

No. Fax: 11.17.001.006.029 AP 192/2018 April 12, 2019 Breikot Management Ltd member of Nikodea Media Group Neas Engomi 33, Doms Assets, 1st floor, flat 200, 2404, Engomi, Nicosia BY HAND OF THE COMMISSIONER FOR PERSONAL DATA PROTECTION DECISION Subject: Complaint about Disclosure and processing of personal data by Breikot Management Ltd

1. Facts:

1.1. On and/or around 10/17/2018 five (5) separate complaints (complaints) were submitted to my Office by the law firm Athos Demetriou Associates LLC, on behalf of their clients A.X., B.X., C. X., D.X and E.X. (hereinafter "complainants") against the company Breikot Management Ltd, a member of Nikodea Media Group, (hereinafter Kat'is the complaint), for four (4) publications, which concerned the complainants in the printed newspaper 24h.

1.2. Specifically, the allegations of the complainants related to the following:

- a) in the four (4) publications, the full names of all the complainants are mentioned,
- b) in three (3) of the four (4) publications, i.e. dated ... , photographs are also included three (3) out of five (5) complainants.
- c) that the court cases referred to in the publications are not matters of a public nature since they have not been made public and
- d) that in the publication dated ... , the name of the complainant is also cited in the body of court cases in violation of the circular of the Supreme Court of Cyprus of the Republic, dated July 19, 2018 for anonymization of parties to court cases.

1.3. The titles and dates of the disputed publications were as follows:

1.4 Pursuant to Article 57(1)(f) of Regulation (EU) 2016/679 (hereinafter the Regulation), on 29/10/2018 a letter was sent with e-mail to Kat'is the complaint, in which she was informed about the above complaints. In the same letter, her positions/opinions on the said allegations were sought.

1.5 On 15/11/2018, a letter was received from the Complainant, in which she stated her positions, as follows:

- a) this is a well-known family, which...
- b) concerns the public interest, since the office of the complainants undertakes projects of millions, such as
- c) referred to two court decisions, which he owns in their entirety, used photographs which are on the internet and are public. As it states, the whole world has access to them.
- d) if the use of photos is "over and above" what is written, then we should read print and online news without any photos and
- e) an arrest warrant is issued and we post a photo, especially when you have in your possession two court orders for people public interest based on the projects assigned to them.

1.6. On 14/01/2019 I sent a letter to the Complainant stating that based on the facts before me and the legal analysis thereof, I judged prima facie a violation of Article 5(1)(c) of the Regulation and the Principle of Minimization of the Data and I invited her, within the framework of the right to be heard, to submit her positions and opinions regarding possible violations on her part of these provisions, as well as for what reasons she believes that any corrective measure or administrative fine should not be imposed on her based on the powers granted to me by articles 58 and 83 of the Regulation, no later than February 12,

2019. 1.7. On 12/3/2019 I received the response of Ms. the complaint, which basically repeats what was mentioned in the previous letter dated 15/11/2018 and states the following: a), is one of the most well-known families in Cyprus, it is considered a family of public interest and interest since through the office it maintains, undertakes projects worth millions of public funds, such as... Therefore, the public has the right to know, b) put the following in the form of a question, if an article was published about P.P.S., with exactly the same characteristics and his photo was used, would he be "accused" again? c) he states that he has published two court decisions, which he owns in their entirety and are posted on cylaw which can be accessed by anyone who wants, d) the photos used are posted on a social media where again anyone who wants can has access, e) if the use of photos is "over and above" what is written then we will read printed and/or electronic journalism with photos of politicians only, f) in no case was there an intention to create such a problem for members of the X family. This is also evidenced by the fact that once they were informed of their complaint all the articles were "taken down" without any indication from the Office of the Privacy Commissioner, h) expresses her sincere regret at the outcome of the whole matter and hopes to be the first and last time dealing with such an issue. 2. Legal Basis: 2.1. The name and the photograph of a natural person, to the extent that his identity is revealed immediately or indirectly, constitute "personal data", according to the definition given in Article 4(1) of Regulation 2 and the publication of the name and the photograph of a natural person constitutes processing of personal data, within the meaning of Article 4(2) of the Regulation. 2.2. Based on the Data Minimization Principle established by Article 5(1)(c) of the Regulation, the Complainant, in any case, must ensure that, "the personal data it publishes are appropriate, relevant and limited to the extent necessary for the purposes for which they are processed". Recital 39 of the Preamble of the Regulation explains, among other things, that "Personal data should only be processed if the purpose of the processing cannot be achieved by other means". 2.3. Article 85 of the Regulation provides that, by law, Member States reconcile the right to the protection of personal data under this Regulation with the right to freedom of expression and information, including processing for journalistic purposes 2.4. Article 29(1) of the 2018 Law on the Protection of Natural Persons Against the Processing of Personal Data and the Free Movement of Such Data, L.125(I)/2018, (hereinafter "the Law"), which applies in national law the provisions of Article 85 of the Regulation, provides that: "The processing of personal data or special categories of personal data or personal data concerning criminal convictions and offenses which is carried out for journalistic or academic purposes or for artistic or literary purposes expression is legal, provided that these purposes are proportional to the intended objective and respect the essence of the rights as defined in the Charter of Fundamental Rights of

the European Union, in the European Convention on Human Rights and Fundamental Freedoms (ECHR), which has been ratified by on the European Convention for the Protection of Human Rights (Kyrotik o) Law, and in Part II of the Constitution.

(2) The provisions of articles 14 and 15 of the Regulation are applied to the extent that they do not affect the right to freedom of expression and information and journalistic confidentiality". 2.5. The right to freedom of expression is established by Article 10 of the European Convention on Human Rights of the Council of Europe (ECHR), Article 11 of the Charter of Fundamental Rights of the European Union and Article 19 of the Constitution. The right to protection of private and family life is established by Article 8 of the Convention, Article 7 of the Charter and Article 15 of the Constitution and the right to the protection of personal data is established by Article 8 of the Charter. 2.6. Recital 4 of the Preamble to the Regulation explains that, "the right to the protection of personal data is not an absolute right; it must be assessed in relation to its function in society and weighed against other fundamental rights, in accordance with proportionality". 2.7. For the way in which the right to freedom of expression and information is weighed against the right to the protection of privacy and the principle 3 of family life and the right to the protection of personal data, based on the Principle of Data Minimization, I refer to Decision no. . 43/2007 of the Greek Personal Data Protection Authority where, among other things, the following are mentioned: principle of proportionality ... in such a way that the protected goods(freedom of information and the citizens' right to information ... and the right to personality and the protection of private life and the right to informational self-determination) to maintain their regulatory scope." 2.8. For the publication of the photos, I refer to Decision no. 73/2013 of the Greek Authority. In paragraphs 1 and 5 of the Decision it is explained that the photographs must be an essential element of informing the public for the journalistic coverage of the issue that the newspaper wishes to highlight and that their publication should serve the interest of informing public opinion. which, as the case may be, must outweigh the rights to the protection of private and family life and personal data. 2.9. Furthermore, the Court of Justice of the European Union in the case CJEU, C-131/12 Google Spain SL, Google Inc v. Agencia Espanola de Protection de Datos (AEPD), [GC], date 13.5.2014, emphasized that the deviation from the right to protect personal data for journalistic purposes is intended to allow journalists to access and collect data so that they can perform their journalistic duty and inform the public about matters of public interest. But there is no public interest regarding information concerning the private lives of others. 2.10. Revisional Appeal 32/2013, Appeal no. 595/2010 between the Republic of Cyprus, through the Commissioner for Personal Data Protection and Dias Dimosia Publishing House Ltd, in which the Plenary Session of the Supreme Court with a decision dated 1/3/2019 accepted the Republic's Appeal overturning the first

instance annulment decision. An important legal point is the extent of processing personal data when it is done exclusively for journalistic purposes based on article 6(2)(i) of the Processing of Personal Data (Protection of the Individual) Law no.

138(I)/2001. Among other things, the decision states "..... In accordance with Article 4(1)(c) of the Processing of Personal Data (Protection of the Individual) Law no. 138(I)/2001, the data controller must ensure that the personal data are relevant, relevant and "no more than is required each time in view of the purposes of the processing". The principle of proportionality is therefore introduced into the relevant equation. The principle of proportionality was violated in the present case by the defendants, who, without being, in any way, necessary for the purposes of informing the public, proceeded, without reason, to publish, in their newspaper, sensitive personal data of the minor and the family of, violating their Right to private and family life, and they cannot, under the circumstances, put forward as their defense the fact that these data were already included in the relevant court decision. The weighing of the two rights, based on the facts of the case, clearly tilts the scales in favor of the right to protect private and family life.....". 4 2.11. According to ECtHR jurisprudence when information is already in the public domain, the court takes this fact into account when assessing whether any restriction on freedom of speech is necessary for the protection of Article 10.2 of the ECHR (Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland, No. 931/13, dated 27.6.2017). 2.12. With reference to the CJEU cases, C-73/07, Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy and Satamedia Oy [GC], dated 16.12.2018 and CJEU, C-131/12 Google Spain SL, Google Inc v. Agencia Española de Protección de Datos (AEPD), [GC], date 13.5.2014, the CJEU emphasized that the public nature of the processing data does not exclude such data from the scope of the Personal Data Protection Directive and the guarantees that this Directive provides for the protection of privacy. 2.13. The opinion that the publication of photographs must be an essential element of informing the public about the journalistic coverage of a subject is also reinforced by Article 3 of the Code of Journalistic Ethics, which provides that: without privacy of persons, taking photographs of persons "The reputation and privacy of each person are respected and no personal information is disclosed. Interventions and investigations into them, including filming or recording sounds without their knowledge or consent - unless they are involved in events or situations that constitute news of general interest - on private property or elsewhere, as well as the securing of information by means of wiretapping or long-term photography are generally unacceptable, and their publication can only be justified in exceptional cases and exclusively in the public interest." consent or 2.14. According to Article 58(2) of the Regulation, I have the authority to impose administrative sanctions, which include an administrative fine under Article 83, on a controller, in this case the Complainant, for violating the

provisions of the Regulation. In the case of an administrative fine, the provisions of Article 83(2) of the Regulation should be duly taken into account.

3. Rationale:

3.1. In the present case, I am asked to examine whether the complaint, through the newspaper "24h" by publishing the names of the complainants and photos of three of them as well as a reference to the conviction of one of them, weighed on the right to freedom of expression and information with the right to the protection of private and family life and the right to the protection of personal data, based on the Data Minimization Principle.

3.2. The publications for which the complaints were submitted were about the fact that the office of the family of the complainants continues to undertake public projects while one of them has been sentenced for I am of the view that, in this case, the weighing of the rights at issue justified the publication of the names of the complainants and the conviction of one of them. The public's right to know who undertakes public works should be considered to outweigh the interests, fundamental rights and freedoms of the complainants.

5 of the right to protect personal data

3.3. The issue therefore remains, whether the balancing of the right to freedom of expression and information with the right to the protection of private and family life and the right to the protection of personal data, based on the Data Minimization Principle, justified the publication of the photographs of the three (3) complainants.

3.4. The data controller, in this case the Complainant, in order to serve the interest of information of public opinion as well as the legitimate public interest, is entitled to publish all the information and data necessary to highlight the issue that constitutes subject of the disputed publications, but on the basis of the Data Minimization Principle.

3.5. I am of the opinion that, in this case, the weighing of the rights, that is, the legal right of the Plaintiff to inform the public against the complainants, did not necessitate the publication of their photographs. As I mentioned above, the subject of the publications was that the office of the family of the complainants continues to undertake public works while one of them has been sentenced for...

3.6. The publication of the photographs of the complainants does not appear to add any additional value to the substance of the publications. On the contrary, I am of the opinion that the right of the public to be informed about the specific case could be served without the publication of the photos in question.

3.7. Kat'is the complaint, in the reply letters dated 15/11/2018 and 12/3/2019, did not justify why she considered that the publication of the photos was an essential element of informing the public about the journalistic coverage of the matter highlighted by the newspaper .

4. Conclusion/Conclusion:

4.1. Taking into account the above, I consider that the four (4) publications in the printed edition of the "24h" newspaper, which is the property of the Complainant, were made for the purpose of informing the public and the mention of the names of the complainants and the conviction of a of these, prevails over the complainants. Therefore, I judge that there is no violation of

the provisions of the Regulation, on the part of the Complainant, for the publication of disputed publications. 4.2. However, the publication of the photographs of three (3) of the five (5) complainants. in three (3) of the four (4) publications, namely dated ..., ... and ..., I consider that the principle of data minimization has been exceeded and that in any case it is excessive in relation to the intended purpose in violation of Articles 5(1)(c) and 6 of the Regulation and of article 29(1) of Law 125(I)/2018, since the news could be published without their photos, since the topic of interest from a journalistic point of view is the fact that the office of the family of the complainants, continues to undertake public works while one of them has been convicted of Publishing the photos does not serve it in the interests, fundamental rights and freedoms of the complainants in the case of the given name

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interest of public opinion information and is not considered necessary, at least within the framework of the minimization principle, nor does it confer any additional value to the public's right to information.

4.3. Taking into account the provisions of article 83 of the Regulation, which concerns the General Conditions for the imposition of administrative fines, when measuring it administrative fine I took into account, when calculating the penalty, the most relevant below mitigating (a - d) and aggravating (e - i) factors:

(a) the position of the Defendant, the complaint that due to negligence and not on purpose, published in the newspaper the photographs of the three (3) complainants,

(b) the fact that the plaintiff in the complaint proceeded to the deletion of those in question

four (4) articles from the electronic edition of the 24h newspaper, before they come to know

of the Office of the Data Protection Commissioner

Personal,

(c) the fact that the Complainant cooperated with the Commissioner's Office

to remedy the breach and limit possible adverse effects

effects of and

(d) the fact that it is the first complaint/complaint submitted to

Office against Ms. the complaint.

(e) the nature of the violation, which affects their professional life

complainants, although the European Court of Human Rights

has judged in relation to the provision of Article 8 of the ECHR that its protection

"private life" based on this article, does not exclude professional life

life of employees and is not limited to life within the place of residence,

(f) the scope of the infringement: it concerns an unknown number of readers of the paper

24h newspaper,

(h) the number of data subjects affected by the breach, directly

the three (3) complainants are affected and the remaining two (2) indirectly

complainants as well as everyone's family environment,

(i) the categories of personal data affected by the breach:

Photo.

Based on the above, I decided to impose the complaint on Kathis,

fine of €3,000 (Three Thousand Euros).

Irini Loizidou Nikolaidou

Data Protection Commissioner

Personal Character