

Athens, 15-02-2023 Prot. No. 397 A P O F A S H 6/2023 The Personal Data Protection Authority met at the invitation of its President at its store, on Tuesday, December 20, 2022 in order to examine the case, mentioned below in the history of this decision. The President of the Authority, Konstantinos Menudakos, and the regular members of the Authority, Aikaterini Iliadou as rapporteur, Christos Kalloniatis and Grigorios Tsolias, as well as the alternate members Dimosthenis Vougioukas and Nikolaos Livos, were present. Present without the right to vote were Anastasia Tritaki, legal auditor - lawyer, as assistant rapporteur and Irini Papageorgopoulou, employee of the administrative affairs department, as secretary. The Authority took into account the following: With the no. prot. C/EIS/5987/04-09-2020 complaint, A raised the following before the Authority: The complainant has completed, for ideological reasons, alternative political social service lasting .. months, in accordance with the provisions of Law 3421/2005 as applicable, which was completed on ... and has not been under any military obligation since then. On ... he submitted a digital application through the stratologia.gr website in order to be granted a certificate of military status and subsequently, on ... he was granted by the Military Service X the no. ... document, where it was stated that he was recognized as a conscientious objector for reasons of religious or ideological beliefs and that he has completed alternative service and is currently not under any military obligation. As, according to the complainant's point of view, from the certificate 1-3 Kifisias Street, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr this results in data related to political opinions and in his philosophical beliefs, the complainant submitted on ... to Military Service X a request for erasure pursuant to Article 17 of the GDPR of the special categories of data held and still processed by Military Service X. With its response document from ... to his request for deletion of the complainant, Military Service X stated that in the military status certificate numbered ... issued on ..., the military changes related to the fulfillment of alternative social service were recorded, without indicating changes related to political opinions, philosophical beliefs or physical ability. Following this, the complainant appealed to the Authority, complaining that Military Service X did not satisfy his request, pointing out that with the above practice he is forced to share his personal data with any other public authority or employer that requests a certificate of military status, and requesting the Authority to intervene so that a) the immediate deletion of all unnecessary personal data held by him from every database (digital or paper) of the recruitment service, in accordance with the current legislation and the relevant decisions of the Authority and b) to be granted a certificate of military status in which only the fact that he has fulfilled his military obligations should be stated and certified. The Authority, in the context of investigating the complainants, sent the no. prot. C/EX/5987-1/08-12-2020 document to provide clarifications regarding the above complaint to Military Service X, which

with no. prot. G/EIS/8912/29-12-

2020 its response to the Authority stated the following: a) in accordance with articles 49 and 67 of Law 3421/2005, it is not possible to delete data concerning the military monitoring of Greeks, but only completion - recall and not deletion is allowed of conscription changes, while those who fulfill alternative service are not deleted from the reserve, nor do they cease to have a reserve obligation, b) from the registration of the recognition as conscientious objection and fulfillment of alternative political social service of the complainant in his conscription portion are not formulated in a specific way nor his religious, nor his philosophical and ideological views, c) no enlistment change can be registered that the conscientious objector has fulfilled his military obligations since he does not have the 2 military status, and d) the information entered in the issued certificate does not reveal the specific religious, philosophical or ideological beliefs of the complainant. On the above complaint, the Authority issued Decision 3/2022, which was notified to the complainant with no. prot. C/EX/79/13-01-2022 document. With this decision, it was decided that the main purpose of the type A military status certificate of general content is to certify that the bearer is no longer subject to military obligations and therefore the entry of any other data on the above certificate is contrary to the principles of article 5 par 1 GDPR regarding the legality of the processing, therefore it is illegal, while more information or even all enlistment changes are legally included in the issued certificate, as long as they are required by law for the purpose for which it is issued. Furthermore, the Authority ruled that article 44 of the Regulation of Organization and Operation of the Joint Legal Body, according to which certificates of enlistment status are used in cases where the interested parties wish to certify their enlistment status or the certification of all or some of their enlistment changes and for the listing of all or certain changes, the purpose for which the interested party requests the issuance of the certificate is taken into account, taking into account the provisions of the applicable legislation for the protection of the individual from the processing of personal data, it is harmonized with the GDPR and the upper judgment of the Authority. Furthermore, the Authority considered that in the case under discussion, the no. 208/1612/2020 type A enlistment status certificate granted to the complainant by Military Directorate X, "after a relevant application for any legal use", as stated in the certificate itself, illegally contains information on three enlistment changes concerning the subjecting him to those liable to alternative civil social service as a conscientious objection, his presentation for the execution of the alternative civil social service and his dismissal after the execution of this service, respectively, and the confirmation that "he has fulfilled alternative service and is not subject to no military obligation", since it was not granted for a specific purpose, for which it was legally necessary to confirm these details, but for any legal use and,

therefore, in this case 3, the certification that the complainant is not subject to military obligations was sufficient. Taking into account the above considerations, the Authority called with its 3/2022 Decision the Ministry of National Defense, as the controller, to re-issue for the complainant the certificate of military status type A' with the inscription only given that he no longer holds any military obligation. With the judgment under no. prot. C/EIS/2662/23-02-2022 request (treatment), the Ministry of National Defense requests the review of Decision 3/2022 of the Authority, pointing out, among other things, the following: - that the performance of alternative service constitutes a deviation from the performance of military service by those who are recognized as conscientious objectors citing their religious or ideological beliefs, provided for by articles 59 to 65 of Law 3421/2005 (Government Gazette A' 302), and that those performing alternative service do not have military status, considered as quasi-members of the armed forces, as the fulfillment of alternative service consists in the provision of public utility services in services of the wider public sector and assimilation with the agency's employees in matters of administrative care; - that the data relating to the fulfillment or non-fulfilment of military obligations, they constitute simple personal data, in accordance with the Authority's Decision 159/2014, while the inscription on military status certificates of the phrase "has fulfilled alternative service and is not subject to any military obligation" does not reveal, without exception, special category data, as long as it does not indicate political thoughts, philosophical beliefs or physical ability, - that the listing of the military status of the conscript, reservist or person performing alternative service constitutes processing within the meaning of the GDPR, which must fall under one of the legal bases of Article 6 para. 1 GDPR, of the cases c' and e' considered to be more suitable in this case, and at the same time be governed by all the principles of article 5 GDPR, - that with the inscription "he has fulfilled alternative service and is not subject to any military obligation" the principle of proportionality is observed, as the purposes pursued by the conscription service (information regarding the fulfillment or not of military service or alternative service) cannot be served by choosing other means, 4- that with the above inscription the principle of accuracy is observed, as the exact military status of the subject identified as objectionable of conscience and fulfilled alternative service, as the fulfilled alternative service that provided public utility services to the wider public sector is differentiated from someone who has served armed conscript military service in units of the armed forces - therefore the above mention is judged necessary as it accurately certifies the military status of the subject

and the purpose to be served by the enlistment certificate is satisfied

status, i.e., whether or not one performed military or alternative service

(without stating the reasons for performing an alternative service),

- that with the above mention the principle of minimization is respected, as it is only mentioned

the fact of performing an alternative service and not a description of the more specific one

for this reason, given that the reasons for fulfillment provided by law

alternative service (religious or ideological beliefs) vary as to

their nature, it is not possible to be concluded by third parties, so that the

interested party to be discriminated against because of it.

Following these and for all the reasons stated above, the Ministry of National

The defense claims that the listing "has fulfilled an alternative service and is not liable

no military obligation' on the certificate of military status constitutes

legal processing in accordance with the principles set by the provisions of the GDPR and requests

with the above C/EIS/2662/23-02-2022 request for the amendment of Decision 3/2022 of

Principle.

The Authority, after examining the elements of the file, after listening to the rapporteur

and the remarks of the assistant rapporteur, who was present without the right to vote,

after thorough discussion,

THOUGHT ACCORDING TO THE LAW

1. Because. in accordance with article 2 par. 8 of Law 3051/2002 (Official Gazette A' 220) on the "Constitutional

vested independent authorities, modifying and supplementing the system

of recruitment in the public sector and related regulations" issued in execution thereof

5

of article 101 A of the Constitution "8. Against the executive decisions of the independents

authorities, a petition for annulment may be brought before the Council of State,

as well as the administrative appeals provided for in the Constitution and legislation. Just right

aids against the decisions of the independent authorities can also be brought against

case competent Minister",

2. Because, according to article 24 par. 1 of Law 2690/1999 (KDDiad) "If from the relevant

provisions do not provide for the possibility of exercising, according to the next article, a specialist

administrative, or internal appeal, the interested party, for material restoration

or moral damage to his legitimate interests caused by individual administration

act can, for any reason, with 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 cancellation (hierarchical

recourse)". Within the meaning of the provision, the remedy application is for the purpose of revocation

or modification of the challenged individual administrative act for legal or factual reasons

its defects attributable to the regime under which it was issued,

3. Because, with the above provisions of article 24 of the Civil Code, the right of everyone is established

"interested" manager, who has suffered material or moral damage from an individual

administrative act, to address the authority that issued said act before

resort to judicial protection (simple administrative appeal, otherwise an application

treatment). This is an "informal" administrative appeal as opposed to the formal ones

"special" and "unequivocal" appeals of article 25 KDDiad. The said appeal has

as a request for the revocation or modification of the above-mentioned individual administration

act, in order to restore the material or moral damage of the applicant, the

caused by the administrative act in those cases where the law does not provide

the possibility of exercising the above appeals of article 25 KDDiad<sup>1</sup>,

4. Because, with the current treatment request, the content of which is set forth above

in the history of the present, in essence, legal claims are presented regarding it

meaning of the provisions of article 5 par. 1 GDPR and their application in said case

case, and new and critical ones are not invoked or presented

real data<sup>2</sup>,

<sup>1</sup> See indicatively, the one with no. 73/2018 Decision of the Authority.

<sup>2</sup> See Supreme Court 1175/2013 (sq. 9), 3259/2011 (sq. 9), 434/2007 (sq. 5), 2683/2003 (sq. 5).

6

5. Because all the allegations raised with the present application for remedy have already examined by the Authority during its examination stage with no. prot. G/EIS/5987/04-09-2020 complaint, they were deemed illegal and unfounded with the no. 3/2022 Decision of the Authority,

6. Therefore, there is no documented need to revise it with no. 3/2022 of Decision, n which was notified to the Ministry of National Defense with no. prot. C/EX/79/13-01-2022 document of the Authority.

FOR THOSE REASONS

The beginning

It rejects the no. prot. C/EIS/2662/23-02-2022 his treatment request Ministry of National Defense against Decision 3/2022 of the Authority.

The president

Konstantinos Menudakos

The Secretary

Irini Papageorgopoulou

7