

(Department) The Personal Data Protection Authority met in composition Department at its headquarters on Wednesday 13.06.2018 upon the invitation of its President, in order to examine the case referred to in the present history. The Deputy President Georgios Batzalexis, obstructing the President of the Authority Constantinos Menoudakos, and the alternate members of the Authority Panagiotis Rontogiannis, Evangelos Papakonstantinou and Grigorios Tsolias, as rapporteur, in place of the regular members Antonio Symbonis, Konstantinos Lambrinoudakis and Charalambos Anthopoulos, appeared, respectively, who, although legally summoned in writing, did not attend due to disability. Present without the right to vote were Kalli Karveli, special scientist-lawyer, as assistant rapporteur, who left after the discussion of the case and before the conference and decision-making, and Irini Papageorgopoulou, employee of the department of administrative and financial affairs, as secretary . The Authority took into account the following: With no. prot. C/EIS/4892/26.06.2017 and C/EIS/8721/4.12.2017 reports to the Authority, A complains that the Medical Association of Athens (hereinafter I.S.A.) announced his sensitive personal data to the General Inspector of Public Administration (hereafter G.E.D.D.), without his prior information and 1 consent and requests the Authority to take action in order to impose the appropriate sanctions. In particular, he states the following: In I.S.A. he had submitted his application with reference number ... , requesting the granting of copies of specific administrative documents for judicial use from his archive. I.S.A. by decision of the Board of Directors rejected his request. Following this, the complainant submitted to the G.E.D.D. appeal requesting the annulment of the decision of the Board of Directors. of I.S.A. as improperly justified, and in particular because it did not contain the legally required justification regarding the fulfillment of the conditions set forth in the provision of article 17 of the Civil Procedure Code. In the context of investigating the appeal, the G.E.D.D. requested the opinions of the I.S.A., who with his letter no. ... communicated his opinions to the G.E.D.D., but in the relevant reply he included sensitive personal data of the applicant without his prior information and consent and without the Authority's prior permission. In particular, I.S.A. announced to the G.E.D.D. the information that the appeal before "[...] should be attributed to the pending criminal case against the applicant in which he is accused and is going to be tried for the acts of 1) disturbing domestic peace, 2) verbal abuse and 3) the attempt of illegal violence following a report by the Medical Association of Athens". Following these, the Authority, in the context of investigating the appeal, sent a document to provide clarifications to I.S.A., who in his reply to the Authority from ... and with order number ... (Authority order number C/EIS/8037 /09.11.2017) reported that a) I.S.A. had a legal obligation to notify the G.E.D.D. the

bringing of criminal proceedings against the applicant for a case that is not merely related, but of identical content, limiting itself to the absolutely necessary reference, without attaching documents from the case file, b) in particular in accordance with the provisions of article 5 of Law 3074/2002, the services must provide all the necessary information for the work of the Inspectors of Auditors and Assistant Inspectors of Auditors that are compulsorily available to them and facilitate them in every way, and the failure to provide the requested information, the concealment of it, or the provision of inaccurate data constitutes an independent disciplinary offense and c) the appellant insists on 2 corresponding applications, as well as prosecutorial orders, which were revoked as clearly abusive after a request from the I.S.A. Following this, the Authority with summons No. G/EX/3156/25.04.2018 and G/EX/3157/25.04.2018 respectively invited I.S.A. and the appellant A, to attend the meeting of the Department of the Authority on 09.05.2018, in order to discuss the appeal of A. During the hearing on 09.05.2018, the appellant A, in person, and Eleni Papaevangelou, attorney for I, attended. S.A., who, after orally developing their opinions, then submitted respective memoranda No. C//EIS/3682/15.05.2018 and C/EIS/3699/16.05.2018 to the Authority. The appellant, during the above hearing of 09.05.2018, but also with his memorandum No. C//EIS/3682/15.05.2018, stated that the I.S.A. announced his sensitive personal data to G.E.D.D. without his prior information and consent and without the Authority's prior permission. The attorney-at-law of I.S.A. during the above hearing of 09.05.2018, but also with her memorandum No. C/EIS/3699/16.05.2018, she stated that a) the I.S.A. acted in accordance with the principle of proportionality in the context of his defense before the G.E.D.D. disclosing only the fact of criminal prosecution, without attaching documents from the case file, b) the specific information was directly related to the subject of the appeal before the G.E.D.D., as with this the appellant complains about the rejection of his request for documents related to the legal dispute between them and c) the G.E.D.D. it should not be considered a third party, in view of the fact that based on the provisions governing its competence and its extent, it should be considered a quasi-Prosecutor of the Public Administration, which is bound by confidentiality. The Authority, after examining the elements of the file, the hearing process and after hearing the rapporteur and the assistant rapporteur, who left after the discussion of the case and before the conference and decision-making, after a thorough discussion 3 CONSIDERED THE LAW 1. According to the provisions of article 2 item. b' of Law 2472/1997, sensitive personal data include those related to criminal prosecutions or convictions. Also according to article 4 par. 1 item b' and c' of Law 2472/1997, personal data must be relevant, relevant and no more than is required each time in view of the purposes of processing, as well as being accurate and if necessary updated. Therefore, data which are not necessary for the purpose of the processing are not lawfully processed.

Even in accordance with the provisions of article 5 par. 1 of the aforementioned law, the processing of personal data is permitted only when the data subject has given his express consent, unless one of the exceptions provided for in par. 2 of the same article applies obligation to obtain consent, such as the statutory obligation of the controller. Furthermore, in accordance with the provisions of article 7 par. 2 item. c of the same law, the collection and processing of sensitive data is exceptionally permitted after authorization from the Authority, as long as the processing is necessary for the recognition, exercise or defense of a right before a court or disciplinary body, while according to article 11, the person responsible processor must inform the data subject during the collection stage and before the transmission of his data to third parties. Finally, the Authority may impose on the data controllers, as an administrative sanction for breach of their obligations, a warning to remove the breach (Article 21 par. 1 letter a' of Law 2472/1997).

2. The following emerged from the information in the file and from the hearing: Appellant A submitted to the ISA his application No. ... requesting the granting from the file of the I.S.A. copies of certain administrative documents for judicial use. I.S.A. by decision of the Board of Directors rejected his request. Following this, the complainant submitted to the G.E.D.D. appeal requesting the annulment of the decision of the Board of Directors. of I.S.A. as improperly justified, and in particular because it did not contain the justification required by law 4 regarding the fulfillment of the conditions defined by the provision of article 17 of the Civil Procedure Code. In the context of investigating the appeal, the G.E.D.D. requested the opinions of the I.S.A., who with his document no. prot. by the G.E.D.D.) in the said document and sensitive personal data of the applicant regarding pending criminal prosecution against him and in particular the information that the appeal before the G.E.D.D. "should be attributed to the pending criminal case against the applicant in which he is accused and is going to be tried for the acts of 1) domestic disturbance peace, 2) verbal abuse and 3) attempted unlawful violence after report of the Medical Association of Athens".

3. Because in the case under consideration, according to the aforementioned, I.S.A. notified on his own initiative to G.E.D.D. sensitive personal data of the applicant regarding pending criminal proceedings against him, without that is to ask him for the specific information directly or indirectly (e.g. as answer to a question from the G.E.D.D. on any motivation for the submission of said appeal), moreover, without the prior information of the appellant and

without prior authorization from the Authority, in violation of the provisions of articles 4

par. 1 f. b', 7 par. 2 item c' and 11 par. 3 of Law 2472/1997.

It should be noted that the appeal before the G.E.D.D. it was about the non satisfaction from I.S.A. of the applicant's request for access to documents intended for judicial use and respectively the G.E.D.D. investigate the reasons for not satisfying said request. The I.S.A., as it appears from his document No. ..., after providing explanations to the G.E.D.D. on of the researched by the same subject, explaining the reasons why not granted the requested documents, noted in the last paragraph:

"Remaining at your disposal for any further clarifications, you should note that in our opinion the appeal before you should be completely to be attributed to the pending criminal case against the applicant...".

From the above wording it follows that after the completion of the explanations provided by I.S.A. in G.E.D.D. on the subject under investigation, with his own initiative and without being asked by the G.E.D.D., he chose, as defensive tactic, to shake the credibility of said appeal by attributing it to

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"pending criminal case against the applicant", announcing at the same time his sensitive personal data.

The Authority lacks the authority to judge the defensive options of I.S.A. and of the necessity or not to act in accordance with them at extrapolated. However, in the event that the data controller in as part of his defensive tactics he wishes to process of sensitive personal data concerning criminal prosecutions, application the provisions of art. 7 par. 2 sec. c' L. 2471/1997, according to which such processing is permitted for the exercise or defense of a right

before a court or disciplinary body, and was acting as such in this matter

the G.E.D.D. provided that the Authority granted upon request relevant permission.

In this case, however, I.S.A. did not submit an application to the Authority for granting a license according to art. 7 par. 2 sec. c' Law 2472/1997 in order to disclose his/her sensitive personal data related to criminal prosecution applicant in the G.E.D.D., and on behalf of the I.S.A. invocation of the legislative provisions for the auditing powers of the G.E.D.D. is not sufficient in itself for the legal disclosure of sensitive personal data without prior notice permission of the Authority. It does not appear from the file that G.E.D.D. asked the I.S.A., in the context of exercising its auditing powers, to be informed about it existence of any criminal prosecution against the applicant.

And on behalf of I.S.A. reference in his memorandum, under no. 1683/16.3.2010 of the Authority's document in its annual report for the year 2010, which concerns the audit responsibilities of the Health Expenditure Audit Service Social Security Agencies (YPEDYFKA) and its processing of personal data in the context of its auditing powers without the prior permission of the Authority, is essentially different from the present case. And this is because in that case, on the one hand, the provision of the article was applicable 7 par. 2 sec. d' Law 2472/1997 on the processing of sensitive personal data health data and not personal data related to criminal prosecutions.

On the other hand, the provision of article 7 par. 2 sec. d' Law 2472/1997, which does not apply in this case, it expressly provides for the exceptional processing of health data without the prior permission of the Authority and furthermore expressly provides that "for the application of this provision the courts and public authorities are not considered

as third parties, if the transmission or notification is required by law or a court order"

(similarly, APDPX 116/2017 available at [www.dpa.gr](http://www.dpa.gr)).

#### FOR THOSE REASONS

The Authority issues a warning to the Medical Association of Athens to processes sensitive personal data related to criminal prosecutions, of which he became aware on the occasion of a pending criminal trial in which he is participating, respecting the existing legislation for the protection of personnel data character and having previously informed the data subjects for this transmission.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou