

Athens, 29.03.2022 Prot. No.: 802 DECISION 22/2021 (Department) The Personal Data Protection Authority (hereinafter "Authority") met in a composition of the Department via video conference on 02-17-2021 at 10:00 a.m. , at the invitation of its President, in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority Konstantinos Menoudakos, and the alternate members Grigorios Tsolias, as rapporteur and Evangelos Papakonstantinou, in place of the regular members Charalambos Anthopoulos and Konstantinos Lambrinoudakis respectively, who, although legally summoned in writing, were present attended due to disability. Regular member Spyridon Vlachopoulos, although legally summoned in writing, did not attend due to disability. The meeting was attended by order of the President, Efrosyne Siougle, specialist scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: Complaint No. C/EIS/752/31-01-2020 was submitted to the Authority by A (hereinafter "complainant"), as supplemented by No. C/EIS/759/31-01-2020 document, with which the complainant provides relevant evidence and complains that his estranged wife 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 and mother of his minor child, B (hereinafter "complainant"), installed and operates two cameras in her residence, to which the complainant is obliged to go in order to visit his child in the exercise of his right of communication, "only in the presence of the mother, without the use of electronic means to communicate with third parties outside the home (e.g. Skype, etc.)" in accordance with the provisions of no. decision of the Single Member Court of First Instance X (interim measures procedure)¹. The complainant argues that "[...] the place of residence during the communication between father and child, now falls within the institutions governing state power. This means that it ceases to have the meaning of the strictly private space of the permanent occupant (ie the mother) and therefore in the strict legal sense it ensures the rights of those served by the court decision (ie the child and the father). It follows that the defense of their own rights takes precedence over the free will of the permanent resident and therefore all the provisions that ensure this must be applied, including those on the protection of personal data." Further, the complainant complains that while he exercised his right to object and delete, the complainant keeps the cameras running and does not delete the relevant material. The Authority, in the context of examining the said complaint, invited, with the summons No. C/EX/1691/04-03-2020, the complainant to attend the meeting of the Department of the Authority on 18-03-2020 in order to detail the subject of the complaint. Due to the restrictive measures to deal with the corona virus pandemic, the meeting of 03-18-2020 was postponed and the Authority called again, with the letter No. C/EX/752-1/12-06-

2020 call, the complainant to attend the meeting on 06-19-2020. During the hearing on 06-19-2020, the complainant was present, who explained the subject of the complaint and filed the case number C/EIS/4252/19-06-

2020 document. Subsequently, the Authority, with letter No. C/EX/4360/23-06-2020 1 Based on the same decision, the complainant is entitled to pick up the child from the home of the complainant and move to a place of his choice to exercise the right to contact during certain festive periods or holidays of the year. 2 and C/EX/4361/23-06-2020 calls, invited respectively the complainant and the complainant to attend the meeting of the Department of the Authority on 03-07-

2020 in order to discuss the complaint in question. Due to the emergency of one of the members of the Authority's Department, the meeting of 07-03-2020 was also postponed by the Authority, with resolutions No. C/EX/4601/02-07-2020 and C/EX/4602 /02-07-2020 calls, re-invited the complainant and the complained-of respectively to attend the meeting of 07-15-2020. At the meeting of 07-15-2020, the complainant, the complainant and the attorney of Panagioti Giatagantzidis were present. During this meeting, the lawyer of the accused presented orally the request for postponement of the discussion of the case, which had already been submitted with the case number C/EIS/4737/08-07-

2020 document. The Authority accepted the postponement request and the discussion of the said case took place at the meeting of 07-17-2020, in which the complainant, the complainant and the attorney of Panagioti Giatagantzidis were present. The complainant and the person complained of were given a deadline and submitted on time the memoranda No.

C/EIS/5375/31-07-2020 and C/EIS/5308/29-7-2020 respectively, while the complainant submitted to the Authority, after the hearing, e-mails No. C/EIS/5077/20-07-2020 and C/EIS/7728/11-11-2020. These messages, which were submitted to the Authority after the aforementioned hearing, were not taken into account. The complainant in her memorandum No. Prot. G/EIS/5308/29-07-2020 accepts that she installed two (2) cameras in visible parts of her house, having previously informed the complainant. The installation and operation of the cameras took place inside her home in order to protect her and her relatives from the violent physical and psychological behavior of the complainant, which took place in front of the minor child. The complainant claims that the complainant entered her home together with his father and forcibly removed the cameras in question including the relevant storage cards of the recording material. For this act as well as for others, crimes have been filed before the Prosecutor's Office of 3 Primary X. In addition, the complainant claims that the said complaint is pretextual as the complainant has already removed the cameras including the relevant recording material, while he never included in a series of requests reform of the court order for the regulation of communication with the child, more specifically a request

regarding the issuance of an order not to be recorded by the cameras. Finally, the complainant maintains that the records in question exclusively within her home are excluded from the scope of the General Data Protection Regulation (Regulation (EU) 2016/679 - hereinafter "GDPR") and Law 4624/2019 as they exclusively concern domestic activity . Additionally, and in the event of rejection of the claim in question, the complainant invokes the overriding legal interest which lies in the protection of the physical integrity and health of herself and her relatives (bodily injuries, insults, domestic violence, threats, disturbance of domestic peace, etc.) and for this reason provides a series of crimes against the complainant as well as complaints and incident reports from the police authorities. The complainant in his memorandum No. Prot. C/EIS/5375/31-07-2020 denies that he removed the cameras, claims that the complainant and her attorney have respectively committed a series of criminal acts for which he has filed criminal charges and cases are pending, while he denies that he has committed the criminal acts attributed to the accused and for this reason he presents the under no. ... decision of the three-member Court of Misdemeanor X by which he was declared innocent of the act of causing bodily harm, while the complainant was declared innocent of the act of insult actually carried out due to justified indignation at the behavior of the complainant, which consisted in the removal of the sick minor child from his room and his transport outside the house. Finally, the complainant expresses his reservations as to whether the "personal-domestic exception" cited by the complainant applies to the application of the GDPR, given that the recording takes place inside the home, but with the forced presence of the person 4 by virtue of a judicial decision and considers that due to the existing legislative gap the Authority should issue an opinion or decide on the complaint. The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote and left after the discussion of the case and before the conference and decision-making, following a thorough discussion , THOUGHT ACCORDING TO LAW 1. From the provisions of articles 51 par. 1 and 55 par. 1 of the 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 arrangements concerning the protection of the individual from processing personal data. 2. The GDPR and Law 4624/2019 do not apply to the processing of personal data by a natural person in the context of an exclusively personal or domestic activity (Article 2 Par. 2 Section C GDPR, Article 2 Section B Law 4624/ 2019). 3. The Authority does not have the authority to examine complaints in cases of processing of personal data in the context of exclusively personal or domestic activity (article 2 par. 2 section c GDPR, article 2 section b Law 4624/2019). 4. There is no legislative definition of the concept of "exclusively personal or domestic activity", but

for its conceptual definition, the corresponding explanatory considerations of the European legislations are useful in principle. Already, from recital no. 12 of Directive 95/46/EC it emerged that the said exception applied to processing such as "those related to correspondence and maintaining address lists", while according to recital no. 18 GDPR 5 seems to have been the intention of the EU legislator. to widen the boundaries of the exemption by accepting that "Personal or household activities could include ... social networking and online activity engaged in as part of such activities." 5. From the explanatory report of the modernized Convention 108 of the Council of Europe for the protection of natural persons from the automated processing of personal data ("Convention 108+"), in article 3 par. 2 of which the exception is similarly provided for of exclusively personal or domestic use, it is established that the said exception aims to avoid the imposition of unjustified (excessive) obligations during the processing of personal data that takes place by natural persons within their private sphere for activities related to the exercise of the individual right to private their life. According to the same report, the personal or domestic activities concern the person collecting the personal data despite the fact that they are objectively and directly connected to the private life of a third natural person², but without a deep intervention in the personal sphere of the latter. In this way, the exemption in question from the scope of the legislation for the protection of personal data is justified, which implies the avoidance of enforcement and, accordingly, compliance with the requirements for the processing of personal data. 6. These activities do not have a professional or commercial dimension and are exclusively related to personal or domestic activities of the person collecting the personal data, such as recording and storing family or personal images on a computer, creating a list of contact information and correspondence of friends and members of family, the installation and operation of cameras within the boundaries of the residence, etc. The sharing of personal data within the personal sphere includes in particular that between a family, a limited circle of friends or a circle limited in size, which 2 Ad hoc Tietosuojavaltuutettu Jehovan todijat C-25/17 of 10.7.2018 sk. 41 with reference to Rynes C-212/13 of 11.12.2014 sc. 31-33. 6 is based on personal relationships or a specific relationship of trust³, so that again the legislation for the protection of personal data does not apply ("household exemptions"). 7. For the application of the "exception of exclusively domestic activity" from the application of the GDPR, in addition to what was stated regarding "personal" activity, the spatial element is additionally taken into account, as residence⁴ usually means the place in the sense of a geographically defined area , where the resident's private and family life develops⁵. 8. Delimitation of the concept of "exclusively personal or domestic activity" of the person collecting the personal data has taken place on a case-by-case basis and in particular with apposite (by contrast) criteria by the Court of Justice of the European Union. In

particular, it has been judged that they do not fall within the context of private or family life under no. 7 of the GDPR and 8 of the ECHR of the person collecting the personal data and therefore the exception of domestic-personal activity does not apply, but the legislation for the protection of personal data is applied in cases such as the announcement of collected data to an unspecified number of people, as the object of activity of private companies⁶ or on the internet⁷, surveillance with a security camera that extends even partially into the public space and therefore leaves the private sphere of the person processing the data⁸, the publication of video on a video posting website, without any limitation in X. Ch. Kontiadis, Anthopoulou 3 Explanatory Report, para. 27. 4 Analysis of the right to the protection of the residence in the light of Article 8 ECHR see in I. Sharma, interpretation, Tsolias/Lyontou/Sapountzis p. 489 ff. 5 *Giacomelli v. Italy*, 59909/00, 2.11.2006, § 76; *Zammit Maempel v. Malta*, 24202/10, 22.11.2011, § 36; *Moreno Gómez v. Spain*, 4143/02, 16.11.2004, § 53; *Luginbühl v. Switzerland* (dec.), 42756/02, 17.1.2006; *Oluić v. Croatia*, 61260/08, 20.8.2010, § 44; *Deés v. Hungary*, 2345/06, 9.11.2010, § 21. 6 *Tietosuojaaltuutettu v Stakunnan Markkinaporssi Oy, Satamedia Oy*, case C-73/07 decision of 16-12-2008 paras 43-45. 7 *Bodil Lindqvist*, case C-101/01 decision of 06-11-2003 para. 46-47. 8 *Rynes* case C-212/13 decision of 11-12-2014 para. 33. (editing), ECHR article 7 access, an unspecified number of persons (viewers)⁹ as well as the collection and transmission of personal data for the dissemination of religious faith¹⁰. Accordingly, the APD with no. 4/2006 its decision accepted that: "Taking a photo of a third person via the data subject's mobile phone and storing it on his personal computer can easily be processed for personal or domestic activities, since the processing is carried out by the data subject and not the data is communicated to third parties...". 9. In cases of exclusively personal or domestic activity, the collection and processing of personal data of third parties takes place within the framework of the personal sphere¹¹ of the collector, where he inevitably comes into contact with them¹². Therefore, "the expression 'personal or domestic', according to the provision in question, refers to the activity of the person who processes the personal data and not to the person whose data is subject to processing"¹³. 10. The CJEU¹⁴ in the related, with the issue of "exclusively domestic-personal activity", cases that it examined, when interpreting the provision in question took as a criterion and referred to "activities that are part of private or family life" or in the "private sphere"¹⁵ of the person collecting the personal data, "which are protected by article 7 of the CHR and 8 of the ECHR". In this regard, the European Court 9 *Sergejs Buivids* case C-345/17 decision of 14-02-2019 para. 43 10 *Tietosuojaaltuutettu* C-25/17 decision of 10.7.2018 sk. 44 ff. 11 Thus, while the initial collection of personal data may fall under the personal or household exception, its subsequent processing may fall within the scope of the GDPR. Cf. para 40 of

Eleanor Sharpston's Prosecution Proposal in C-345/17 Sergejs Buivids "The publication of the video on the internet was not part of his private or family life...they were made available to an unlimited number of people who gained access to them".¹² For the referred to as "intersubjective nature of the right to privacy" see Ch. Akrivopoulou, *The right to private life*, Sakkoulas 2012, p. 60 ff. ¹³ Tietosuojaaltuutettu Jehovan todishajat C-25/17 of 10.7.2018 sc. 41 with reference to Rynes C-212/13 of 11.12.2014 s. 31-33. ¹⁴ Tietosuojaaltuutettu – Jehovan todidajat paras 42 and 44, Lindqvist para 47, Tietosuojaaltuutettu v Stakunnan para 44, proposal of the Attorney General in the Rynes case, paras 51 – 55 and 65 as well as, proposal of the Attorney General in the TK case para 40. ¹⁵ Tietosuojaaltuutettu – Jehovan todidajat par. 44 and 50. ⁸ Human Rights (ECHR) ruled that Article 8 of the ECHR protects the right to identity and personal autonomy of the individual in order to develop his personality as well as personal relationships with other people¹⁶. ¹¹ In particular, the CJEU in the Rynes case (C-212/13) held that to the extent that surveillance by a security camera extends even partially into public space and, therefore, leaves the private sphere of the processor of data by this means, cannot be considered as exclusively personal or domestic (sec. 33), in contrast to the processing of personal data that takes place inside the home¹⁷. Subsequently, the CJEU ruled that in case of recording images outside the limits of the house, now that the legislation for the protection of personal data is applied, the legal collection becomes possible and in general processing for the purposes of protecting the legitimate interests of the controller, which consist in particular of protecting the property, health and life of the controller and his family (see s. 34). ¹² Thus, the person who records e.g. with his mobile phone image data of participants in a celebratory event (e.g. birthdays even at work), in order to keep them as a souvenir for himself or even share them afterwards with familiar or friendly people in the environment of (and therefore in a narrow circle), then the said processing of personal data of third parties takes place not in order for them to be subjected to any kind of commercial or other exploitation or for the purpose of exposing or revealing the persons to an unlimited number of recipients - viewers, but in the context of the exercise of the right to his private sphere¹⁸. If ¹⁶ *Pretty v UK* paras 61 and 67 and *Niemietz v Germany* of 16-12-1992, no. pr. 13710/88 para. 29. ¹⁷ See and proposal of the Attorney General Niilo Jaaskinen of 10.7.2014 sc. 54 as well as s. 55 where he agrees with the position of the United Kingdom Government in which "the protection of the inviolability of a private residence and its protection against theft and against all illegal entry are activities which are basic to every household and, for this reason, can be considered as domestic activities". ¹⁸ See a contrario argument in the CJEU *Tietosuojaaltuutettu C-25/17* of 10.7.2018 sc. 44, 50 as well as *Rynes C-212/13* decision of 11-12-2014 para. 33. ⁹ corresponding processing (recording) of image data takes place within the

boundaries of the residence of the person collecting the personal data, then it is possible to simultaneously the circumstance of exclusively domestic activity. 13. In accordance with article 3 par. 2 of Directive 1/2011 of the Authority for the use of video surveillance systems for the purpose of protecting persons or goods, the provisions of which are applied in conjunction with the provisions of the GDPR, the reception and processing of image data or audio, using a video surveillance system installed in a private home, is considered exclusively a personal or domestic activity, since the control field of the cameras includes only private spaces and does not cover public ones. Exclusively personal or domestic activity means that which refers to the private field of action of a person or a family, i.e. that which does not fall under their professional and/or commercial activity (see APD Opinion 5/2017 sc. 2). 14. In accordance with the Guidelines of the European Data Protection Board no. 3/2019 for the processing of personal data through video recording devices¹⁹ that takes place inside a residence (see par. 13) criteria²⁰ for the application of the exception of exclusively personal or domestic activity (and therefore for the non-application of the GDPR) consist of: the existence of a personal relationship with the videotaped data subject, if based on the level (scale) or frequency of the recording, some kind of professional activity is indicated and if the recording has negative consequences for the data subject²¹. In the examples mentioned there, which fall under the exclusively personal or domestic activity, 19 Edition B' of 01-29-2020. 20 Interpretive approach to the meaning of the specific provision see in Appendix 2 "Proposals for Amendments regarding exemption for personal or household activities" of the document of Working Group 29 dated 27.02.2013 "Statement of the Working Party on current discussions regarding the data protection reform package". 21 The examples mentioned there, which fall under the exception, include the case of watching a vacation video together with friends or recording private moments of people in the family garden. 10 includes the case of watching a vacation video together with friends or recording private moments of people in the family garden. 15. In the event that the image of an employee is recorded inside the home during the provision of services by him, then the said collection of personal data does not take place in the context of exclusively personal or domestic activity of the collector as it concerns the receipt of provided professional services and therefore constitutes a professional activity (see also APDPX 3/2007 sc. 2) regardless of the fact that it is provided within the home of the person collecting the data²². 16. On the contrary, the installation and operation of a video recording system with a field of capture within the boundaries of the house (including e.g. the garden) with the aim of preventing risks, ensuring and protecting the life and property of the owner or occupant and his family it constitutes exclusively a personal and domestic activity according to the aforementioned jurisprudence of the CJEU and the APD²³. 17. On the contrary, it is not considered an

exclusively personal or domestic activity to capture and process an image with a video surveillance system installed in a private house, when the field of control of the camera includes external public or shared spaces or spaces belonging to the properties of others²⁴. 18. In the present case, the Authority found that between the complainant and the complainant, estranged spouses, there is an intense dispute and litigation with the exchange of crimes and lawsuits, with the cause and starting point of the break-up of the married life and the custody of their minor child are pending before the competent civil and criminal courts, while the police authorities have been called upon from time to time to respond to relevant complaints - summonses. With the under no. ... decision 22 Tietosuojavaltuutettu C-25/17 of 10.7.2018 sc. 41 with reference to Rynes C-212/13 of 11.12.2014 sc. 31-33. 23 See and APD 30/2020 sc. 12, APD 21/2017 sc. 2, 3, APD Gnmd 5/2017 sc. 2, 3. 24 See CJEU C-212/13 Frantisek Rynes sc. 13 and 33. 11 of the Single-Member Court of First Instance X (interim measures procedure) initially regulated the right of the complainant to communicate with his minor child "only in the presence of the mother, without the use of electronic means to communicate with third parties outside the home (e.g. Skype, etc.)", with the exception of certain festive periods and holidays of the year, when the complainant also had the right to communicate with the minor child in a place of his choice. The complainant's estranged wife and mother of the minor child installed two (2) cameras in visible parts of her home and informed the complainant by e-mail about their installation and operation for reasons of her own and her minor child's safety. Before the Authority, the complainant in her written statement invoked the deterrent function of the cameras to protect the physical integrity and health of herself and her relatives as well as the health of their minor child during the time of the complainant's visits in order to communicate with the minor child, in accordance with the provisions of the above court decision. Regardless of the validity or otherwise of the relevant risks cited by the complainant, given that the relevant crimes are pending in the criminal courts (with the exception of the above-mentioned decision no. ... Official Criminal Code X) and the Authority does not have the authority to ascertain whether the relevant crimes have been committed that the installation and operation of the cameras took place by the complainant within the boundaries of her home in the context of an exclusively personal and domestic activity, i.e. to protect the personality, health and physical integrity of herself and her relatives. 19. The claim of the complainant that "[...] the place of residence during the communication between father and child, now falls under the institutions governing the state power. This means that it ceases to have the meaning of the strictly private space of the permanent occupant (ie the mother) and therefore in the strict legal sense it ensures the rights of those served by the court decision (ie the child and the father). A corollary is that the defense of their own rights takes precedence over the free

will of the permanent resident and therefore all the provisions that ensure this must be applied, including those on the protection of personal data" is rejected. 20. First of all, the complainant's right to enter and stay inside the complainant's house in order to exercise the right to communicate with his minor child in the presence of the complainant, in accordance with the provisions of no. ... decision of the Single-Member Court of First Instance X (interim measures procedure), constitutes a legal limitation of the right to respect the residence of the complainant no. 8 par. 2 ECHR and 9 par. 1 S. From then on, however, within her residence, the complainant decides autonomously on the way of personal development of her private and family life no. 9 par.1 S., 7 XTHDEEand 8 ECHR²⁵, the meaning of which also includes the taking of measures for protection of her personality, physical integrity and health herself and her relatives through the installation and operation of the system image recording through cameras (see above paragraphs 8 and 10 for relevant jurisprudence of the International Court of Justice), so that the processing in question constitutes "exclusively personal-domestic activity" of the accused, such as moreover, the CJEU also accepted the Rynes case. Besides, from the decision under no. ... AutTpl X, which was presented to the Authority by the complainant, it follows that the accused was acquitted of the charge of insult because of justified indignation under no. 306 par. 4 cond. No. 36 PK from previous behavior of the complainant, while with the no. ... decision of the Single-Member Court of First Instance X (interim measures procedure) took place accepted that there are "[...] particularly tense relations between the parents, the who still choose to resolve their most trivial differences with her in the presence of the police agencies and refuse to compromise without tensions, many of which are caused due to irritability and

²⁵ Giacomelli v. Italy, 59909/00, 2.11.2006, § 76; Zammit Maempel v. Malta, 24202/10, 22.11.2011, § 36; Moreno Gómez v. Spain, 4143/02, 16.11.2004, § 53; Luginbühl v. Switzerland (dec.), 42756/02, 17.1.2006; Oluić v. Croatia, 61260/08, 20.8.2010, § 44; Deés v. Hungary, 2345/06, 9.11.2010, § 21.

irritable character of the father".

21. Furthermore, according to no. ... decision of the Single Member Court of First Instance

X (interim procedure), the communication between the complainant

and of the minor child within the residence of the complainant, he had to

takes place in the presence of the latter and therefore whichever

image recording included the same. Besides, as mentioned above

(see section 9 of this decision) the "exclusively personal or domestic

activity" refers to that of the complainant, as a condition

for the exemption from the application of the legislation for the protection of

personal data and not to the fact of recording the data

image of the complainant, which cannot lead to non-

application of the "personal-domestic exemption", even if the complainant

was obliged to exercise the right of communication with the minor child

inside the house of the accused and even in her presence.

22. Moreover, the execution of a court decision by which her residence is defined

reported as a place of communication between the complainant and his child,

in fact, in the presence of the accused, he does not practice law in this case

influence on the implementation or non-application of GDPR no. 2 para. 1 or 2 GDPR.

23. The complainant requests the rejection of the complainant's claim

according to which there is a case of "exclusively personal-

household activity" and requests the implementation of the legislation for it

protection of personal data. But even if on her part

complained of processing did not take place in the context exclusively

personal or domestic activity, the installation and operation of cameras

in this case it would not be rendered illegal without a counter, either

but because based on a court decision it is defined as his place of communication

complainant with his child, the home of the complainant. On the contrary, as extrapolated based on the jurisprudence of the CJEU, there would be a question of examining the conditions for applying the principles of article 5 par. 1 GDPR combined to the provisions of Directive 1/2011 APD, on the basis of the supreme legal interest under no. 6 par. 1 sec. in the GDPR.

24. Under a different interpretive version with the invocation of "forced"

14

of the presence of the complainant in the home of the person complained of court decision, there would be a risk of widening the field implementation of the GDPR, in violation of EU law. and contrary to defined by the provisions of article 2 par. 2 sec. c GDPR, which must to be interpreted narrowly²⁶.

25. Finally, given that GDPR no. 2 para. 2 sec. because of this

it is submitted that similarly the provisions of the GDPR do not apply related to the rights of the subjects, including those

of opposition and deletion, which the complainant claims to have exercised without response from the complainant.

26. Due to non-applicability of GDPR and Law 4624/2019 as stated above in this case, the Authority lacks the competence to examine the complaint

FOR THOSE REASONS

The Authority becomes incompetent and puts the case on file.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

²⁶ Relatedly see CJEU C-439/19 decision of 22.6.2021 B v Latvijas Republikas Saeima, sc. 62 final ed.

