

Athens, 08-02-2019

PRINCIPLE FOR DATA PRIVACY

FOR OPIC CHARACTER

Prot. No.: G/EX/1095/08-02-2019

A P O F A S H 3 /2019

The Personal Data Protection Authority met in composition

of the Department at its headquarters on Wednesday 06.02.2019 following the invitation of the President of, in order to examine the case referred to in the history of the present.

The Deputy President Georgios Batzalexis was present, in his presence

of the President of the Authority, Constantinos Menoudakou, and its alternate members

Authority Panagiotis Rontogiannis and Evangelos Papakonstantinou, as rapporteur, in

replacement of the regular members Antonios Imbonis and Konstantinos

Lambrinoudakis, respectively, who, although legally summoned in writing, did not

attended due to obstruction. The regular member of the Authority Charalambos Anthopoulos

and its alternate member Grigorios Tsolias, although they were legally summoned

in writing, they did not attend due to obstruction.

Present without the right to vote was Kalli Karveli, specialist scientist-

lawyer, as assistant rapporteur, who left after the discussion of the case and

before the conference and decision-making and Irini Papageorgopoulou,

employee of the administrative affairs department, as secretary.

The Authority took into account the following:

A, a citizen of Albania (...), with the number of protocol A/EI /47/22-08-2018

his appeal to the Authority requested his deletion from the National List

of Unwanted Aliens (hereafter E.K.A.N.A.) and the Information System

engen (hereinafter .P. .), due to the lapse of four years from the imposition with the

decision ... of the Police Directorate (region) X of the relevant measure.

With no. prot. ... (no. prot. Authority A/EI /86/04.12.2018) its document, in answer of no. prot. A/EX/47-1/24.10.2018 of the Authority's document for provision clarifications, the Security-Foreigners Office of the Police Directorate (region) X informed the Authority of the details of the applicant's registration.

specifically, the applicant was arrested on ... in (area) X by police of the 1st Department of Parish Protection Ψ because having in his possession the no. ... from ... passport of Albanian authorities, expired ..., which did not bear a stamp entry for our country and while he was registered with E.K.A.N.A., he returned irregularly in an earlier time in the Greek territory from Albania using a pass to (area) X, bypassing some of the Greek State entry points avoiding travel control documents carried out in them. Then, the Headquarters of the Hellenic Police established that the foreigner in question is registered with E.K.A.N.A. with the special administrative measure of ban on entry due to administrative expulsion with no. lens ..., with date of introduction of the measure on ... and date of expiry of the measure on THE said foreigner, with a case file against him, was taken to Misdemeanor Prosecutor (region) F and by decision of the Single Member Misdemeanor Court (region) Y was declared guilty with the mitigating factors of art. 84 par. 2-b' of the Criminal Code for the act of violating art. 82 par. 4 of Law 3386/2005 and was sentenced to two months imprisonment, the execution of which is suspended for three years. He was then arrested again by the police in order to be enforced against him the provisions of art. 21 Law 3907/2011, because there is a risk of his escape, in the sense that if he is released it will now be difficult until impossible to locate by the competent Authorities for the execution of the decision of his return to his country, given that he does not have a permanent residence and existence of his life cycle in Greece. On ... a decision was issued

of Police Director (region) X by which his detention was decided until

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the completion of its removal process. At the same time, he was summoned to a hearing,

in order to submit objections in writing or express them in person

before the Police Director, but he did not appear. the

then, the Police Director (region) X issued the no. ... from ...

decision, by which he ordered the administrative return of the alien from

Greece, the registration of this in E.K.A.N.A. and in .P. . until ... as well as

continuing his detention, until the removal procedures are completed

of which may not exceed six months from its issue and which

served spontaneously. In order to execute the decision, the foreigner was returned on...

in his country through Passport Control (region) X. Then with the no.

... by ... decision of the Service it was decided to maintain the registration to

I DID. and in .P. . until ... as long as the reasons still apply

of its registration. With his application from ..., the foreigner, by power of attorney

his lawyer, requested his deletion from E.K.A.N.A. and the .P. ,

citing that five years had passed since the date of imposition of the measure

and in accordance with Law 4055/12, it automatically ceases to be in force and furthermore has no

since then, it has concerned the Greek justice system, nor has it ever shown itself to be delinquent

behavior. The above request was rejected by the decision of the General

Regional Police Director (region) X. Subsequently, the foreigner with the

with no. prot. A/EI /47/22-08-2018 appealed through his attorney

before the Personal Data Protection Authority and requested the

its deletion by E.K.A.N.A. and P and the cancellation of any adverse

element pending against him.

The Authority, after examining the aforementioned data, heard the rapporteur and the clarifications from the assistant rapporteur, who then left, and after thorough discussion

SEVENTH E ACCORDING TO THE LAW

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1. Because article 24 of Regulation 1987/2006 in accordance with the provisions of the previous article 96 E regulates the conditions for the registration of nationals of third countries in the European Information System (SIS II). Also, in article 29 par. 2 and 4 provided that to maintain the entry in SIS II for longer period of time, timely existence within the three-year period is deemed necessary especially reasoned decision of the organ deciding the registration, which justifies the need to maintain it beyond three years. The competent body decides after a recorded overall and individualized evaluation need to maintain it otherwise, the registration is automatically deleted (par. 5 Regulation). Besides, from the provisions of articles 41, 43, 44 of the above Regulation in combination with the provision of article 19 par. 1 sub-section (e) of Law 2472/1997, it is concluded that the Authority is competent to examine, following an appeal by the subject, the legality of its entry in the list .P. . (SIS II), in accordance with provisions above issued by the authority for registration Authority, of the decision for the need to maintain it beyond the time mentioned by the above provisions and if the above conditions of the registration are not met and of its maintenance, to order the deletion.

2. Greece's observance of the National List of Undesirable Aliens provided for in article 82 of Law 3386/2005, which stipulates that "The Ministry of Public A list of unwanted foreigners is maintained. The criteria and the stitching process

and by foreign nationals from the same category are determined by decision of Ministries of Interior, Public Administration and Decentralization, Foreign Affairs, National Defense, Justice and Public Order". Based on the above authorization order was issued with number 4000/4/32-Ia'/17.10.2012 KYA, articles 1 and 3 of which respectively provide for the conditions for the registration of foreigners in the E.K.A.N.A. and the ex officio review of each registration every three years. In particular according to with article 1 thereof: "1. On the National List of Undesirable Aliens (E.K.A.N.A.A.) are written: a. Foreigners against whom a judicial or administrative order was issued expulsion decision from the country or return decision, if they have not been complied with 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr

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with the obligation to return. b. Foreigners, whose presence on Greek soil constitutes a threat to national security, public safety or public order...", while according to article 3: "1. The validity period of the agreement with E.K.A.N.A.A., is determined by the decision-maker, based on their languages which is imposed and does not exceed five (5) years. The above duration with seam to E.K.A.N.A.A. it is possible, to exceed five years in case the foreigner constitutes a serious threat to national security, public safety or public order as well as in case deportation is imposed by a criminal court decision and prohibition of re-entry of the foreigner to the Country, for as long as the time specified in it (par. 3 of article 74 of the Civil Code, such as apply). Each case is related to E.K.A.N.A.A. it is automatically reviewed every three years...". In addition, according to article 6 of above KYA, for the observance of E.K.A.N.A.A. and the processing of the corresponding ones for personal data, the relevant provisions of Law 2472/1997 apply and especially of art. 4 and 13 thereof. Also, according to the provisions of art. 82 of the law

3386/2005 in combination with art. 2 paragraph 1 section b of KYA4000/4/32-

la/17.10.2012 (Sheet No. 2805/17-10-2012) provides for the enforcement of the administrative measure of the "Entry Ban" in our country for reasons of national security, and registration of a third-country national in the E.K.A.N.A.

3. Because, from the combined interpretation of the above and article 76 par. 1 item b' of Law 3386/2005 shows that the registration of a foreigner in EKANA is allowed, as long as there is a violation of this law regarding entry and residence of third country nationals in Greek territory, which has led to administrative deportation of the alien. The same is true in cases where it has ordered to deport the foreigner based on art. 74 PC due to conviction for criminal acts provided for in Law 3386/2005 (No. 82 illegal return to country of a foreigner, who is registered with E.K.A.N.A., art.83 entry/exit of a foreigner from the country without legal formalities.)

4. the case under consideration, from the information in the file and the clarifications

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of the Directorate of State Security of the Hellenic Police Headquarters emerged that the applicant ... was registered on ... by the (regional) Police Directorate X in the National List of Undesirable Aliens and the Information System engen (S.I.S. II) until ..., according to the no. ... decision of its CEO This management. It also appears that the Director of the Police Directorate (region) X issued the no. ... from ... specially reasoned decision on maintaining the registration beyond three years from its introduction, until ..., as long as the reasons for registration still apply. His claim is not applicant that five years have passed since his registration with E.K.A.N.A. is unfounded, since from the decision of the D.A. (area) X it follows that she received

country on ..., in any case the maintenance of foreign registration in
I DID. beyond five years from its initial registration is legal, as long as in
article 3 of no. 4000/4/32-la'/05.10.2012 KYA provides that the period of validity
registration with E.K.A.N.A. it is possible to exceed five years, when the foreigner
poses a serious threat to national security, public safety or the public
class.

Consequently, in accordance with the aforementioned provisions, its registration
applicant in .P. . and E.K.A.N.A. it is legal, as it was registered
in the above lists for reasons of public order and security, if entered
illegally in our country and as long as three years have passed since its registration
it was decided to maintain his registration with them.

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
Engen Information System and the National List of Undesirable Aliens.

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The Deputy President

The Secretary

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