

Athens, 19-12-2022 Prot. No.: 3293 DECISION 66/2022 (Department) The Personal Data Protection Authority met at the invitation of its President in a teleconference meeting on Monday 04-07-2022 and time 10:30, in order to examine the case mentioned in the history of this present. The Deputy President of the Authority, Georgios Batzalexis, standing in the way of the President of the Authority, Constantinos Menoudakos, and the alternate members of the Authority, Demosthenes Vougioukas and Maria Psalla, as rapporteurs, in place of regular members Konstantinos Lambrinoudakis and Grigorio Tsolias, who, although called legally, they did not attend due to disability. Present without the right to vote were Stefania Plota, specialist scientist-lawyer, as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: With the no. prot. C/EIS/7889/17-11-2020 her complaint to the Authority, A (hereinafter "complainant"), complains to the company with the distinctive title "Slim Way Rejuvenation Center" (hereinafter "company") for failure to satisfy a right access. In particular, the complainant states that although she submitted an application on ... to the company, which was received, as the complainant claims, by an employee of the store putting her signature and the date of receipt on the application, in order to be granted copies of the contracts she has signed, as and to be informed about the sessions he had attended and about the surplus balance he had deposited for 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 monitoring of the program, there was no response from the complained company. Then followed an extrajudicial statement by the complainant to the company on ... with the same requests, without receiving a response. The Authority, in the context of examining the above complaint, sent the company the no. prot. C/EXE/7889-1/23-12-2020 document for providing opinions by electronic message on 23-12-2020. Since the Authority did not receive any response, nor confirmation that the message was received, following a telephone call with a representative of the company, the aforementioned document from the Authority was sent again electronically on 05-02-2021 and its receipt was confirmed by telephone on the same day, but without then submit the company's views to the Authority. Subsequently, the Authority electronically sent the same letter to the complained company again on 11-02-2021, the receipt of which was confirmed on the same day by an email from the complained company's contact email "<mailto:info@slimway.club>". Since the Authority did not receive any response, it sent the company the no. prot. C/EXE/1200/12-05-2021 document, re-transmitting the complaint and the first letter from the Authority, calling on the company to immediately send its views, without any response from the complainant, while the sending the document by registered mail was returned to the Authority as unsolicited. The letter in question was sent to the company again by email on

03-08-2021 and, according to his statement, the representative of company B confirmed by phone the receipt of the letter and undertook to send the company's views within the next ten (10) days . Since the Authority did not receive a response to this letter either, it sent letter no. prot. C/EXE/2590/15-11-2021 document, with which a deadline of ten (10) days was set for the company to provide its opinions, otherwise the Authority would proceed to examine the complaint without objection, stating that "every data controller has an independent obligation to cooperate with the Authority, pursuant to article 31 GDPR, and his non-compliance with this obligation entails the imposition of an administrative fine, in accordance with the provisions of article 2 the complainant, A, and 83 par.4 item a' GDPR, in addition to the other corrective powers that the Authority has, pursuant to articles 58 par. 2 of GDPR 2016/679 and 15 of Law 4624/2019". Since then, the Authority has not received any response to all the above attempts to contact the company. In view of the above, the Authority with no. prot. C/EXE/729/18-03-2022 and C/EXE/728/18-03-2022 documents invited the complained company Slim Way Rejuvenation Center, respectively, to be presented at the meeting of the Department of the Authority on Wednesday 30-03 -2022. At the meeting in question, the complainant A was present after the attorney-in-fact Evangelos Stratoudakis (...), and Alexandra Spanaki (...), attorney-at-law of the complained-about company. During this meeting, those present developed their opinions and subsequently submitted to the Authority within the set deadline, on the one hand, the complainant under no. prot. C/EIS/6126/18-04-2022 memorandum and on the other hand the complained company under no. prot. G/EIS/6132/18-04-2022 memorandum. In the memorandum submitted by the complainant to the Authority, it stated that, although approximately two years had passed since the out-of-court invitation to the company to comply with the requests it had submitted to it in order to obtain information and also to grant it copies: i. of the contracts signed by the same, as well as the body of the signed contracts and the cost of each of those examined, ii. of the sessions she has attended and any type of written information about them, as well as any detailed records that have been issued in her name as well as iii. to receive a certificate for the surplus balance she has deposited to follow the program, which she ultimately does not wish to follow so that this money is returned to her from the company, the complained company had not satisfied them. Subsequently and after submitting the complaint to the Authority, the special conditions of the programs she wished to attend were sent to the complainant, when she contacted the company and from 02-10-2019 document confirming the complainant's attendance of a twenty-minute program, as well as an unsigned and undated, as 3 of the memorandum on the day of submission states, a document, "without any legal significance, which anyone could draw

up" in which the programs that the complainant had attended, while the evidence of attending the programs up to the complainant had not been granted to her. Although the complainant also requested the other evidence of monitoring, she was never given, as she mentions and points out that following the 30-03-2022 discussion before the Authority, "even at the request of the honorable Mr. President, in order to grant all the evidence monitoring of the programs by me, the company to date and at this time has not complied. Her discredit therefore not only includes her clients but also the legal order itself, as not only has she not shown the slightest interest in informing about what she is complaining about, but she is also deaf to an express order given by the honorable Mr. President". The complained-about company under no. prot. C/EIS/6132/18-04-2022 her memorandum, states first of all that the name of the complained-about company "Slim Way Rejuvenation Center" is "MARIA PEDIOTI KE SIA O.E." and that the complainant herself gave her details to the company on ... and concluded five (5) service contracts with the company, listing the main points thereof. The company claims that the complainant, when drawing up the contracts, was fully and in detail informed about the terms of the contract, as well as about the method of payment and the prices per service, analyzing the financial issues arising from the contractual relationship, pointing out that in terms of contracts, the complainant was never terminated, she never withdrew from their execution, neither verbally nor in writing, and for this reason they remain active to this day. It should be noted that the complained company did not provide any document regarding the satisfaction of the right of access and its compliance with the legal framework for the protection of personal data in its hearing statement and did not state the reasons why it did not respond to the Authority's requests, even though he had confirmed receiving them. 4 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, after a thorough discussion DECIDED IN ACCORDANCE WITH THE LAW 1. Because, 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 (Government Gazette A'137) it follows that the Authority has the authority to supervise the implementation of the provisions of the GDPR, the law this and other regulations concerning the protection of the individual from the processing of personal data. the subject 2. Because Article 5 of the GDPR defines the processing principles that govern the processing of personal data. Specifically, it is defined in paragraph 1 that personal data, among other things: "a) are processed lawfully and legitimately in a transparent manner in relation to with ("legality, objectivity, transparency"), b) are collected for specified, explicit and legal purposes and are not further processed in a manner incompatible with these purposes (...), c) are appropriate, relevant and limited to what is necessary for purposes for

which they are processed ("data minimization") (...)' of the data 3. Because, according to Article 5 para. 2 of the GDPR "the data controller bears responsibility and must be able to demonstrate compliance with the processing principles established in paragraph 1 ("accountability")" . As the Authority¹ has judged, with the GDPR a new model of compliance was adopted, the central point of which is the principle of accountability in the context of which the controller is obliged to design, implement and generally take the necessary measures and policies, in order for the processing of data to be in accordance with the relevant 1 See Authority Decisions 36/2021, sc. 3, 26/2019, sc. 8, 44/19 sk. 19 available on its website. 5 legislative provisions. In addition, the data controller is burdened with the special duty to prove himself and at all times his compliance with the principles of article 5 par. 1 GDPR. It is no coincidence that the GDPR includes accountability (Article 5 para. 2 GDPR) in the regulation of the principles (Article 5 para. 1 GDPR) governing the processing, giving it the function of a compliance mechanism, essentially reversing the "burden of proof" as to the legality of the processing (and in general the observance of the principles of Article 5 par. 1 GDPR), shifting it to the controller², so that it can be validly argued that he bears the burden of invoking and proving the legality of the processing. Thus, it constitutes the obligation of the data controller, on the one hand, to take the necessary measures on his own in order to comply with the requirements of the GDPR, and on the other hand, to demonstrate his compliance at all times, without even requiring the Authority, in the context of research - of its audit powers, to submit individual - specialized questions and requests to ascertain compliance. 4. Because, according to the definitions of article 4 no. 1 and 2 GDPR "means "personal data": any information concerning an identified or identifiable natural person ("data subject"); an identifiable natural person is one whose identity can be ascertained, directly or indirectly, in particular through reference to an identifier such as a name, an identity number, location data, an online identifier or one or more factors that characterize the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person' . 5. Because, according to the provisions of article 15 par. 1, 3 and 4 GDPR: "1. The data subject has the right to receive from the controller confirmation as to whether or not the personal data 2 Relatedly see L. Mitrou, The principle of Accountability in Obligations of the controller [G. Giannopoulos, L. Mitrou, G. Tsolias], Collected Volume L. Kotsali – K. Menoudakou "The GDPR, Legal Dimension and Practical Application", 2nd ed. Law Library, 2021, p. 265 ff. 6 character concerning it are being processed and, if this is the case, the right to access personal data [...]. 3. The data controller provides a copy of the personal data being processed.[...] 4. The right to receive a copy referred to in paragraph 3 does not adversely affect the rights and freedoms of others". 6. Because, according to article 12 para. 3 and 4 GDPR "The data controller shall provide the data subject

with information on the action taken upon request pursuant to articles 15 to 22 without delay and in any case within one month of receipt 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. 4. If the data controller does not act on the data subject's request, he shall inform the data subject within one month of the receipt of the request of the reasons why he did not act and of the possibility of filing a complaint with a supervisory authority and taking legal action ». 7. Finally, according to Article 31 of the GDPR "the data controller and the data processor and, where applicable, their representatives shall cooperate, upon request, with the supervisory authority for the exercise of its duties". This provision introduces an independent general obligation of each data controller to cooperate with the supervisory authority, when a relevant request is submitted in the exercise of the duties assigned to it by the European legislator, while the violation of its fulfillment independently entails the imposition of the administrative fine of article 83 par 4 pc. 1 GDPR. It is pointed out that this obligation together with the principle of accountability 7 of article 5 par. 2 GDPR strengthens the role of the supervisory authority in the exercise of its powers towards the realization of the purpose of effective personal data protection rules³. application of 8. Taking into account the above, from all the elements of the case file, the hearing procedure and the submitted memoranda, it appears that the complainant requested to receive from the complained company copies of contracts, to which she was a contracting party and therefore the said documents contained personal data that identified and concerned her, as well as to be informed as a data subject about data concerning her and held by the company, i.e. about the sessions she had attended and about the surplus balance she had deposited for the attendance of the program, exercising the right of access of article 15 GDPR. Therefore, the complainant as a data subject had, according to Article 15 para. 1 and 3 GDPR, the right to receive from the complained company, in its capacity as data controller, access to the above mentioned documents and information, for which she did not receive any response from the company. The complained-about company as data controller has an obligation to provide a reasoned response to the subject's right of access, even in the negative, in the event that, in the opinion of the data controller, there is no legitimate reason to satisfy the request, within one month of receipt of the request, in accordance with article 12 par. 3 GDPR⁴. If the data controller does not act on the data subject's request, it shall inform the data subject within one month of receipt of the request of the reasons for not acting and of the possibility of filing a

complaint with a supervisory authority and taking legal action, in accordance with article 12 par. 4 GDPR. The controller's non-response to a request for access and information on 3 See decision 33/2021 sc. 9, available on the website of the Authority. 4 See indicative decisions APD 26/2021, 36/2021 8 of the subject for his personal data constitutes an independent violation according to Article 15 GDPR, as the subject in the present case did not receive a response to the access request he submitted to the data controller in writing, only after of the Authority's intervention, received part of the requested data, without properly satisfying the exercised right of access. Therefore, the Authority considers that the controller has violated the provisions of articles 12 par. 3 and 4 and 15 par. 1 and 3 for not satisfying the subject's right of access. Furthermore, from the entire case file, the hearing process and the submitted memoranda, the Authority finds that the complained company did not respond to letters that had been repeatedly sent by the Authority within a period of eleven (11) months, i.e. the first sending took place on 23-12-2020 and the last one on 15-11-2021, although the company confirmed receipt of the letter both by telephone on 05-02-2021 and by email sent from the email address info@slimway .club on 11-02-2021. The contacted company, apart from the confirmation of receipt of the electronic message, did not send any written response to the supervisory authority for sixteen (16) whole months, except for the hearing under no. prot.G/EIS/6132/18-04-2022 memorandum, in which it should be noted that no reference is made to processing issuespersonal data, nor in relation to the subject

complaint, nor in relation to the company's possible compliance with the legislative framework for the protection of personal data. By sequence, the Authority finds that the complained-about company demonstrated continued indifference to the Authority's repeated calls for provision clarifications that constitute a violation of its obligations as responsible processing, causing substantial obstacles to the examination of the case at hand case. It is pointed out that the controller has an obligation to respond immediately to the calls of the supervisory Authority, in accordance with the provision the company's

continued non-response of the controller to her calls

Authority to provide his views on the complaints for so long

period of time, without any justification for the behavior in question,

proves his non-cooperation with the Supervisory Authority and recommends

breach of the independent obligation to cooperate with the Supervisory Authority

provided for in article 31 GDPR.

9. Based on the above, in relation to the established violation of the provisions

of articles 12 par. 3 and 15 GDPR for the alleged violation thereof

right of access, the Authority deems it appropriate to exercise them

according to article 58 par. 2 of the GDPR its corrective powers and that it should, with

based on the circumstances established, to be imposed, pursuant to it

provision of article 58 par. 2 sec. i' GDPR, effective, proportionate and

dissuasive administrative fine according to article 83 of the GDPR, both to

restoration of compliance, as well as for the punishment of illegality

behavior and also to give an order to the company according to article 58 par. 2

item c GDPR to satisfy the complainant's right of access to

part exercised and not yet satisfied.

10. The Authority considers that for the established violation of the obligation to cooperate

with the Authority according to Article 31 of the GDPR must, based on the circumstances that

were established, to impose, pursuant to the provision of article 58 par.

2 pcs. i GDPR, effective, proportionate and dissuasive administrative money

fine according to article 83 GDPR, in accordance with the Guidelines "for

the application and determination of administrative fines for its purposes

Regulation 2016/679»⁵ of the working group of article 29 and

Guidelines 04/2022 for the calculation of administrative

fines under the GDPR of the European Data Protection Board⁶.

5 WP 253 from 03.10.2017 available at the link https://www.dpa.gr/sites/default/files/2019-12/wp253_en.pdf

6 Guidelines 04/2022 on the calculation of administrative fines under the GDPR from 12.05.2022 under public consultation, available at https://edpb.europa.eu/system/files/2022-05/edpb_guidelines_042022_calculationofadministrativefines_en.pdf

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11. Furthermore, the Authority, during the evaluation of the data, took into account the criteria for measuring the fines defined in article 83 par. 2 of GDPR, the aforementioned Guidelines, as well as the factual data of the case under consideration and in particular:

i.

The fact that the complainant did not satisfy in a timely manner and accordingly, the subject's right of access according to article 15 GDPR.

The fact that the infringement was isolated, ie in this case it touched only the complainant, as the subject of the data.

The continued lack of cooperation of the complainant company with the Authority, given that it did not provide explanations to the Authority without reason despite repeated calls.

The absence of previous established violations complained of, as a relevant check shows that she does not have it imposed until today an administrative sanction by the Authority.

ii.

iii.

iv.

FOR THOSE REASONS

THE BEGINNING

A. Finds that the complained-about company "MARIA PEDIOTI KE SIA O.E.", as

controller, satisfied the complainant's right of access

overdue and incomplete in violation of the provisions of the articles

12 par. 3 and 15 GDPR and imposes on the complained company administrative

fine, according to article 58 par. 2 item i', in the amount of 2,000.00 euros.

B. Gives an order, according to article 58 par. 2 item. 3 GDPR, to the complained company

"MARIA PEDIOTI KE SIA O.E.", as controller, to satisfy

accordingly the complainant's right of access to the part she has

exercised and not yet satisfied.

C. Finds that the complained-about company "MARIA PEDIOTI KE SIA O.E.", as

controller, violated the independent obligation to cooperate with

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supervisory authority according to article 31 of the GDPR and impose on the complained company

administrative fine, according to article 58 par. 2 item i', in the amount of 5,000.00 euros.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou

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