

Athens, 19-07-2022 Prot. No. 1689 DECISION 31/2022 (Department) The Personal Data Protection Authority met as a Department by teleconference on 02-03-2021 at the invitation of its President, in order to examine the case that refers to the history of the present. Georgios Batzalexis, Deputy President, in opposition to the President of the Authority, Konstantinos Menoudakos, and the regular members, Konstantinos Lambrinoudakis, and Charalambos Anthopoulos, were present, as rapporteur. The meeting was attended, by order of the President, without the right to vote, Maria Alikakou, a legal expert scientist, as assistant rapporteur and Irini Papageorgopoulou, an employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: With his appeal No. C/EIS/6535/27.7.2018, A denounces Medical Association X (hereafter IS X) and in particular its President, B, for illegal processing of his personal data and disclosure to a third party of documents originating from a disciplinary procedure file. In particular, the appellant, who is a doctor and a member of the complainant, states in his current appeal that in the context of disciplinary proceedings against him following a complaint for not providing a receipt to a patient, he sent a letter to the complainant, in response to the relevant summons for an apology which 1 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) had been served to him, in accordance with the provisions of article 326 of Law 4512/2018. The letter in question, for reasons unknown to the applicant, was published in the media and in a large number of electronic newspapers (such as ..., ..., ..., ...). Further, according to the applicant's claims, while his name was not explicitly mentioned in the aforementioned publications, in a radio broadcast the President of the complainant clarified that he was a foreign doctor, an element that, according to the applicant's claims, he was "photographing" with resulting in his complete identification, for the reason that at the given time the appellant was the only foreign doctor contracted with the EOPYY who was active in a specific area of ... . Following this, the Authority sent to the complainant IS X the documents with the original numbers G/EX/6535-1/15.10.2018 and G/EX/1287/15.2.2019, with which it asked the complainant to provide the opinions of the accused. To the above documents of the Authority, the President of the complained ISF X, B, responded with the document number C/EIS/3284/08.5.2019, with which he clarified, among other things, that as the President of ISF X and in the context of the above-mentioned disciplinary procedure that had been initiated against the applicant, he acted in accordance with the provisions provided for in the relevant disciplinary law. In fact, the complainant referred to the entire history of the disciplinary proceedings against the applicant (how it started, what it was about, who were involved, who else filed relevant complaints against the applicant), without, however, providing opinions on the complaints and in particular for the reason and the manner in which the letter in question escaped the complainant's file

and was published in the press. With particular reference to the publication of the letter in question, the complainant claimed that the journalist, C, a relative of whom had submitted the above initial complaint against the applicant, could be the one who published the letter in question, pointing out that he " he also had a legitimate interest, since he made the complaint, due to which the disciplinary procedure was initiated by Medical Association X, to have access to the documents related to the disciplinary procedure, as provided for in article 5 par. 1 and 2 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) 2 of KDDiad., but also as defined by the principles of open administration and publicity of administrative bodies." In any event, the complainant claimed that the complainant's personal data was never breached as his name was never mentioned and "the complainant doctor's identifying information has been mosaicked/tiled and it is not possible for the reader to know the identity of the mentioned.". With reference to the basic identifying element of the applicant's identity as alleged, that is his foreign origin, the complainant states that there are seven (7) foreign doctors registered in the IS X in total. Finally, the complainant mentions in his reply to the Authority the possibility that the appellant himself proceeded "intentionally and purposefully" to publish the letter in question, "precisely, in order to create the real basis for the allegations of the alleged violation of his personal data, which he invoked in his lawsuit against Medical Association X and me personally [...]". Following this, the Authority invited those involved to the meeting of the Department on 29/1/2020 and then a deadline was set for them to submit briefs. During the hearing on 29/1/2020, the applicant A and his attorney Ioannis Tzorgis were present.... Charalambos Politis was also present as IS X's proxy lawyer... . The above-mentioned parties, after developing their views orally, were given a deadline to submit memoranda in further support of their claims and submitted their written memoranda on time, with which they briefly presented, among other things, the following: In particular, the complainant during the above hearing , but also with his memorandum No. C/EIS/1241/14.2.2020, he repeated the alleged allegations, arguing, among other things, that the disciplinary procedure against him had several irregularities, the principle of the secrecy of the preliminary proceedings was not respected as it should have been, while in response to the corresponding allegations of the complainant, he stated that he had no intention in any case to hinder the smooth development of the said 3 Kifisias Ave. disciplinary procedure by sending the letter in question to the complainant. The accused IS X, through the lawyer's proxy during the above hearing, did not provide any answers regarding the manner of communication of the letter in question, reserving to respond in writing with his memorandum. In fact, with the memorandum No. C/EIS/1243/14.2.2020, IS X clarified that the document in question was granted to the above-mentioned journalist together with the other documents of the file of

the disciplinary procedure carried out against the applicant. Specifically, as stated in the above memorandum, an attempt was made by the complainant to reach a compromise between the two parties, that is, the complained and disciplinary controlled doctor and the complainant. For this purpose, a meeting was set up at the offices of the complained-about IS X, at which, however, the appellant never appeared, according to IS X's claims. disciplinary file, including the letter in question. One was intended to be administered to the appellant doctor and the other to the complainant. However, only the side of the complainant appeared at the meeting, represented by the aforementioned journalist, who received the above file. In fact, the complainant claims that in the file in question "the details of the doctor, including the protocol number and the date of the protocol of Medical Association X, were erased with blanks and blurred out", emphasizing that the action in question was done in good faith by the reported in order to protect the anonymity of the applicant doctor. In addition, the complainant claims that the journalist, as a third party, had a legitimate interest in receiving the file in question "since he was acting in the name and on behalf of the mother-in-law and complainant, D and her father.". In fact, the complainant claims that the journalist was the one who proceeded to share the disputed letter due to his and the complainant's anger because the complainant had not agreed to request 4 two envelopes with copies 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) sorry for his inappropriate behavior that led to the initial complaint. Specifically, in his above-mentioned memorandum, the complainant states that "Mr. C was a publisher and because of the anger of his mother-in-law and the fact that the doctor did not apologize to him, he chose to communicate completely anonymously (he could possibly add a name , even if illegally) the disrespectful and insulting response of the doctor, not only exposed the doctor, but also exposed the entire Medical Association, now nominally the Panhellenic one". Regarding the applicant's claim that he is the only foreign doctor of the E.O.P.Y.Y., the complainant states that it is an "invention" of the applicant for the reason that no one could know through a search of the E.O.P.Y.Y. that he is the only doctor contracted with E.O.P.Y.Y. Finally, the complainant points out that the appellant would possibly have to submit the present appeal against the third party, Mr. C, who, however, according to the above and according to the allegations of the complainant, was legally in possession of the granted documents, including the disputed letter. The Authority, from the hearing process, 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 for the protection of

natural persons against the processing of personal data (hereinafter GDPR) and article 9 of Law 4624/2019 (Government Gazette A' 137) it follows that the Authority has the authority to supervise the implementation of the provisions of the GDPR, this law and other regulations concerning the protection of the individual from the processing of personal data. In particular, from the provisions of 5 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) articles 57 par. 1 item. f of the GDPR and 13 par. 1 item g' of Law 4624/2019 it follows that the Authority has the authority to deal with the complaint of doctor A against Medical Association X.

2. Because article 4 of the GDPR defines that "processing" is "any act or use of a series of acts carried out with or automated means, to personal data or sets of personal data, such as [...] disclosure by transmission [...]" without the 3. Because Article 5 GDPR sets out the principles that must govern a processing. According to the second paragraph of the same article, the data controller "bears the responsibility and is able to demonstrate compliance with paragraph 1 ("accountability")". The principle of accountability explicitly introduced by the second paragraph of Article 5 is a cornerstone of the GDPR and a central point of the new compliance model adopted by it. According to this authority, the controller has the responsibility to be able and must be able to demonstrate and prove its compliance with the GDPR, whenever requested, in particular, before the supervisory authority. In particular, within the framework of the principle of accountability, the controller is obliged to plan, implement and generally take the necessary measures and policies, in order for the processing of the data to be in accordance with the relevant legislative provisions. By extension, this authority enables the data controller to check and legally document every processing operation it carries out, in accordance with the legal bases provided by the GDPR and the national data protection law. Therefore, the controller is required to establish specific and practical measures by converting the general principles for data protection into specific policies and procedures, in accordance with the applicable laws and regulations. Furthermore, the data controller must, in accordance with the authority in question, ensure the effectiveness of the above measures taken and to prove, whenever requested, that he has taken the measures in question.

4. Because article 6 par. 1 GDPR specifies in which cases and for which reasons the processing of "simple" personal data is legal and specifically, under which specific conditions the data controller can carry out processing operations, such as, among other things, granting to third party documents containing personal data. This is also the case f) of paragraph 1 of the same article, according to which the processing is lawful, if "it is necessary for the purposes of the legal interests pursued by the controller or a third party, unless the interest prevails over these interests or the fundamental rights and freedoms of the data subject which require the protection of personal data [...]".

5. Because article 24 par. 1 and 2 GDPR

introduces the general obligation of the controller to apply appropriate organizational and technical measures "1. [...] in order to ensure and be able to demonstrate that the processing is carried out in accordance with this Regulation' and '2. [...] when justified in relation to the processing activities, the measures referred to in paragraph 1, include the implementation of appropriate policies for data protection" (para. 1 and 2 respectively). According to the request. 78 of the GDPR: "The protection of the rights and freedoms of natural persons against the processing of personal data requires the adoption of appropriate technical and organizational measures to ensure that the requirements of this regulation are met. In order to be able to demonstrate compliance with this regulation, the data controller should establish internal policies and implement measures that respond in particular to the principles of the protection of 1 See more generally on the principle of accountability and the "Opinion 3/2010 on the principle of accountability" of Working Group no. 29, July 13, 2010, 00062/10/EL WP 173. 7 Kifissias Ave. 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) data already by design and by definition. Such measures could include, inter alia [...], transparency regarding the operations and processing of personal data, so that the data subject can monitor the data processing and the controller is able to establish and improve safety features." 6. Since article 12 par. 1 states that "the data controller shall take appropriate measures to provide the data subject with any information referred to in articles 13 and 14 [...]" and article 13 par. 1 and 3, specifies the more specific obligation of the person in charge, when the subject himself has granted his personal data to the person in charge and the latter "[...] intends to further process the personal data for a purpose other than that for which the personal data were collected, the person in charge processing provides the data subject, before said further processing, with information for this purpose and any other necessary information, as referred to in paragraph 2.". The combination of the above-mentioned provisions results in the controller's obligation to take appropriate measures and procedures with the aim of transparently informing the data subject, when the data provided by the subject to the controller for a specific purpose are further processed by the controller processing for another purpose. In this case, the subject must be informed by the person in charge before the above-mentioned further processing. 7. Because in the present case, the complainant claims that he himself gave the documents in question to a third party, pointing out, however, that the transmission in question was done legally in the context of an extra-disciplinary effort to resolve a dispute taking into account the relevant legitimate interest of the third party. In addition, the complainant points out that the applicant's personal data had previously been deleted from the granted documents 8 Kifissias Ave. 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr). In particular, with regard to the invocation of the existence of a legitimate interest of the third party, the

complainant claims that the third party received the disputed documents as a relative and representative of the complainant, who had initially initiated the disciplinary procedure against the applicant, whose file she had, according to the allegations of the complainant, legitimate interest to receive. The defendant, however, beyond the above general invocation of the existence of a legitimate interest of the third party, does not specify what this legitimate interest consists of, nor does he document, as he should on the basis of the above-mentioned provisions, the reason and weighting of the interests of the two parties, that is, of the third party and the data subject, in which he proceeded in order to arrive at the judgment that the third party had a legitimate interest superior to the rights of the subject in obtaining knowledge of the contents of the file of the disciplinary procedure before it was completed. As for the complainant's claim of deletion of the data from the disputed documents with "blanco" and "blurring", which he puts forward as a means of "protecting anonymity" and by extension the applicant's personal data, it is rejected as unfounded, while it is presented pretentious and misleading, for the reason that the third party, to whom the documents in question, "anonymized", according to the allegations of the complainant, were granted, knew that they refer to the applicant, against whom the complaint was initially submitted, in the context of which the invoked extra-disciplinary dispute resolution effort had been defined between the parties. Therefore, any attempt to "anonymize", it would not be effective as it would not fulfill the basic purpose of this, i.e. the concealment of the identity of the subject, i.e. his applicant, for the reason that the third party knew exactly to whom regarding the personal data it receives. In addition, the the complainant did not prove before the Authority that the disputed documents

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were actually subjected to any form of anonymization prior to communicating them to a third party.

It is pointed out that the accused was not in a position to prove before the Authority based on the above-mentioned provisions no one from his above claims. He contributed to this weakness

essentially the non-receipt and application by the complainant appropriate organizational measures, as it would be, for example, to observe a specialist archive of outgoing documents, as well as relevant civil protection, for the processing operations that take place in the context of the process extra-disciplinary dispute resolution effort, including procedures for informing the subjects and satisfying others their rights, as he did not present before the Authority evidence that to prove those in question his claims. In particular, Mr the accused did not prove before the Authority during the examination of the sub appeal judgment, if, how, in what form and for what reason provided the third party with the disputed documents.

Because, finally, during the examination of the appeal in question, the prior notification of the applicant in any way and for any reason granting to a third party his disciplinary file, including them

aforementioned provisions of articles 12 par. 1 and 13 par. 1 and 3 GDPR.

The lack of that of the data controller to inform him applicant and data subject that his data is about to be granted to the third party, journalist and its representative initially complainant, in the context of an extra-disciplinary effort to resolve it dispute between the two parties involved, constitutes a direct violation of the aforementioned provisions.

of the disputed letter, according to

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## FOR THOSE REASONS

The beginning:

1. Addresses, based on article 58 par. 2 a' of Regulation (EU) 2016/679, warning to the complained Medical Association X, as responsible processing, to take appropriate organizational measures based on article 24 par. 1 and 2 of Regulation (EU) 2016/679 in order to be able to framework of the principle of accountability to demonstrate and prove the its compliance with the above Regulation.

2. Addresses, based on article by article 58 par. 2 item II GDPR, reprimand to the complained Medical Association X, as controller, for the violation of the provisions of articles 12 par. 1 and 13 par. 1 and 3 GDPR.

The Deputy President

George Batzalexis

The Secretary

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