

Athens, 02-04-2018 Prot. No.: C/EX/2595/02-04-2018 PERSONAL DATA PROTECTION AUTHORITY OF PHASE 29/ 2018

(Department) The Personnel Data Protection Authority Character met as a Department, at its headquarters, on 07.3.2018 at 10:00, upon the invitation of its President, in order to examine the case referred to in the present history. The President of the Authority, Konstantinos Menudakos, and the substitute members of the Authority, Grigoris Tsolias, as rapporteur, and Charalambos Tsiliotis, in place of regular members Charalambous Anthopoulos and Spyridonos Vlachopoulos, respectively, who, although legally summoned in writing, did not attend due to obstruction, attended. Present without the right to vote were Maria Alikakou, legal expert, as assistant rapporteur, and E. Papageorgopoulou, employee of the administrative and financial affairs department, as secretary. The Authority took into account the following: Submitted to the Authority under no. prot. C/EIS/8858/07.12.2017 document question of A through the power of attorney of his lawyer, Konstantinas Vasilikis Efstathiou, with which he requests the Authority to give an opinion regarding the legality of the use and presentation, before the Directorate of Transport and Communications [region] X, of a medical certificate, which he has in his possession and which concerns the mental health of his ex-partner, B. The applicant wishes to submit to the above address the disputed medical certificate in the context of the report he is going to submit before the said service in order to decide to revoke the driver's license of his ex-partner and mother of their two minor children. In particular, the applicant mentions in the above document his question that he is in a legal dispute with his ex-partner for the custody of their two minor children. The applicant claims that his ex-partner suffers from Bipolar Affective Disorder type II (mania and depression) and is receiving medication according to the psychiatrist's certificate dated 8.9.2016 that she presented to the hearing of the insurance measures for the custody of the two their minor children. Because of this condition, the applicant states that the road behavior of his ex-partner endangers the safety of their two children. For this reason, the applicant wishes to have his ex-partner's driver's license revoked. In fact, the applicant points out in his supplementary document that this last element will be crucial for the custody action of his minor children which is going to be heard in a regular hearing on ..., as it will constitute "an additional negative element in terms of the ability of the opposing party to take custody of their minor children and emphasizes the seriousness of her illness", but also "will strengthen the image of the "good father" in court for claiming custody of his children, since in the insurance measures that preceded the president and ... urged him to contact the competent authorities since he fears for the safety of his children due to their mother's dangerous driving behavior due to her illness." For the reason that the applicant requests the immediate examination of his request by the Authority claiming that the possible removal of his ex-partner's driving license due to a

medical condition could be an important element in support of the above action, the above question was judged by the Authority to involve a request for the Authority's license to be issued to the data controller in order for the latter to process sensitive personal data of a third party. After examining the aforementioned elements, after hearing the proposal of the rapporteur and the assistant rapporteur, who then left, and after a thorough discussion, The Authority, CONSIDERED ACCORDING TO THE LAW 1. Because, article 2 of Law 2472/1997 stipulates that for the purposes of this law, "sensitive data" means data related, among other things, to health. 2. Because the provision of article 4, paragraph 1 of Law 2472/1997 expressly states that: "Personal data to be lawfully processed must: a) Be collected in a legitimate and legal manner for specified, clear and lawful purposes and to be legitimately and legally processed in view of these purposes. b) To be relevant, convenient, and no more than is required each time in view of the purposes of the processing. (...)". 3. Because according to the provision of par. 8 sec. a and c of article 13 of Law 2696/1999 (Road Traffic Code) "The Minister of Transport and Communications, the prefects, as the case may be, or the authorities authorized by them may impose the re-examination of the driver's license holder, if they arise doubts about his fitness to drive or his medical review if doubts arise about his physical or mental condition. In these cases, the driving license of the referred driver for re-examination is withdrawn after the issuance of the decision for re-examination and is returned only if he is deemed competent. The manner and process of reviewing the drivers, as well as any other detail necessary for the application of the provisions of this paragraph, are determined by a decision of the Minister of Transport and Communications and of the competent minister as the case may be, and in the case of mopeds of the Minister of Public Order .». 4. Because according to articles 1 and 2 of Ministerial Decision no. ST-28171 "On the method of re-examination of car drivers and motorcyclists" (Government Gazette B'1190/1977): "1. Prefects are responsible for referring car drivers and motorcyclists for review. Especially in the Prefecture of Attica, the Deputy Prefects, Heads of its departments, are responsible. 2. The referral is acted upon by a justified decision of the Prefect issued following a proposal from the relevant Transport Service or the competent Directorate of Police, Deputy Directorate of Traffic or Gendarmerie Directorate. The proposal is addressed to the Prefecture, in whose region the referee has his permanent residence or residence, must be fully justified and state in detail the facts on which it is based. 3. The referral decision, whether it is a review of driving and traffic rules, or a medical review, will always state the time period within which the referred person must be re-examined. [...]. 7. If it is a medical review, the Secondary Medical Examination Committees of drivers are responsible." 5. Because, in the present case, the following emerges from the file's data: With the no. prot.

C/EIS/8858/07.12.2017 document question A requests from the Authority permission to process sensitive personal data.

Specifically, the applicant requests the said permission in order to present before the Directorate of Transport and Communications [region] X, in the context of a report-complaint that he wishes to submit against his ex-partner B, a medical certificate in his possession concerning the mental health of the latter, in order to decide to revoke her driving license. The applicant wishes to request the said removal of the driver's license from the above address in order to protect his minor children, as he claims that their mother due to a psychiatric condition mentioned in the above medical certificate (Bipolar Affective Disorder type II ), puts them at risk while driving. In addition, the applicant states that the removal of his ex-partner's driver's license due to a medical condition would help him support the custody action of their minor children, which he has filed against his ex-partner and is scheduled to be heard in regular court on ... . 6. Because the disputed medical certificate contains information referring to the mental health of the applicant's ex-partner and in this sense constitutes sensitive personal data, in accordance with the provisions of article 2 para. (b) of Law 2472/1997. 7. Because, from the above provisions, it is clear that the only competent services for the medical re-examination of drivers are the Secondary Medical Examination Committees for Drivers. The competent services of the respective regions, which do not have the authority to examine a driver's ability in relation to his physical or mental condition, refer to the said Committees for a medical review of driving ability. 8. Because, following these, in this case the Directorate of Transport and Communications [region] X is not responsible for the medical review of the applicant's ex-partner. The said Administration can only refer, according to the above, to the corresponding Secondary Medical Examination Committee in order for the latter to examine the physical or mental condition of the mentioned-complained driver. 9. Because, therefore, in the present case the said purpose of processing, i.e. the provision and submission of the disputed medical certificate

from the applicant to the Directorate of Transport and Communications [region] X

in order for his ex-partner to be deemed unfit to drive and, according to

extension, to take away her driver's license, is inconsistent with the provision of the article

4 pc. a' and b' of Law 2472/1997, as the agency in question is not responsible for

the medical review (physical and mental) of the drivers. Accordingly, the

presentation and submission of the disputed certificate before the above address

not required. On the contrary, competent to examine their medical condition

of reported-referred drivers according to the above are the Committees  
Secondary Medical Examination. Therefore, in a case in which the  
applicant to provide the disputed medical certificate to the above Service, h  
lastly it lacks the authority to review the abilities of the drivers, therefore  
and evaluation of the medical certificate. In the last case, the presentation  
of the medical certificate to the competent Service makes the relevant processing  
of sensitive data as not suitable for the intended purpose and therefore as  
illegal and in violation of the principle of proportionality.

10. Because, therefore, there is no need to consider the contribution of the others  
conditions for granting a license from the Authority.

#### FOR THOSE REASONS

The Authority rejects, for the reasons mentioned in its reasoning  
present, A's request for a license to process sensitive data  
personal data and especially a medical certificate concerning the ex-partner  
of, B, with the above content, in order to present it, for the reason  
referred to in the rationale, to the Directorate of Transport and Communications  
[area] X.

The president

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou