Article 10 GDPR introduce further conditions and procedural guarantees for the lawful processing of personal data relating to criminal convictions and offences, including criminal prosecutions. Such a legal basis, on which the processing of personal data provided for by the provisions of article 10 of the GDPR can be based, is the consent of the subject, in accordance with article 6 par. 1 a' of the GDPR according to which "1. The processing is lawful only if and as long as at least one of the following conditions applies: a) the data subject has consented to the processing of his personal data for one or more specific purposes, b) [...]'. 5. Because for the validity of the consent, the terms and conditions provided for in articles 4 par. 11 and 7 GDPR, as clarified by recitals 32, 40 and 42 of the GDPR and the recent Consent Guidelines of the European Data Protection Board (EDPB)2. In particular, 1 See Authority Opinion 1/2020, available at

(https://www.dpa.gr/el/enimerwtiko/prakseisArxis/epi-ton-diataxeon-toy-n-46242019) 2 European Data Protection Board, Guidelines 5/2020 on the Consent under GDPR 2016/679, 4 May 2020, wp259rev.01, (the text is available at the following link https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_202005_consent_en.pdf). of the Authority www.dpa.gr. website 6 7 in accordance with the provision of article 4 par. 11 GDPR, the consent in order to be valid must be free, specific, explicit and fully informed, while its validity as well as its receipt must be proven by the data controller in the context of the aforementioned accountability principle, according to with article 7 par. 1 GDPR, which states that "1. When the processing is based on consent, the controller is able to prove that the data subject consented to the processing of the personal data. 2.[…]". 6. Because, according to article 12 para. 3 and 4 GDPR "The data controller shall provide the data subject with information on the action taken upon request pursuant to articles 15 to 22 without delay and in any case within one month of receipt request. This deadline may be extended by a further two months if necessary, taking into account the complexity of the request and the number of requests. The data controller shall inform the data subject of said extension within one month of receipt of the request, as well as of the reasons for the delay. […] 4. If the data controller does not act on the data subject's request, he shall inform the data subject within one month of receiving the request of the reasons why he did not act and of the possibility of submitting a complaint to a supervisory authority and exercise of legal action.". 7. Because, according to article 15 par. 1 of the GDPR "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 to the following, among others, information: a) the purposes of the processing, b) the relevant categories of personal data, c) the recipients or categories of recipients to whom […] the personal data were disclosed, c) […].". 8. Because, according to article 17 par. 1 item d' GDPR "1. The data subject has the right to request from the controller the deletion of personal data concerning him without undue delay and the controller is obliged to delete without undue delay if one of the following reasons applies: a) […] d) the personal data were processed unlawfully [...]'. personal data 9. Because, according to Article 31 GDPR "the controller and the processor and, where appropriate, their representatives shall cooperate, upon request, with the supervisory authority in the exercise of its duties." In particular, in conjunction with the above-mentioned principle of accountability, this provision implies that the data controller must cooperate with the supervisory authority and provide all possible and useful information to facilitate its work when checking its level of compliance with the GDPR. For this reason, the data controller should be able at any time and whenever requested, without undue delay, to be able to prove to the supervisory authority whether and in what way it has

implemented its obligations under the GDPR, and have , to this end, very relevant compliance information at the outset. The supervisory authority will then be able to use the said information in the context of its actions for the application of the existing legislation. Furthermore, as the Article 29 Working Group also mentioned in the relevant Opinion, if the above information is not provided when requested, the data protection authority will immediately have a reason to take action against the controller, in the event that he does not cooperate, regardless from the alleged violation of other underlying data protection principles, in accordance with the above-mentioned provision3. 10. Because, in accordance with the provisions of article 58 paragraph 2 of the GDPR in combination with the provisions of article 15 paragraph 4 et seq. of Law 4624/2019 the supervisory authority has the corrective powers provided for in said provisions against the person in charge processing, when the latter has violated 3 See OE A29, Opinion 3/2010 on the principle of accountability, 13.7.2019, 00062/10/EL WP 173. 8 9 provisions of the GDPR and Law 4624/2019. 11. Because the processing in question concerns the posting on the website of S.E.K.E.L.E.L. documents containing personal data, which refer to a pending criminal case of the complainant and specifically to a criminal prosecution brought against him. In this sense, the said processing permissibly takes place, only if the conditions of articles 5, 6 and 10 GDPR are met cumulatively, according to the aforementioned, among others, and when this is based on the consent of the data subject, while the receipt and the validity of the consent must be proven by the controller in the context of the principle of accountability. In particular, as provided, both in recital 42 of the GDPR preamble, and in the aforementioned Article 7 paragraph 1 GDPR, when the processing is based on the consent of the data subject, the controller should be able to demonstrate that the data subject consented to it. 12. Because in the case under consideration, from the hearing procedure, and the elements of the file, as it was supplemented with the memoranda of the parties involved, it was found that the post in question, which constitutes automated processing, was made by S.E.K. E.E.L., as data controller. In particular, S.E.K.E.L. confirmed that it proceeded with the posting in question, the legality of which it wrongly based on the complainant's consent. Specifically, S.E.K.E.L. claimed that it proceeded to post the disputed documents having received the complainant's consent for said processing. In particular, S.E.K.E.L. argued in his above memorandum that the complainant had provided him with the disputed documents during the meeting of the Board of Directors of S.E.K.E.L.E.L. on ... at the same time giving his consent for "public use of these" in support of the complainant's work interests and in particular to prevent his imminent dismissal from the KE.EL.P.NO., a fact that according to the claims of S.E.K. .E.E.L. was recorded in the minutes of the above meeting. S.E.K.E.L., however, did not document in writing before the Authority its above claim and consequently did not prove, 9 10 as it

should according to the above mentioned, that the processing in question was lawful based on the consent of the complainant. Therefore, in the absence and unproven existence of the legal consent of the data subject, it is assumed that the processing in question took place without a legal basis. Consequently, the processing of the personal data under consideration under article 10 GDPR was carried out incorrectly and without meeting the conditions of article 6 par. 1 sub. a' GDPR and therefore without the existence of a legal basis, so that the Authority can establish that the provisions of articles 5 par. 1 sec. a' (principle of legality), par. 2 (principle of accountability), 6 (lack of legal basis - legality of processing) in conjunction with article 10 GDPR4. 13. Since, the complainant further legally exercised the right of access before S.E.K.E.L.E.L., as data controller, i.e. with his application from ... he requested, among other things, to be informed regarding the method of acquisition and collection of the disputed documents and the reason for their posting. S.E.K.E.L., however, never responded to the above request, as it should according to articles 12 par. 3 and 4 and 15 par. 1 GDPR, as a result of which it violates the provisions in question . 14. Since, the complainant additionally exercised the right of erasure before S.E.K.E.L.E.L., as data controller, i.e. with his above-mentioned application he asked the union in question to proceed with the removal of the disputed documents from the website of S.E.K.E.L. for the reason that their posting and, by extension, their publication for a long period of time on the website in question is contrary to the applicable GDPR and they affect him as an individual. S.E.K.E.L. never responded to the request in question, nor did it immediately and without undue delay suspend them, as it should according to articles 12 par. 3 and 4 and 17 par. 1 d' GDPR, since, as established during the procedure before the Authority and described above, S.E.K.E.L. illegally proceeded with said posting and its maintenance even after the complainant's deletion request. Therefore, S.E.K.E.L. should have immediately satisfied the 4 For the principle of legality in the processing of personal data see already APD 26/2019 sc. 5 and 20. 10 11 request to delete the complainant and by not doing so he has violated the above-mentioned provisions of articles 12 par. 3 and 4 and 17 par. 1 d' GDPR. However, it is pointed out that S.E.K.E.L. complied with the above-mentioned obligation to withdraw the publication of the disputed documents after the intervention of the Authority and namely after the meeting of the Authority on 18.12.2019, as appears from his memorandum with the number C/EIS/291/15.1.2020 . 15. Since the appellant addressed his request from ... to the KE.EL.P.NO., as a data controller, with which he requested to be informed regarding the method of obtaining the disputed documents from the S.E.K.E. .E.L. and especially if they were legally granted to the union in question and in case of an affirmative answer, to receive copies of the relevant correspondence. The KE.EL.P.NO. never responded to the above request in violation of articles 12 par. 3 and 4 and

15 par. 1 GDPR. 16. Because the KE.EL.P.NO., in the context of examining the present complaint, received from the Authority the numbers C/EX/7439-1/22.10.2018 and C/EX/1258/14.2.2019 opinion papers, to which he never responded. In addition, the KE.EL.P.NO. received from the Authority the summons with original number 4713/3.7.2019 to a hearing during the aforementioned meeting on 11.7.2019, in which, however, he did not appear, nor did he inform the Authority about his non-attendance and the reasons for this. In particular, in accordance with the obligation provided for in Article 31 of the GDPR, as described above in paragraph 9 hereof, the KE.EL.P.NO., as a data controller, had to cooperate with the supervisory authority during the examination of the present appeal and to provide clarifying information in order to facilitate the Authority when examining the case at hand. On the contrary, the KE.EL.P.NO. showed unjustified indifference to the Authority's repeated calls for clarification. The above-mentioned attitude of the KE.EL.P.NO., during the control of the Supervisory Authority, constitutes a violation of its obligations as data controller and demonstrates not only the lack of intention on the part of the data controller to cooperate with the Authority, but also 11 12 the complete lack of compliance with the requirements of the GDPR, causing substantial obstacles to the examination of the case in question. 17. Because the violation of the provisions described in detail above lead to the imposition of administrative sanctions under article 83 GDPR. In particular, the violations of articles 5 par. 1 sec. a', par. 2, 6 par. 1 a' in combination with article 10 GDPR and article 31 GDPR entail the imposition of the administrative sanctions of article 83 paragraph 5 item. a' and par. 4, respectively, while the violation of the rights of the data subjects provided for in articles 12-22 of the GDPR entails the imposition of the relevant sanctions according to article 83 par. 5 item. b' of the GDPR. 18. According to the GDPR (ref. s. 148), in order to strengthen the enforcement of the rules of this Regulation, sanctions, including administrative fines, should be imposed for each violation of this Regulation, in addition to or instead of the appropriate measures that are imposed by the supervisory authority in accordance with this Regulation. 19. Based on the above, the Authority considers that there is a case to exercise its corrective powers according to article 58 par. 2 of the GDPR in relation to the violations found. 20. The Authority further considers that the imposition of a corrective measure is not sufficient to restore compliance with the provisions of the GDPR that have been violated and that it should, based on the circumstances established, be imposed, pursuant to the provision of article 58 par. 2 pcs. i of the GDPR additional and effective, proportionate and dissuasive administrative fine according to article 83 of the GDPR both to restore compliance and to punish illegal behavior. 21. Furthermore, the Authority took into account the criteria for measuring the fine defined in article 83 par. 2 of the GDPR, paragraph 5 item. a' and b' of the same article that are applicable in this case and the

Guidelines for the application and determination of administrative fines for the purposes of Regulation 2016/679 issued on 03-10-2017 by the Article 29 Working Group (WP 253), as well as the facts of the case under consideration and in particular: i. The fact that the observance of the principles provided by the provision of article 5 par. 1 sec. a' of the GDPR is of capital importance, 12 13 primarily, the principle of legality, so that if this is missing the processing becomes illegal from the beginning, even if the other processing principles have been observed, especially in this case where none was established legal basis for the processing in question according to the foregoing. ii. The fact that KE.EL.P.N.O., i.e. a NPDD, violated articles 15 par. 1 and 31 GDPR by circumventing its basic obligations as a data controller towards the data subjects and the supervisory authority, respectively. iii. The fact that S.E.K.E.L., as a data controller, violated the provision in article 5 par. 1 sec. a GDPR principle of legality, i.e. violated a fundamental principle of the GDPR, as mentioned above, for the protection of personal data. iv. The fact that the processing of personal data in violation of the GDPRof data from S.E.K.E.L., as controller, through the

legal basis in this case concerned one (1) natural person as a subject

of personal data.

v. The fact that the violation of the provisions on the basic principles

for processing, the obligation to cooperate with the supervisory authority

as well as with the rights of the subjects it is subject to, according to

provisions of article 83 par. 4 and 5 sec. a' and b' GDPR, in the upper class

prescribed category of the administrative grading system

fines.

vi. The fact that the aforementioned violations of the GDPR by

the denounced S.E.K.E.L. it is not proved beyond doubt that

attributed to his fraud, but to his negligence due to ignorance of the provisions

of the GDPR.

vii. The fact that S.E.K.E.L. proceeded after her intervention

Authority to revoke the publication of the disputed documents after the

intervention of the Authority, namely after the meeting of the Authority on

18.12.2019 (see above section 14).

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viii. The fact that from the elements brought to the attention of the Authority and

based on which he established the above violations of the GDPR, the above

notified controllers, namely the KE.EL.P.N.O. and

S.E.K.E.L., did not obtain a financial benefit, nor did they cause any material damage

damage to the complainant.

ix. The absence of previous established violations of

reported data controllers, namely the KE.EL.P.N.O. and his

S.E.K.E.L., as a relevant audit shows that it has not been enforced

to date no administrative sanction by the Authority to any of those in question

carriers.

22. Based on the above, the Authority unanimously decides that it should be imposed

to the above-mentioned complainants, KE.EL.P.N.O. and S.E.K.E.L., as

controllers and for the above-mentioned established

violations attributable to them, those referred to in its ordinance

present administrative sanctions, which are considered proportional to the severity

of said violations.

For those reasons

The beginning:

A. Enforces the Center for Disease Control and Prevention - KE.EL.P.NO. (now

National Public Health Organization – EODY) in accordance with articles 58 par. 2

item i' and 83 par. 4 par. 4 item. a' and para. 5 item II GDPR:

a) for the violation of article 15 par. 1 GDPR the effective, proportionate

and dissuasive administrative fine appropriate to the specific case,

according to the special circumstances thereof, in the amount of two thousand (2,000.00) euros,

and

b) for the violation of Article 31 GDPR the effective, proportional and

dissuasive administrative fine appropriate to the specific case,

according to the special circumstances thereof, in the amount of eight thousand (8,000.00)

euro.

B. Enforces the Infection Control Center Employees Union-

S.E.K.E.L. according to articles 58 par. 2 item i' and 83 par. 5 item a' and b'

GDPR:

a) for the violation of article 5 par. 1 sec. a', par. 2, 6 par. 1 a' in combination

with Article 10 GDPR the effective, proportionate and dissuasive administrative

fine appropriate to the specific case, according to the special ones

circumstances thereof, amounting to three thousand (3,000.00) euros,

b) for the violation of article 15 par. 1 GDPR the effective, proportionate

and dissuasive administrative fine appropriate to the specific case,

according to the special circumstances thereof, in the amount of one thousand (1,000.00) euros, and

c) for the violation of article 17 par. 1 GDPR the effective, proportionate

and dissuasive administrative fine appropriate to the specific case,

according to the special circumstances thereof, in the amount of one thousand (1,000.00).

The Deputy President The Secretary

Georgios Batzalexis Irini Papageorgopoulou