

Athens, 26-08-2021 Prot. No.: 1948 DECISION 37/2021 (Department) The Personal Data Protection Authority convened, at the invitation of its President, in a regular meeting in the composition of the Department at its headquarters on 7/4/2020 and 10:00 a.m., in order to examine the case referred to in the present history. The meeting was attended by teleconference by Georgios Batzalexis, Deputy President, in opposition to the President of the Authority, Konstantinos Menoudakos, and regular member Konstantinos Lambrinoudakis and alternate member Grigorios Tsolias attended as rapporteur. He did not attend due to disability, even though regular member Charalambos Anthopoulos was legally summoned in writing. The meeting was attended, by order of the President without the right to vote, by Haris Symeonidou, specialist scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Administrative Department of the Authority, as secretary. The Authority took into account the following: With the no. prot. C/EIS/5247/27-07-2020 her complaint to the Authority A complains that the company "NOW DOCTOR - Company for the Provision of Electronic Search Services" (website www.nowdoctor.gr and online appointment booking service) does not satisfy the right to erasure of its data. Iatron E.P.E.", which manages (electronic directory and Display it in particular, according to the complaint, although the complaining doctor had stated that she no longer wished any cooperation with the complained company and repeatedly asked it to delete her data from the electronic platform managed by the company (www.nowdoctor.gr), through which it appears to be provided 1 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr online appointment booking service with doctors, she had not received any response and her request had not been satisfied. Specifically, the complainant complained that the display of her information on the said electronic platform created a problem in the operation of her practice and in communicating with her patients, who are given a false impression of how they can get appointments and become resentful. According to the complaint, the complainant as a doctor, he exercised his right to delete her in the manner stated on the website, that is, with a request via email on 2/7/2019 to the address contact@nowdoctor.gr of the complainant stating at the same time that he does not wish any cooperation with her, and repeated her request on 28/5/2020. In support of the complainant's request for deletion, the Medical Association of [region] X intervened with its document on 1/17/2020 to the company Now Doctor ΕΠΕ, which appears to have been communicated to the same email address. <https://www.nowdoctor.gr/contact-us>), is publicly displayed on the business website (which In the context of investigating the complaint, the Authority sent the under no. prot. C/Εξ/5247-1/11-08- 2020 document to provide clarifications to the company Now Doctor ΕΠΕ, specifically requesting its opinions on the alleged facts, but also information regarding the more general policy followed by the company in question regarding the right to delete the

users of the platform www.nowdoctor.gr i.e. if and in what way the doctors/data subjects are granted the right to delete their data. Given that the Authority did not receive any response from the company, with the reference No. C/EX/5247-2/28-09-2020 reminder document, invited it again to respond immediately in writing to the complaints. However, the company complained about did not respond to the last document either, while as could be easily ascertained from the search for the name of the complainant on the above platform, until at the end of January 2021, i.e. for more than a year from the initial exercise of the right to erasure, her data remained registered and posted publicly at the address <https://www.nowdoctor.gr/...> Subsequently, the Authority, with the no. prot. C/EXE/500/27-01-2021 and C/EXE/518/28-01-

2021 Calls to a hearing by video conference, to the complainant and the legal representative of the complained respectively, invited the involved parties to a hearing at the meeting of its department on 03/02/2021, in order to present their views 2 on the case. Then, with the no. prot. C/EIS/750/29-01-2021 her document to the Authority, the complainant withdrew her complaint due to later satisfaction of her right with "today's deletion of my data from nowdoctor.gr", as she stated, requesting at the same time, "no decision should be issued and the case should be filed". Following this, the case was not discussed on 3/2/2020 and the Authority with no. prot. C/EXE/616/11-02-2021 summons invited the complained company to the meeting of the Department of the Authority on 24/2/2021, in order to present its views, in the context of its exercise according to article 13 par.

1 h) Law 4624/2019 of its authority for ex officio control of the implementation of the General Data Protection Regulation (GDPR), regardless of the withdrawal of the said complaint for non-fulfilment of the right to erasure and in addition regarding a) the late fulfillment of the right to erasure of the data of Mrs. A in the context of examining her above complaint and b) the alleged incomplete compliance of the company in question with the requirements of the GDPR and the relevant national legislation for the protection of personal data including in particular the possibility of satisfying the rights of the subjects. The meeting, which took place on 24/02/2021, was attended by the manager and legal representative of the controlled company, ..., and the company's attorney, Antigoni Logothetis. During the hearing, the complainant, through her legal representative, argued that, although she does not dispute that the company did not immediately fulfill its legal obligations in this particular case, this happened because it first became aware of the complainant's request by notifying the complaint on behalf of the Authority, just one month before the hearing, as all the relevant messages had been automatically saved in the "spam" folder, which was due to an error of the Google e-mail service provider. However, as the legal representative of the company stated, as soon as the company became aware of the complainant's request, it apologized to her and satisfied her, as a result of

which the complaint was withdrawn. He also claimed that the company has been essentially inactive since 2017, when he left as he took up duties in another position, while it is still unclear what will happen to its website. The reason why no one was present at the company's offices when it was initially attempted to serve the summons for a hearing before the Authority was, according to the representative of the complainant, the fact that the employees of its offices are teleworking due to the measures to deal with the pandemic of the coronavirus. 3 Furthermore, he argued that the complainant did not suffer any material damage, there was no leakage of data, which in any case are registered at the request of the subjects and with their consent, while to a related question from the Authority he answered that no other requests from subjects under the GDPR. Finally, the representative of the complainant asked for the understanding of the Authority, stating that although the company has not complied with the GDPR, its compliance has already been initiated. The complainant received, during this meeting, a deadline and timely submitted the no. prot. C/EIS/1665/09-03-2021 memorandum, in which, in addition to what he claimed during the meeting, he also stated the following: a) The company, which was established in 2012, has been in liquidation since 2018 and is in great degree inactive. b) The delay in satisfying the complainant's deletion request in this case is due to "unfortunate coincidences, due to the incorrect or delayed transmission of the request to the competent persons within the company for the management of the request". c) The company acknowledges its objective responsibility for the delayed satisfaction of the right to erasure and its incomplete compliance with the current legal framework for the protection of personal data. d) It claims that during the creation of its website (www.nowdoctor.gr), an external partner was entrusted with the creation and posting of a privacy policy and terms of use, with the result that the company's managers have the "reasonable belief that the necessary care has been taken for the basic requirements that the website must meet in accordance with the requirements of the applicable relevant legislative framework". e) Due to the under-functioning of the business, in recent years there has been no staff to handle daily tasks, such as checking its e-mail or updating the website. f) In any case, the audited company itself acknowledges the lack of internal procedures for compliance with the GDPR and it is stated that as part of the liquidation work, the company has already launched its compliance "both at the level of the company's internal procedures (configuration and adoption of policies and procedures) as well as at the website level (update of civil privacy policy, terms of use and posting of cookie policy) (...) without delay and within two months at the latest", while, finally, its lack of malice regarding the delay is emphasized. Furthermore, from the ex officio control of the complainant's website, it was found that, as publicly stated, it includes a list of 2,969 4 doctors from 65 specialties and in 148 cities. The details of doctors (name, specialty, address, phone)

can be found by searching by specialty and/or location, while they are also displayed on an interactive map. By selecting a certain doctor, a calendar is displayed with the available days and times for appointments, giving the visitor the opportunity to book an appointment with that doctor. On the website there is a text entitled "Policy for the Protection of Personal Data" and last updated in July 2012. The said Policy, on the one hand, appears to have been written under Law 2472/1997, on the other hand, it refers to the processing of personal data of visitors/users of the website who wish to make an appointment with the registered doctors and not in the data processing of the doctors as subjects. The only reference to the purpose of processing the doctors' data is found at the point where they provide their information in order to express an interest in being registered (<https://www.nowdoctor.gr/parousiasi>) where there is the following text, in the form of a responsible statement: "With my personal responsibility and knowing the sanctions provided by the provisions of par. 6 of article 22 of Law 1599/1986, I declare responsibly that all the information provided in this statement is legal, true and accurate. I understand that NowDoctor.gr relies on the legality, accuracy and correctness of the information provided in this statement. By signing below [electronic signature by ticking the box below], I hereby declare that this application does not contradict the Code of Medical Ethics and medical legislation in general and I give NowDoctor.gr my approval, which is valid unless revoked in writing by me, to use and process all the data and information registered in this application concerning me, for the purposes of promoting my practice and finding new patients".

The Authority, from the hearing procedure, from the elements of the case file, as well as from the memorandum 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 thorough discussion, IT WAS CONSIDERED IN ACCORDANCE WITH THE LAW 1. From the provisions of articles 51 and 55 of the General Data Protection Regulation (EU) 2016/679 (hereinafter "GDPR") and article 9 of law 4624/2019 (Official Gazette A' 5 137) 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. Furthermore, according to articles 57 par. 1 item a), h) GDPR and 13 par. 1 h) Law 4624/2019, the Authority has the duty to monitor and enforce the implementation of the Regulation and to carry out, ex officio or following a complaint, investigations or audits regarding the implementation of the regulations concerning the protection of the individual against the processing of personal data. 2. According to article 5 par. 1 GDPR "1. Personal data: a) are processed lawfully and legitimately in a transparent manner in relation to the data subject ("legality, objectivity and transparency"), [...] e) are kept in a form that allows the identification of the data subjects only for the period

required for the purposes of processing personal data;" while according to par. 2 of the same article: "2. The controller is responsible and able to demonstrate compliance with paragraph 1 ('accountability')." 3. According to Article 17 para. 1 GDPR "The data subject has the right to request from the controller the deletion of personal data concerning him without undue delay and the controller is obliged to delete personal data without undue delay, if one of the following reasons applies: a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed, b) the data subject withdraws the consent on which the processing pursuant to Article 6(1)(a) or Article 9(2)(a) and there is no other legal basis for the processing, [...]". 4. Furthermore, according to the provision of article 12 par. 2 and 3 GDPR: "2. The controller shall facilitate the exercise of the data subjects' rights provided for in Articles 15 to 22. In the cases provided for in Article 11(2), the controller shall not refuse to act at the request of the data subject to exercise his rights under of articles 15 to 22, unless the controller proves that he is unable to ascertain the identity of the data subject. 3. The controller the action that provides the data subject with information on 6 is carried out upon request pursuant to articles 15 to 22 without delay and in any case within one month of receipt of the request. This deadline may be extended by a further two months if necessary, taking into account the complexity of the request and the number of requests. The data controller shall inform the data subject of said extension within one month of receipt of the request, as well as of the reasons for the delay. If the data subject makes the request by electronic means, the information shall be provided, if possible, by electronic means, unless the data subject requests otherwise." data processing that was based on consent 5. Finally, according to the Guidelines 5/2020 of the GDPR on consent: "117. As a general rule, in case of withdrawal of consent, all operations carried out before the withdrawal of consent – and in accordance with the GDPR – are still legal, but the controller must stop the relevant processing operations. If there is no other legal basis justifying the processing (e.g. further storage) of the data, the controller should delete the data. [...] 119. Controllers are required to delete data processed on the basis of consent when this consent is withdrawn, as long as there is no other purpose that justifies their continued retention. (In this case, the other purpose justifying the processing must be based on a separate legal basis. This does not mean that the controller can jump from consent to another legal basis, see section 6 below.) Apart from this case, which is covered in Article 17 paragraph 1 letter b), the data subject may request the erasure of other data concerning him and which are processed in accordance with another legal basis, e.g. based on Article 6 paragraph 1 point b). Controllers are required to consider whether the continued processing of the data in question is appropriate, even in the absence of a deletion request from the data subject." 6. In this case, it emerged that the audited

company Now Doctor Ltd. did not initially satisfy the request to delete the complainant's personal data within the deadline, despite her repeated requests via email to the company's published email address contact@nowdoctor.gr initially on 2 /7/2019 and then on 28/5/2020 and despite the intervention of the Medical Association 7 [region] X on 17/1/2020, while he did not respond to the Authority's two documents (11/8/2020 and 28/9 /2020) for providing explanations. The right to delete the data of the complainant from the website www.nowdoctor.gr of the complained company was finally satisfied on 29-1-2021 after the notification of the summons to a hearing before the Authority, to the manager and legal representative of the complained company, as appears from the C/EIS/750/29-1-2021 statement of withdrawal of the complaint, with which the complainant requested that no decision be issued and that the case be closed. The complainant's right to erasure was therefore fulfilled out of time and in fact with a long delay, i.e. approximately 18 months from its initial exercise, on 2/7/2019 and only after the Authority intervened. 7. The complainant's exercise of the right to delete her personal data is based in this case, according to the information available to the Authority, on the revocation of her initial statement to the website of the complainant in which she was granted permission to register the her personal data, which is interpreted as giving consent. At her request for the deletion of her personal data from the website, the complainant exercised the provisions of article 17 par. 1 sec. 2 GDPR right due to withdrawal of consent, while the possibility of retaining the data under another legal basis has not been established. In particular, after the complainant's statement from 2/7/2019 via e-mail that she does not wish any cooperation with the complainant, with which she revoked her initial statement and consent, the legal basis for the processing of the complainant's data evolved and therefore, the complainant should have stopped the relevant processing, regardless of the possible submission of a deletion request, in application of the principle of limiting the storage period of art. 5 par. 1 sec. e' GDPR. Rather, the complainant should have satisfied the right to erasure in accordance with article 17 par. 1 GDPR without undue delay, after exercising it. Henceforth the maintenance and processing of the complainant's personal data on the website despite and after her declaration that she does not wish any cooperation with the complainant and the submitted deletion request due to the withdrawal of her consent, becomes illegal as there is now no legal basis for processing the personal data according ' No. 6 para. 1 GDPR with the consequence of a violation of article 5 para. 1 sec. 1 GDPR and in particular the principle of legality. 8 In addition, the retention of the complainant's personal data for a longer period of time than is required for the purposes of legal processing, i.e. for the provision of online viewing services, a purpose which ceased in any case with the complainant's statement of 2/7/2019, it also contradicts the principle of the limitation of the storage period, of article 5 par. 1

sec. e' GDPR. Consequently, the audited company failed in the context of the accountability obligation no. 5 para. 2 GDPR to prove in this case its compliance with the observance of the principle of legality no. 5 par. 1 sec. a' and 6 par. 1 sec. 1 GDPR as well as the principle of storage time limitation according to art. 5 par. 1 sec. e' GDPR, admitting as will be shown below that it has not complied with the requirements towards the principles of article 5 par. 1 and 2 GDPR. 8. In addition, the complained company, as admitted both during the hearing and in its memorandum, has not taken any measures to comply with the requirements of the GDPR and in particular in relation to the requirement of article 12 paragraph 2 GDPR to facilitate the exercising the rights of the subjects, given that the correspondence with the email address contact@nowdoctor.gr, which the company publicly declares on its website (<https://www.nowdoctor.gr/contact-us>) as a means of communication with the public in fact, it does not work and does not respond to the requests and correspondence of both the data subjects and even the Authority, as as stated by the complainant there is no staff available to check the relevant correspondence, a fact which was proven, after all, by the non-response of the messages sent to the said address by the complainant, by the Medical Association [area] X and by the Authority. 7. The complainant's claim that this omission is due to the fact that it has been liquidated since 2018 has no legal effect in view of the obligations imposed on it by the GDPR as a data controller. Furthermore, on the one hand, the claim in question is not substantiated by any document, on the other hand, the exact opposite is proven since a) its status appears to be "active" and GE.MH. (<https://www.businessregistry.gr/publicity/index>), even if this is formal b) its website, even if it has not been updated in recent years, remains posted, functional and with full content - consisting of personal data of hundreds of subjects - which demonstrates that in the last 3 years there has been a liquidation" website "under the no 9 at least renewal of the domain name (domain name) and the related hosting costs have been paid, and c) this claim seems to contradict the declared the company's intention to complete the process of complying with the GDPR within two months, even formulating and "adopting internal policies and procedures", according to its memorandum. In the opposite case of a possible suspension of its operations, which did not occur, the audited company should have correspondingly stopped the processing of the personal data it maintains as then the purpose of maintaining and processing them would disappear. 8. Based on the above, the Authority finds that the complained and audited company violated the provisions of articles 5 par. 1 sec. a' and e', par. 2, 6 par. 1, 12 par. 2, 3 and 17 GDPR. 9. In accordance with the GDPR (Rep. Sk. 148) in order to strengthen the enforcement of the rules of this Regulation, sanctions, including administrative fines, should be imposed for each violation of this Regulation, in addition to or instead of the appropriate measures imposed by the

supervisory authority in accordance with this Regulation. In cases of a minor violation or if the fine that may be imposed would constitute a disproportionate burden on a natural person, a reprimand could be imposed instead of a fine. 10. Based on the above, the Authority considers that it is appropriate to exercise its corrective powers under Article 58 para. 2 of the GDPR in relation to the identified violations and to instruct the complained company to make the processing operations that take place through of the website it maintains in accordance with the provisions of the GDPR as well as to take the appropriate technical and organizational measures to facilitate the exercise of the rights of the subjects in accordance with article 12 GDPR as defined in the provisions hereof within one (1) month from receipt of this and to inform the Authority in writing of the execution of this order. 11. The Authority further considers that the above corrective measure is not sufficient to restore compliance with the provisions of the GDPR that have been violated and that it should, based on the circumstances established, be imposed, pursuant to the provision of article 58 par. 2 pcs. i of the GDPR, in addition to an effective, proportionate and dissuasive administrative fine according to article 83 of the GDPR, both to restore compliance and to punish illegal behavior¹. i. 12. Furthermore, the Authority took into account the criteria for measuring the fine defined in article 83 par. 2 of the GDPR, paragraph 5 of the same article which is applicable in this case and the Guidelines for the application and determination of administrative fines for the purposes of Regulation 2016/679 issued on 03-10-2017 by the Article 29 Working Group (WP 253), as well as the facts of the case under consideration and in particular: a) the nature, gravity and duration of the violation, in view of the nature, extent or purpose of the relevant processing, as well as the number of data subjects affected by the breach and the degree of damage suffered by them and in particular: the fact that the complained company violated the principle of legality according to Article 5 1 p. a' of the GDPR, as well as the principle of limiting the storage period according to article 5 par. 1 sec. e GDPR, i.e. it violated fundamental principles of the GDPR for the protection of personal data, the observance of which is of fundamental importance, the fact that the complained company did not satisfy the right to erasure until after a delay of 18 months and only after the intervention of the Authority of the complainant's personal data according to article 17 par. 1 GDPR, the fact that as the complainant herself admitted, she has not complied with the requirements of the GDPR. the fact that the violation of the above principles of article 5 par. 1 GDPR as well as the violation of the provisions regarding the rights of the subjects fall under the provisions of article 83 par. 5 sec. a' and b' of the GDPR in the highest prescribed category of the administrative fine classification system, the fact that no material damage occurred to the data subject - complainant, whose right was finally satisfied with delay, as a result of which she withdrew the complaint, iii. iv. ii. b) the fraud or negligence that

caused the violation 1 See OE 29, Guidelines and the application and determination of administrative fines for the purposes of Regulation 2016/679 WP253, p. 6 11 The violation of the provisions of the GDPR by the complained company was the result of insufficient knowledge and application of the provisions of the GDPR attributed negligently and is therefore taken into account in mitigation in relation to the possibility that it had taken place with malice. c) the actions taken by the complained party to mitigate the damage suffered by the data subjects and the degree of cooperation with the Authority to remedy the violation and limit its possible adverse effects The complained company, after receiving knowledge of the complaint, satisfied at least and late

the right to erasure, at the same time apologizing to

complainant and before the Authority acknowledged the violation on her part of

provisions of the GDPR and its lack of compliance, while it stated that it intends to

comply with the GDPR within two months at the latest.

d) the increased responsibility of the complained company as a data controller due

of insufficient technical and organizational compliance measures and specifically due to

in the absence of the establishment of appropriate procedures to facilitate the exercise of

rights of the subjects, given that the accused does not

responded to messages sent to the unique e-mail address that

appears on its website as a way for subjects to communicate with it.

e) the absence of previous violations of the complained company, as well as from

a relevant inspection shows that it has not been imposed on the complained company to date

administrative sanction from the Authority.

f) the fact that the personal data affected by the breach

do not fall under the categories of articles 9 and 10 of the GDPR, according to the data provided

were brought to the Authority's attention.

g) the fact that the complained-about company did not immediately respond to its requests

Authority to provide answers to questions in the control box and dispatch

documents but a reminder letter from the Authority was needed,

h) the fact that the complainant withdrew her complaint due to lateness

at least to satisfy the right to erasure,

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i) the small size of the company, given that from the published financials

company statements for the year from 1/1/2019 to 31/12/2012 the cycle

of its operations amounted to 500.00 euros, while its capital amounts to 10,200

euro.

Based on the above, the Authority unanimously considers that it should be imposed on

denounced company as controller or the one referred to in the ordinance

administrative sanction, which is considered proportional to the gravity of the violation.

FOR THOSE REASONS

THE BEGINNING

1. Gives an order to Now Doctor Ltd., in accordance with article 58 par. 2 item. d'

GDPR, as within one (1) month of receipt of this:

i. to make the processing operations that take place through it

of a website that maintains compliance with the provisions of the GDPR,

ii. to take the appropriate technical and organizational measures for the facility

the exercise of the subjects' rights in accordance with article 12

GDPR and

iii. to inform the Authority about the realization of the above

actions.

2. It imposes on Now Doctor Ltd., in accordance with articles 58 par. 2 sec. i' cond.

83 par. 1, 2, 3, 5 sec. a' and b' GDPR the effective, proportional and deterrent

administrative fine appropriate to the specific case,

according to the special circumstances thereof, in the amount of five thousand (5,000) euros

for the violation of articles 5 par. 1 sec. a' and e', par. 2, 6 par. 1, 12 par. 2, 3

and 17 GDPR.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou