

PERSONAL DATA PROTECTION AUTHORITY Athens, 05-09-2018 Prot. No.: C/EX/7203/05-09-2018 A P O F A S I NO. 58 / 2018 (Department) The Protection Authority D of a Personal Character met as a Department composition at its headquarters on Thursday 26.07.2018 at 10:00, following the invitation of its President, following its regular meeting from 21.03.2018, in order to examine the case referred to in the history of this . Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Konstantinos Menoudakis, was present, the substitute members Panagiotis Rontogiannis, Grigorios Tsolias as rapporteur, and Evangelos Papakonstantinou to replace the regular members Antonios Symvonis, Charalambos Anthopoulos and Konstantinos Lambrins who, respectively, and were legally summoned in writing, did not attend due to obstruction. Present without the right to vote were Elena Maragou, special scientist-auditor, as assistant rapporteur and Irini Papageorgopoulou, employee of the Department of Administrative and Financial Affairs, as secretary. The Authority took into account the following: With no. of the Authority C/EIS/5894/03.08.2017 his document A resident of [area] F through the attorney of B. Sotiropoulos submitted to the Authority an appeal against the no. first ... from ... decision of the Director of Urban and Municipal Affairs of the Ministry of the Interior, by which 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa .gr -2- his request regarding the revival of his birth certificate was rejected following a relevant decision issued by the Minister of the Interior regarding the annulment of the decisions of the Secretary General of Decentralized Administration based on which a previous decision of the Secretary General of the former Region of Attica regarding acquisition was revoked of the Greek citizenship of B (A). In particular, with the no. first ... declaratory decision of the former Regional Governor of Attica, it was established that B who was born in [region] X on ... acquired Greek citizenship from ... because he has a Greek father, C. Subsequently, with no. ... decision of the former Prefecture of Athens, it was decided to register him in the Male Register of the Municipality of Athens. Furthermore, with the no. ... decision of the former Prefecture of Athens, it was decided to change the surname and first name of the applicant from B to A. Subsequently, it was drawn up in the Special Registry of Athens under no. ... , volume ... , year .... birth certificate of A, which is based on an official translation of the Greek Ministry of Foreign Affairs document of the Government [...] of [region] X with the subject "Translation of Birth Certificate". However, with the no. first ... from ... decision of the General Secretary of Decentralized Administration revoked the declaratory decision on the acquisition of Greek citizenship by A. Also, with the decision no. ... by ... decision, the decision on registration in the Male Register of the Municipality of Athens and on the change of surname was annulled. Following this, the birth certificate of A was also annulled. Against these annulment decisions, the appellant appealed with the special

administrative appeal of art. 8 of Law 3200/1955 in combination with Art. 1 par. 2 of Law 2503/1997 and art. 6 par. 2 of Law 3852/2010 before the Minister of the Interior requesting the revocation of the above decisions of the Decentralized Administration of Attica. With the no. first ... from ... decision the Minister of the Interior after rejecting a series of claims of the applicant, finally accepted the appeal of A citing reasons of good administration and justified trust of the citizen taking into account that on the one hand, the Administration does not prove malice on the part of L. Kifisias 1- 3, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr) -3- of the governed and, on the other hand, that the revocation affects already established rights of major importance both of the governed and of the members of his family. After the sixty (60) day deadline for filing an application for annulment against the decision of the Minister of the Interior expired and the decision became irrevocable, the applicant submitted an application to the Department of Civil & Municipal Affairs of the Ministry of the Interior requesting apply the decision of the Minister of the Interior and "revive his birth certificate". In this sense, he requested, as he later claimed before the Authority, the correction of his personal data, which the Registry maintains, and their updating. This request is, according to his later claim, an exercise of the right to object of article 13 in combination with article 4 par. 1 of Law 2472/1997. In response to this request, the no. first decision ... by ... of the Director of Urban and Municipal Status of the Ministry of the Interior on the subject of "Revival of birth certificate", which rejected his request regarding the revival of his birth certificate. In the decision, the provision of art. 42 par. 2 of Law 344/1976 as amended and in force, according to which notarial acts of Greek citizens who have Greek citizenship by birth and not by act of recognition can be registered in the Directorate of the Special Registry, as is the case of A, which makes the request to revive the notarial deed impossible. Against this rejection decision, A filed an appeal before the Authority with a request to examine his objections. In his appeal, he argues that, contrary to what is stated in the rejection decision of the Directorate of the Special Registry Office, he does not request the drawing up of a new registry act or the registration of a registry act of recognition, but the revival of the canceled birth registry act in accordance with art. 21 and 24 of Law 2690/1999 (KDDiad.), according to which the body responsible for revoking an individual administrative act is the one that issued it or is responsible for its issuance. The refusal of the Directorate of Urban and Municipal Status 1-3 Str. Kifisias, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr) -4- Urban and Municipal Status constitutes in the opinion the violation of the provisions of art. 4 of Law 2472/1997, as the controller does not comply with the obligation to process his personal data accurately and up-to-date, given that he does not implement the decision of the Minister of the Interior revoking the cancellation of his birth

certificate. For this reason, it asks the Authority to intervene in order to correct the data of the case so that they become accurate and in their current form and to order the Department of Urban and Municipal Situations of the Ministry of the Interior to comply with the provisions of art. 4 par. 1 of Law 2472/1997, in order to make it possible to obtain a copy of the birth certificate with accurate information, to be re-registered in the male register of the Municipality of Athens and to further make it possible to issue travel documents given that the passport has been canceled of and has been trapped in [region] F. A and the Ministry of Interior were legally summoned, with the no. prot. C/EX/2004/12.03.2018 and C/EX/2005/12.03.2018 documents, respectively, in a hearing before the Authority at the meeting of the Department on 21.03.2018, to provide further clarifications and present the opinions thoroughly them on the above. At the meeting of 21.03.2018, V. Sotiropoulos as A's attorney and D, [...] as a representative of the Ministry of the Interior, were legally present. During the hearing, the above representatives presented their views orally and requested and received a deadline to submit a memorandum. Subsequently, A and the Ministry of the Interior submitted, in a timely manner, relevant memoranda with no. Authority letter C/EIS/2472/28.03.2018 and with no. prot. ... and date ... (Authority prot. no.: C/EIS/2519/29.03.2018), respectively. Among other things, the following are noted in said memorandums: The Ministry of the Interior states in its memorandum that the Special Registry Department revoked the ... act, which is located in the volume ... of the year ..., page ..., with the date of declaration ... and which in heading instead of "Registrar Certificate of Birth" reads "Registrar Certificate of Recognition" and not "identification report", while in the body of the document it is written that "it was copied from 1-3 Kifisias Street, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628 , [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr) -5- the registry deed of recognition ... of Registrar E village Ps". The child was voluntarily recognized by the father with his statement from ... before the Registrar of [region] Ψ, as it appears from the Registry Act of birth with the date of issue ... . However, following the publication of no. first ... from ... decision of the Minister of the Interior by which A's appeal against the decisions of the Secretary General of the Decentralized Administration was accepted, the Department of Urban & Municipal Affairs of the Ministry of the Interior was informed by an inter-service document of the Ministry of Foreign Affairs of the existence of further untrue details, which are included in the foreign birth certificate of B (A). In addition, the Department of the Special Registry Office of the Directorate of Civil & Municipal Status underlines that it is responsible for the registration of all notarial acts, which concern Greek citizens as well as for the registration of notarial acts drawn up abroad after a previous check, while in cases birth of a child out of wedlock by a Greek father and a foreign mother, which is recognized by the father at a later date than the birth (by voluntary or judicial decision)

the Special Registry draws up a Recognition Report after the issuance of a declarative decision by the competent Decentralized Administration regarding the child's citizenship . In this regard, a person recognized voluntarily or with full judicial recognition as the child of a Greek before reaching the age of 21 becomes a Greek from the recognition and therefore it is not the responsibility of the Special Registry Office to transcribe the birth certificate of the person concerned. In this particular case, the Ministry of the Interior argues, on the one hand, that the alleged Registry deed of recognition of a child before the Registrar of [region] X, on the basis of which the registration in the Special Registry was carried out, does not produce legal results, nor does it constitute recognition according to the applicable national law, and on the other hand, that contrary to the claims of the appellant, the registration in the Special Registry was not made following the verification of Greek Citizenship as the date of issuance of the relevant verification decision of the former G.G. of Attica Region is five days after the registration in the Special Registry Office. 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr) -6- In his memorandum, A mentions, among other things, in order to argue in favor of the competence of the Authority in this case, that the notarial entries on the documents which constitute notarial acts constitute manual processing of personal data, which are contained in a file, within the meaning of Law 2472/1997 and, at the same time, it invokes as relevant the ' No. 134/2001 decision of the Authority, by which it was accepted that the details of natural persons kept by the registries and subject to processing in accordance with the provisions of Law 344/76, for the purpose referred to in Article 8 thereof, constitute data of a personal nature and fall within the scope of Law 2472/97. It should be noted that the Authority with no. 134/2001 ruled on the necessity of including or not religion in the content of a registry act issued by the Municipality. Furthermore, it states that the legal basis of said processing is Law 344/1976 on notarial acts, which regulates notarial acts, which are carried out by the Registrar as the person in charge of processing, while the supervising Prosecutor is responsible for granting permission correction only in the cases of art. 13 of Law 344/1976. In this context, the appellant, presenting the Ministerial Decision canceling the two decisions revoking his citizenship and his name, requested with his application from the Special Registry Office to update his data and to register the change in the information system of art. 8A of Law 344/1976 thus exercising, as he claims, the right of objection of art. 13 of Law 2472/1997. According to his same claims, the refusal of the data controller on the grounds that notarial acts of Greeks who have Greek citizenship by recognition act, such as the one in question, are not registered, is incorrect, as registration is not requested but the change of the already existing and registered notarial act . In addition, it is noted in the memorandum that the examination of this case by the Authority does not contradict

the jurisprudence of the Supreme Court, according to which 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr) -7- the Authority does not have the authority to diagnose factual incidents and to make judgments about the legality or otherwise of other factual incidents that do not concern the processing of personal data but constitute by their nature a jurisdictional judgment, given that no such judgment is required by the Authority as there is a final judgment of the Minister of the Interior. This constitutes, after all, the final binding judgment on the legality of the initial registration according to art. 26 par. 2 of the Constitution, as an individual administrative act, which cannot be overturned or revoked by lower administrative bodies including the Special Registry, which has not challenged the Ministerial Decision. Finally, he points out that the applicant, due to the inability to issue official identification documents, cannot grant the required notarial power of attorney to represent him before a court of annulment, in order for justice to judge the refusal of the Registry Office to update his information, thus making the Authority as the only available means of providing legal protection. The Authority, after examining all the elements of the file and referring to the minutes of its meeting held on 21.03.2018, after hearing the rapporteur and the clarifications of the assistant rapporteur, who then left before the conference and the decision-making, and after a thorough discussion discussion, **CONSIDERED ACCORDING TO THE LAW 1. Article 2 par. a' of Law 2472/1997**, defines that "personal data" is "any information that refers to the subject of the data". "Data subject" is "the natural person to whom the data refer, and whose identity is known or can be ascertained, i.e. can be determined directly or indirectly, in particular based on an identification number or on the basis of one or more specific elements that characterize the his condition from a physical, biological, mental, economic, cultural, political or social point of view". 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr) -8- In the same article also (item d) it is defined as the processing of personal data "any task or series of tasks carried out by the State or by a legal person of public or private law or an association of persons or a natural person with or without the aid of automated methods and applied to personal data, such as the collection, registration, organization , the retention or storage, modification, export, use, transmission, dissemination or any other form of disposal, association or combination, interconnection, binding (locking), deletion, destruction". 2. According to article 2 par. g' of Law 2472/1997, as controller is defined as "anyone who determines the purpose and manner of processing personal data, such as a natural or legal person, public authority or agency or any other organization. When the purpose and manner of processing are determined by provisions of law or regulatory provisions of national or Community law, the controller or the specific criteria on the basis of which he is selected shall be determined

respectively by national or Community law. 3. In accordance with Article 4 of Law 2472/1997, personal data to be subject to legal processing must: "a) Be collected in a legitimate and legal manner for defined, clear and legal purposes and be legitimately and legally processed in view of the these purposes. b) To be relevant, convenient, and no more than is required each time in view of the purposes of the processing. c) To be accurate and, if necessary, to be updated. d) To be kept in a form that allows the identification of their subjects only during the period required, at the discretion of the Authority, for the realization of the purposes of their collection and processing..." 4. According with the article 5 of Law 2472/1997 data processing is permitted only when the subject has given his consent. The processing of personal data without the consent of their subjects, is exceptionally permissible, only in the event that one of the exceptional bases of legality of the processing of paragraph 2 of the same article is met, which states that: "With the exception of L. Kifisias 1 -3, 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr) -9- processing is permitted even without consent, when: ... b) The processing is necessary for the fulfillment of the controller's obligation, which is imposed by law...". 5. According to article 13 of Law 2472/1997, the data subject has the right to object at any time to the processing of data concerning him. Objections are addressed in writing to the controller and must contain a request for specific action, such as correction, temporary non-use, retention, non-transmission or deletion. The controller has the obligation to respond in writing to the objections within an exclusive period of fifteen (15) days. In his reply, he must inform the subject of the actions he took or, possibly, of the reasons he did not satisfy the request. The response in case of rejection of the objections must also be communicated to the Authority. If the controller does not respond in time or his response is unsatisfactory, the data subject has the right to appeal to the Authority and request the examination of his objections. 6. Furthermore, Law 344/1976 on notarial acts regulates the matters related to notarial books and entries. Specifically, according to art. 8A. "1. An Information System for the Management of Registry Acts is created at the Ministry of the Interior and a central database is maintained. Only accredited users are allowed to enter this system through access codes assigned by the Department of Computerization and Electronic Data Processing of the Ministry of the Interior. Accredited users enter the information system to register, search, modify, process, monitor and print all notarial acts issued by the local competent notarial offices of the country. 2. The Department of Urban and Municipal Affairs of the Ministry of the Interior ensures the provision and management of the data required for the operation and continuous updating of the central database of the previous paragraph. 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr) -10- 3. The General Secretariat of Information Systems, the Criminal Record Services

of the Ministry of Justice , Transparency and Human Rights, the public limited company "Electronic Governance of Social Security Public Limited Company" (H.D.I.K.A. S.A.), the Hellenic Statistical Authority (EL.STAT.), the National Organization of Health Services (EOPYY), as well as any other accredited body, automatically extract citizens' registry data from the central database exclusively for the exercise of their responsibilities. By decision of the Minister of the Interior, other accredited bodies may be specified that draw information from the central database of paragraph 1. 4. The notarial deeds are printed exclusively by the Information System for the Management of Notarial Deeds and carry a security feature that is automatically generated by the information system ». In the article 14 of the same law defines that "Changes that occur in the status of the natural person after the drafting of the registry acts due to legalization, recognition, repudiation, dispute, infringement of paternity, adoption of a child and its termination, dissolution or annulment of a marriage, termination of a cohabitation agreement, addition or change of name, surname, nationality, religion or "gender correction" and are registered in the field of the information system of article 8A marked "Changes" within one month from the time they took place upon presentation of the relevant administrative act or certificate irreversibility of the relevant court decision". 7. In the present case, the appellant submitted an application to the controller, i.e. to the Department of Urban and Municipal Affairs of the Ministry of the Interior, with which he expressly requested the "execution of the ministerial decision which accepted his appeal against the decision of the Decentralized Administration...so as to revive the birth certificate of A" in accordance with the provisions of article 14 of Law 344/1976. In addition, the applicant attributes to this application the characterization of the written objection of article 13 of Law 2472/1997 in order to update the data concerning him, although it does not appear from its content that the exercise of 1-3 Kifisias Street, 11523 Athens , Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr) -11- said right of objection, which does not need to be exercised in a solemn way, but must include a specific request, such as e.g. data correction. The appellant requests the Authority to order the Department of Urban and Municipal Status of the Ministry of the Interior to update his personal data held in the Registry's file in accordance with the above and therefore requests the Authority to order the execution of said Ministerial Decision. From the provisions of the current legislation on the protection of personal data and in particular from the provisions of Law 2472/1997, it follows that the Authority does not have the authority to order the execution of a Ministerial Decision. Moreover, it becomes obvious that the subject of this appeal exceeds the limits of the legislation on the protection of personal data. In particular, although there is a relevant judgment of the Administration in the form of the Decision of the Minister of the Interior, which annuls the previous decisions of the Administration to revoke the

applicant's citizenship, the fact that the competent service, which is subject to the Ministry of the Interior, disputes the legality of the original birth certificate, rather it disputes the birth certificate itself, which is indeed headed "recognition certificate" instead of the correct "recognition report", further arguing that the protocol number of the copy of the relevant certificate which attached by A to his appeal does not correspond to the service's registration system in addition to the fact that it is headed "birth certificate", it makes clear that the issues that arise exceed the limits of the protection of personal data and the judgment in which he can legally carried out by the Authority. Reinforcing the Authority's judgment of its incompetence is the fact that, as appears from the Decision of the Minister of the Interior accepting the applicant's appeal, "the case was referred to the Court of Justice, in order to investigate the possible commission of criminal acts of certificate forgery and the usurpation of a false certificate by C", event at 1-3 Kifisias Ave., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr)

-12- which is also mentioned the appellant in his memorandum, pointing out that the presumption of innocence applies as no relevant court decision has been issued, nor does he "accept the accusations of illegal initial registration of his notarial deed". Finally, the Authority's judgment of its incompetence is reinforced by the claims of the Directorate of Civil and Municipal Status:

a) on the incompetence of the Special Registry Office to transcribe the birth certificate of a child recognized before the age of 21 by a Greek, as well as the questioning of the claim of the applicant that the registration in the Special Registry was carried out following the establishment of Greek citizenship, b) on questioning the validity of the decision of the Minister of the Interior due to its non-publication in the Government Gazette. 8. Furthermore, the Authority with no. prot. 1200/24.05.2004 and 1201/24.05.2004 its acts had dealt with a similar issue concerning the accuracy of the data contained in registry acts according to art. 4 par. 1 of Law 2472/1997, judging that, on the one hand, it is a related obligation of the data controller to comply with the obligations of this article, on the other hand, that if doubts remain and for this reason the data controller refuses to make a correction, must, in accordance with the corresponding application of the provision of article 791 of the Civil Code, summarize the refusal and the reasons in the relevant book. And the pendency created by the refusal is lifted by a decision of the court in the district in which the Registry Office is located, at the request of anyone with a legal interest. For all the above reasons, the Authority lacks the competence to rule on the appeal in question, as otherwise it would be engaged in resolving issues of civil, administrative and criminal jurisdiction. FOR THESE REASONS 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr)

-13- The Authority rejects A's appeal due to lack of jurisdiction. The Deputy President The Secretary Georgios Batzalexis Irini Papageorgopoulou 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210



