

Athens, 29-03-2021 Prot. No.: 933 DECISION 10/2021 The Personal Data Protection Authority met as a Department via teleconference on Wednesday 17.02.2021 at the invitation of its President, in order to examine the case mentioned in the history of the present. Georgios Batzalexis, Deputy President of the Authority's President Constantin Menoudakos, and the alternate members Evangelos Papakonstantinou as rapporteur and Grigorios Tsolias in place of the regular members Konstantinos Lambrinoudakis and Charalambos Anthopoulos, who, although legally summoned in writing, did not attend due to obstruction, attended. Also, the regular member Spyridon Vlachopoulos did not attend although he was legally summoned in writing due to disability. The meeting was also attended by order of the President, E. Maragou, specialist scientist - legal auditor as assistant rapporteur and E. Papageorgopoulou, an employee of the Authority's Secretarial Support Department, as secretary. The Authority took into account the following: A, a citizen of P[country] (born ...), with his appeal to the Authority with protocol number A/EIS/48/23.08.2018, as completed, requested his deletion from the Schengen Information System (hereafter S.S.S.) and the National List of Unwanted Aliens (hereafter E.K.A.N.A.). With its letter No. A/EX/18/14.02.2019, the Authority invited the Aliens Directorate of the Ministry of Citizen Protection to inform it about the existence of an entry in the above lists.

1-3 Kifissias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 The Security - Aliens office of the R[region] Police Directorate with the number of ... from ... (No. of the Authority's first letter A/EIS/25/14.03.2019), its document informed the Authority about the details of the registration of the foreigner in question by attaching the relevant documents. As can be seen from the above document of the Directorate of Aliens to the Authority, the applicant A was registered with the E.K.A.N.A. and in S.P.S. on ... until ..., by virtue of the No. ... decision on the administrative return of the alien from Greece of the Police Directorate R as "he was arrested on in ... R by police officers of the .. Border Guard Department S, because lacking travel documents and while you were registered in the National List of Undesirable Aliens and in the Schengen Information System, you illegally re-entered Greek territory at an unspecified time from P using a crossing located in ... P bypassing the entry points specified by the Greek State and avoiding the control of travel documents carried out in that's all. A foreigner with the case filed against him was brought before Mr. Misdemeanor Prosecutor P, who set a hearing for the trial of this case before the Single-Member Misdemeanor Court T on He was subsequently re-arrested by Police officers of the aforementioned Service in order to apply the provisions of article 21 of Law 3907/20011 against him as there is a risk of his absconding, in the sense that if he is released it will be difficult or impossible to locate him by the Competent Authorities for the execution of the Decision to Return him to his country, given that there is no evidence of his permanent residence and the

existence of a cycle of life relationships in Greece, while the evaluative evidence deriving from the offenses he committed demonstrate that he is a person with delinquent behavior and his presence in our country constitutes a serious threat to the internal legal order and society as a whole and therefore he is considered particularly dangerous to the public order and security of the country." Subsequently, on ... the appellant submitted before the Police Directorate R a request to delete him from the E.K.A.N.A.A. and the SPS citing that on ... he entered into a marriage in P with ... national B with whom they have had a child born 2 on ... in Y, which was recognized by the applicant according to a notarial declaration drawn up in P. In support of the deletion request presented him with a copy of the residential rental contract, B's responsible declaration regarding the validity of the marriage, a copy of the marriage certificate, a copy of B's marital status certificate and a copy of B's identity card. Following the submission of the deletion request, the Police Department R ordered the Department of Foreigners Y conducting a thorough investigation into the sham of the marriage, which in turn submitted a report by the police officer who conducted the investigation, according to which B was unaware of the identity of her alleged husband while there is no actual cohabitation in her home. Therefore, with the decision of the General Regional Police Directorate No. ... of ... the request for deletion was rejected because a) the claim of the applicant regarding the part that he is the spouse of a ... citizen, is deemed to be rejected because after a thorough investigation it emerged that the marriage is fictitious and b) it appears from the facts that it constitutes a threat to public order, as the applicant a) was arrested on ... because a decision of the Tribunal was pending against him. Plenipotentiary X for violation of the act of article 372 of the Civil Code. for which he was sentenced to a prison sentence of ... months, b) on ... [because] he was caught operating as a temporarily responsible health care store..., to have installed electronic machines suitable for immediate use to carry out games of chance by customers - patrons of the store , c) on ... [because] he was caught having installed electronic machines suitable for immediate use to carry out games of chance by patrons of the store and d) on ... for attempted theft by complicity. Subsequently, the appellant filed the ... request for treatment, claiming that there is a marriage with B and that his wife is .. weeks pregnant. This request was rejected with document no. ... of the Department of Security and Foreigners of the General Regional Police Directorate F, as no new evidence emerged from the facts of the historical basis of the request. 3 However, with his application from ... the applicant again requested his deletion citing that he is the holder of a Certificate of Application for the issuance of a Residence Permit (for humanitarian reasons), that he is the parent of a minor citizen and that he has humanitarian reasons, since he is a guardian family of ... citizen and minor citizen. With the decision no. ... of ... of the General Regional Police Director F, the

newest request was rejected for the same reasons as the previous one. Following this, with the aforementioned request for deletion to the Authority, the appellant invokes the provisions set out in articles 21-24 of the P.D. 106/2007 and Article 40 of Law 3007/2011 as well as the unbreakable family ties he has developed in the country, which according to the applicant were not taken into account, as dictated by Article 25 S and Article 8 ECHR given that is the spouse of a ... national and the parent of a minor national child. Subsequently, with the decision no. and in the SPS until ... as long as the reasons for registration are still valid. The Authority, after examining the aforementioned data, heard the rapporteur and the clarifications from the assistant rapporteur and after a thorough discussion, DECIDED IN ACCORDANCE WITH THE LAW 1. Because, art. 24 of Regulation 1987/2006, in accordance with the provisions of the previous article 96 of the SESA, regulates the conditions for the registration of third country nationals in the Schengen Information System (SIS II). Also, in article 29 par. 2 and 4 it is provided that in order to maintain the registration in SIS II for a longer period of time, it is deemed necessary to have a timely, within three years, specially reasoned decision of the body deciding on the registration, justifying the need to maintain it beyond of the three years. The competent body decides after a recorded overall and individual assessment the need to maintain it otherwise, entry 4 is automatically deleted (par. 5 of the Regulation). Moreover, from the provisions of articles 41, 43, 44 of the aforementioned Regulation in conjunction with the provision of article 10 par. 4 of Law 4624/2019, it follows that the Authority is competent to examine, following an appeal by the subject, the legality of the of its registration in the S.P.S. list (SIS II), in accordance with the above provisions issued by the Authority responsible for the registration, of the decision on the need to maintain it beyond the time mentioned in the above provisions and if the above conditions for the registration and the of its maintenance, to order the deletion. 2. Because article 1 and article 3 of KYA4000/4/32-la' /17.10.2012, as it was replaced and valid with article 1 par. 2 of KYA4000/4/32-n /31.03.2017, provide respectively the conditions for registration of foreigners in the E.K.A.N.A. and the ex officio review of each registration every three years. Additionally, according to art. 6 of the above KYA, for compliance with the E.K.A.N.A. and the processing of the corresponding personal data shall be subject to the relevant provisions of Law 2472/1997 and in particular of Art. 4 and 13 thereof, while the article 83 of Law 4624/2019 states that "where in provisions of the current legislation reference is made to Law 2472/1997 is understood as a reference to its relevant provisions GDPR and the present".

3. Since, from the combined interpretation of the above and article 76 par.

1 pc. a' of Law 3386/2005 it follows that as "serious criminal acts"

are meant not only those that entail a custodial sentence

at least one year but also those expressly listed in the provision of the article

76 par. 1 item a' of the above law. Further, from the combinatorial interpretation

of the provisions of articles 96 par. 3 of the SESS and 76 par. 1 item. b' of n.

3386/2005 it follows that any violation of the last law regarding

the entry and residence of nationals of third countries in the Greek territory, which

has led to the administrative deportation of the foreigner (such as, for example,

use of false travel documents or the revocation of citizenship due to use

of fake certificates) justifies its registration in EKANA and in SPS.

The same applies in cases where judicial deportation has been ordered

of a foreigner based on article 74 of the Criminal Code due to a conviction for criminal acts

5

provided for in Law 3386/2005 (Article 82, illegal return to the country

of a foreigner who is registered in EKANA, article 83 entry/exit

of a foreigner from Greece without the legal formalities). (Regulation of Authority with no.

3/2012).

4. Because, for the legality of the registration both in case of conviction

as well as in the case of the existence of nuances of indications for the performance of "serious

of a criminal act", from the above mentioned, the competent for the

registration body should in its decision take into account and to

takes into account all the circumstances of the commission of the criminal act and to pronounce specifically

reasoned judgment on the "threat" constituted by the presence of a foreigner on

of the national territory (see previous point).

5. Because the P.D. 106/2007 (Government Gazette B´ 135/21.6.2007) regarding the free

movement and residence in Greek territory of European citizens

Union and the members of their families incorporated them into the Greek legal order

Directive 2004/38 EC while article 21 describes its limitations

right of entry and residence for reasons of public order, public security

or public health.

6. In the case under consideration, from the information in the file and the

clarifications of the Security Office - Foreigners of the Police Directorate R

it emerged that the applicant A was registered with the E.K.A.N.A. and in S.P.S. for

reasons of public order and security on ... 2015 until ... 2022, based on the

No. of the first ... Decision of the Police Director R which, consist in the ec

on the part of the applicant, illegal entry into the country without travel documents

documents, as detailed in the history of the present.

Furthermore, the issue of the deletion of the applicant from E.K.A.N.A.

and the S.P.S. for reasons consisting of marrying a ... citizen and in

existence of a minor citizen child, have been thoroughly examined by the Department

Foreigners Y as well as from the Police Department P, which specially

reasoned decisions has rejected the request on grounds of non-existence

de facto marriage in relation to the applicant's characterization based on

of his background and relevant facts as a dangerous person

for public order and security. This, moreover, provides legal justification for

6

the restriction of the right of entry and residence to a citizen spouse

The European Union.

From the registration of the foreigner in question in E.K.A.N.A. and in S.P.S.

three years have passed and the decision of its Director No. ... of ... has been issued

Police Directorate P, with which it was re-examined, in accordance with the provisions

in paragraph 3 par.1 of art. 3 of no. K.Y.A. 4000/4/32-Ia and maintained

the registration of the above in the S.P.S. and to E.K.A.N.A. until ..., as determined that the original reasons for registration still apply.

Consequently, in accordance with the aforementioned provisions, the registration of the applicant in the S.P.S. and E.K.A.N.A. it is legal, as it was registered in the above lists for the public reasons mentioned above order and security, before three years have passed since the initial registration, it was decided to maintain its registration both in the S.P.S and in I DID.

Consequently, his appeal must be rejected as unfounded.

For those reasons

The Authority rejects A's appeal for the deletion of his data from the S.P.S. and E.K.A.N.A.

APPROVED 2-23-2021

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou