PERSONAL DATA PROTECTION AUTHORITY Athens, 03-07-2019 Prot. No.: C/EX/4722/03-07-2019 A P O F A S I 20/2019 (Department) The Personal Data Protection Authority met in composition Department at its headquarters on Wednesday 15.05.2019 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, respectively, were present, who , although they were legally summoned in writing, they did not attend due to disability. Present without the right to vote were Kalli Karveli, specialist 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 Authority's administrative affairs department, as secretary . The Authority took into account the following: With the no. prot. C/EIS/5577/22.06.2018 her complaint to the Authority A, through the proxy of her husband B, complains that the Unified Social Security Agency/Directorate of Medical Assessment (hereinafter EFKA) and the Disability Certification Center (hereinafter KE.P .A.) falsified her medical data with the aim of preventing her access to the benefits provided for her condition, inventing and attributing to her by issuing a relevant certification decision a) a different condition than the one with which she had been diagnosed, b) disability and characteristics related to the fabricated condition, c) rate of disability related to the fabricated condition, and d) duration of disability also related to the fabricated condition. She also complains that despite exercising her right to object by submitting an appeal to the competent secondary health committee for the change and falsification of her condition, her inaccurate personal data was never corrected. In particular, as appears from the relevant documents attached to the complaint, A submitted an application for certification of her disability to the KE.PA.A. on ..., in order to receive various benefits from the competent services due to disability. Subsequently, it was examined by the Honorable Health Committee of specialty ... and was issued under no. … Notice of Result of Disability Certification, according to which he was assessed for the disease of “severe disorder … ”, with a total rate of disability of ..% for a period of … (…-…), in order to be re-examined. Against this opinion, the complainant filed an appeal on ... before the Secondary Commission of the KE.P.A. disagreeing with the medical assessment-opinion as well as with the rate of disability with which her degree of disability was assessed and requesting that her request be re-examined based on the file she initially filed, but without correcting, as she claims, the inaccurate data of the condition and the disability rate. This request concerned the re-evaluation of her condition by the

Second Committee, in accordance with the current medical science, and did not contain a request to correct or delete data. Following this, with her complaint to the Authority she first complains because the K.E.P.A. falsified her medical data, without taking into account the diagnosis of C's treating physician, inventing and attributing to her a) a different condition than the one with which she had been diagnosed (... disorder in ...), b) disability and characteristics related to a fabricated condition, i.e. to some "serious disorder ...", c) rate of disability related to the invented condition (...% instead of ...%) and d) duration of disability also related to the invented 2 disease/disorder ... instead of lifetime. For the relevant issue, the complainant also filed a complaint with the Ombudsman, the Ministry of Labour, the Inspector General of Public Administration and the United Nations Commission on the Rights of Persons with Disabilities, as well as a lawsuit against the doctors of the K.E.P.A. for breach of duty, which is at the stage of preliminary examination, and a lawsuit (Articles 105 and 106 EISNAK) against EFKA before the Three-member Administrative Court of First Instance of Athens for compensation due to moral damage. The Ombudsman put the case on file, on the grounds that the issue has been brought before the competent courts. Also, with her complaint to the Authority, she claims that a) the Ombudsman kept silent, covered up, misinterpreted and did not report, as he should have, the falsification of her medical file and her exclusion from the rights deriving from her certification as a person with ... , b) the National Confederation of Persons with Disabilities, despite being informed in writing with evidence, kept silent, covered up and did not report the falsification of its personal data and c) the Ministry of Labor and Social Security transmitted falsified and false information to the UN. , developing an argument in defense of offending physicians. The complainant specifically requests the Authority: 1) to search and receive on her behalf any personal data held and processed by the Ministry of Labour, Social Security and Social Solidarity and the EFKA in the context of her request for certification of her condition as a disability (right of access), 2) to oblige the Ministry of Labor and the Administration of the EFKA to issue a correct decision certifying her disability, in accordance with her diagnosed condition (right of correction), 3) to oblige the Administration of the EFKA to revoke and permanently delete from its records the decision of the Honorable Health Committee of ... and the conclusion of the sample control, notifying the decision on definitive and irreversible deletion both to itself and to the attending physician (right to be forgotten), 4) to compel the Administration and anyone involved to stop the further processing of its personal data, 5) to impose the appropriate sanctions to all those involved, 6) to inform the Ombudsman, in order to shake up the issue, which he raised in the file, 7) to communicate the decision or its relevant opinion to the UN 3 Committee on the Rights of Individuals with Disabilities, 8) to ensure that the original Opinion-Certificate of her treating

physician, C, contained in the KEPA referral file, is returned to her, 9) to inform C, as the subject of the data, of the consequences of the falsification by third parties of data that he provided to his patient, 10) to check the compliance of EFKA with the GDPR and 11) to give an opinion on the anonymity status of the Health Committees and the Sampling Control Committees of the KE.P.A. . The Authority, in the context of investigating the complainants, sent on 20.9.2018 the under no. prot. C/EX/5577-1/20.9.2018 letter to EFKA/KE.PA. for providing clarifications regarding the complaint, which in no. first ... his answer stated that the result of the primary health crisis was finalized, since it was not possible to legally review it by the competent Secondary Health Committee, due to the complainant's refusal to attend and provide the necessary clarifications to the members of the Committee. It also attaches the conclusion of the sample check carried out by the competent Committee on ... regarding the correctness or otherwise of the primary health crisis, according to which a) "there is no evidence in favor of the diagnosis of a disorder of..." and b) "the insured could appeal to an appellate body, asking for the correction of any erroneous judgment …. and even now the patient can be subjected to special and/or diagnostic tests for accurate differential diagnosis". Following the aforementioned, the Authority invited the complainant to the Department during the meeting of ……2018 to provide clarifications regarding the case. At this particular meeting, Mr. Christos Dimitriou, the complainant's attorney, was present, who, both during the hearing and in the case no. prot. C/EIS/158/10.01.2019 his memorandum filed with the Authority stated the following: 1) the Primary Health Committee of the K.E.P.A., a) without the knowledge of A, carried out a new independent medical procedure ("diagnosis" and certification), without being authorized to do so. More specifically, she formed a diagnosis of her likeness and relied on it to then give an opinion on the duration and rate of disability of her likeness, b) she did not limit herself to her task, which is to give an opinion on the rate and duration of the 4 disability that correspond, on the basis of the Uniform Table of Certification of Disability Rate in force at the time, to A's diagnosed condition which is ..., but he completely ignored the applicant's referral file and the diagnosedher illness and performed the duties of a treating physician, 2) there was no way for the Secondary Committee to correct the falsification of A's medical data and this is proven by the conclusion of the Sampling Control Committee, which validated the action of the Primary Committee, attempting to to grant amnesty, and the sampling test and its conclusion took place after a lawsuit and appeal had been filed with the United Nations and the Greek government had been called to provide explanations, 3) this conclusion was drawn up without the knowledge and absence of A with the addressee being the ... of the Ministry Work, which proves that the conclusion was drawn up for this reason and with the intention of the Greek government using it to stop the appeal of A's husband before the United Nations,

and in essence legally and technically it is not a medical certificate or an administrative act, but constitutes a internal control document of the administration, 4) the aforementioned conclusion includes a psychiatric profile and medical diagnosis of a person that they never examined and did not have the authority to examine, and the administration of EFKA/KE.PA. suggested to the government the use of this finding before the United Nations, 5) A participated in an interview for barely a quarter of an hour by the Primary Health Committee of the KE.PA.A., 6) if the Primary Health Committee of K.E.P.A. intended to carry out her legal duty and needed to obtain more specific and detailed information about A's life and difficulties, she could either reserve the right to request additional information from her attending physician or invoke the same lack of judgment due to lack of expertise and to refer to a Committee of purely specialized psychiatrists-neurologists, 7) the EFKA (the K.E.P.A. has no organizational autonomy) when it receives a request for disability certification, it receives with the referral file personal health data that have been issued by structures of the Ministry of Health or private doctors. EFKA, based on this health data and using the Uniform Table for Determining the Disability Rate, in turn extracts disability data. Any interference with health data is not permitted by law and would require the prior information and consent of both the patient and the attending physician, 8) the way in which EFKA acted in the case of A was the complete falsification of her health data which were contained in the certificate of C and of the public health structure of ... Hospital X, which constitutes an act of mental forgery and raises questions of criminal responsibility, 9) A expected from the KE.PA.A. to determine the statutory rates and duration of her disability in relation to her diagnosed condition, which is ... , and under these conditions and with this expectation she approached the KEPA, and to this end she also filed the proposal file that indicates and requires the KE.PA.A., and never gave an authorization to the KE.PA.A. to create new data concerning her state of health and neither does the KEPA have such authority and possibility, and finally, 10) overall, the actions of the KEPA. were done outside and beyond the clear and strict context of A's request and without her ever being informed of these actions. The Authority, after examining the elements of the file, the hearing and after hearing the rapporteur and the assistant rapporteur, who withdrew after the discussion of the case and before the conference and decision-making, after a thorough discussion, CONSIDERED LAW 1) According to article 2 par. d of Law 2472/1997, processing of personal data is any task or series of tasks carried out by the State or by a legal entity of public or private law or an association of persons or a natural person with or without the help of automated methods, such as collection, registration , organization, retention or storage, modification, export, use, transmission, dissemination or any other form of disposal, association, combination, interconnection, binding, deletion, destruction of personal data. The data

controller must, both at the stage of collecting personal data and before transmitting it to third parties, inform the data subject in a clear and appropriate manner about the personal data he is processing as well as about his rights (Article 11 of Law 2472/1997). In particular, the controller must inform the data subject of at least the following information: his/her identity and the identity of any representative, the purpose of processing, the recipients or categories of recipients of the data and the existence of the right of access (Article 11 par. 1 section a' of Law 2472/1997). Also, in accordance with the provisions of article 12 of Law 2472/1997, the data subject has the right to know at any time whether personal data concerning him are or have been the subject of processing, while if the controller does not respond within fifteen days or if his answer is not satisfactory, the data subject has the right to appeal to the Authority, in the event that the data controller refuses to satisfy the interested party's request, he communicates his answer to the Authority and informs the interested party that he can appeal to her (art. 12 par. 4 of Law 2472/1997). At the same time, the data subject has the right to object at any time to the processing of data concerning him (article 13 par. 1 of Law 2472/1997). Objections are addressed in writing to the controller and must contain a request for specific action, such as correction, temporary non-use, blocking, non-transmission or deletion. The controller has the obligation to respond in writing to the objections within an exclusive period of fifteen (15) days. 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 (par. 2 of article 13 of Law 2472/1997). Furthermore, according to the provisions of article 19 par. 1 sec. f of Law 2472/1997, the Authority imposes the administrative sanctions according to Article 21 of the Law, one of which is a warning to the data controller or to his representative, if any, to remove the violation of his obligations, according to par. 1 pc. a' of this article (article 21 of Law 2472/1997). 2. From the information in the file and the hearing process, the following emerged: A submitted an application for certification of her disability to the KE.PA. on ..., in order to receive various benefits from the competent services due to disability. Subsequently, it was examined by the Psychiatrists' Specialty Health Committee and the no. … Notice of Disability Certification Result, according to which he was assessed for the disease of "… 7 disorder …", with a total disability rate of ..% for a period of one year (…), in order to be retested. Against this opinion, the interested party filed an appeal on ... before the Secondary Commission of the KE.PA.A. disagreeing with the medical assessment-opinion as well as with the rate of disability with which her degree of disability was assessed and requesting that her request be re-examined based on the file she initially submitted, and that her condition be re-evaluated by the Secondary Committee in accordance with with what is in force in medical science, taking into account the diagnosis of C's

treating physician, according to which she suffers from a ... disorder in ... of ... . The result of the primary health crisis was finalized, since it was not possible to legally re-check it by the competent Secondary Health Committee. Also, according to the conclusion of the competent Sampling Control Committee drawn up by ... regarding the correctness or otherwise of the primary health crisis, a) "there is no evidence in favor of the diagnosis of a disorder of..." and b) "the insured could have recourse to appellate body, requesting the correction of any erroneous judgment .... and even now the patient can be subjected to special and/or diagnostic tests for accurate differential diagnosis". For the relevant issue, A, through her husband's proxy, filed a complaint with the Ombudsman, the Ministry of Labour, the Inspector General of Public Administration and the United Nations Committee on the Rights of Persons with Disabilities, as well as a lawsuit against the doctors of K.P.A. for breach of duty, which is at the stage of the preliminary examination, and a lawsuit (Articles 105 and 106 EISNAK) against the EFKA before the Three-member Administrative Court of First Instance of Athens for compensation due to moral damage. The Citizen's Advocate put the case on file, with thereasoning that the matter has been brought before the competent courts. 3. In the case under consideration, according to the aforementioned, with the exception of the right of access, the remaining rights of correction, deletion, restriction of processing, opposition were neither exercised nor addressed to the controller. In particular, the appeal submitted on ... against the decision of the Honorable Committee of the K.E.P.A. it concerned the re-evaluation of A's illness by the Second Committee in accordance with the current medical science, and did not contain a request to correct or delete data. Similarly, the complaints submitted to the Ministry of Labour, the Ombudsman as well as the other requests and memoranda referred to in section 8 of the complaint form do not constitute an exercise of a right under the GDPR or Law 2472/1997, moreover, it appears that they are being exercised in non-competent bodies, e.g. .x. misdemeanor prosecutor, United Nations Commission. 4. Subsequently, the complainant refers to "falsification" of her medical and personal data (or of her illness) because initially the KE.P.A. with the "Notification of Disability Certification Result" he reached a different medical conclusion in relation to the one reached by C, as described in no. first ... Medical Certificate-His Opinion. Also, the complainant reaches the same conclusion about "falsification" in the case of the investigation of her complaints by the Sampling Control Committee of the KE.P.A. 5. The complainant, speaking of "falsification" of her medical and personal data, refers to the sensitive personal data included in the medical opinion reached by C, which she considers to be correct, in contrast to the corresponding one of the KE.PA.A . The Authority reaches this conclusion additionally and based on the letter-application of the complainant's attorney-in-fact (prot. no. C/EIS/7576) according to which he "warns" the Authority that

"...you are obliged to receive as a unique personal health data, starting reference and orientation that of the diagnosis of her treating physician, C". As the Ombudsman points out in no. first ... from ... his document to IKA-ETAM, which the complainant presented as relevant under no. 8 of her complaint, "doubts are expressed regarding the correctness of the medical assessment" by him, as "the competent committee found a disease different from the diagnosis made by the attending physician according to the medical assessment...". The complainant, both initially and more specifically in her clarifications following the hearing before the Authority (prot. no. C/EIS/158 from 10-01-2019), claims that "The Primary Health Committee of KEPA did not even take 9 into account the medical certificate and the referral file of A, C's treating physician, nor did he make any mention, reference or reference to them" (p. 1), "completely ignored the applicant's referral file and her diagnosed illness...if not had universally displaced and disappeared C's Medical Act, she would not have been able to issue a disability opinion with a rate and duration of her liking" (p. 2), "the way in which EFKA acted in the case of A, i.e. the complete falsification of the Health Data of ...constitutes an act of mental forgery and raises issues of criminal liability" (p. 11). The above claim of the complainant implies the absence of any act of processing personal data according to art. 2 para. d' of Law 2472/1997 and, therefore, it becomes impossible to violate the provisions of Law 2472/1997 by not taking into account and not evaluating personal data. In the opposite case, the eventual consideration and evaluation of the disputed Medical Opinion-Certificate by the doctors of the KEPA, together with what emerged from the clinical picture based on the interview of the applicant, the disability certification and the relevant clarifications , led the doctors to a different medical assessment-diagnosis than what the complainant considers to be correct, without this differentiation constituting a violation of the legislation for the protection of personal data. In any case, it follows from the above that there was no illegal processing of the personal data file (indicative file of disability benefits) which included the above Medical Certificate-Opinion of C, in the form of "modification" or "destruction" of the sensitive personal data of , by no. 2 para. d' of Law 2472/1997, nor can it be understood as such any failure to take into account the above Medical Certificate-Opinion or the extraction of a different medical assessment or opinion. 6. The above conclusions (under no. 5) reached by the Authority are also confirmed by the fact that the complainant in none of her applications and appeals to the KEPA, the EFKA, the Ministry of Labour, Social Security and of Social Solidarity does not invoke a violation of the legislation for the protection of its personal data, nor does it invoke any modification or destruction of its sensitive personal data according to art. 10. 2 para. d' of Law 2472/1997, nor did he exercise any of the rights of correction, erasure, restriction of processing and opposition invoked as violated. In particular,

from the text of the complaint to the Authority and the documents attached to it, it appears that the complainant did not submit a request for correction of her allegedly inaccurate personal data to KE.PA., nor did she exercise her right to object to the deletion of this data , while, in accordance with the aforementioned provisions, he should have submitted a request for correction and/or opposition to the KEPA, as controller, and subsequently, in the event that he did not receive a response within the prescribed period or his response was not satisfactory, to file a complaint with the Authority. Specifically, in her appeal from ... before the Second Level Committee of the KE.PA.A. against the decision of the First-tier Committee of the above administrative body, in the last three lines of the above request the following are mentioned verbatim: "I request that my request be re-examined based on the file I initially submitted" The immediately above request, however, concerns the re-evaluation of her condition by the Secondary Committee in accordance with the applicable medical science, but in no case does it constitute a request to correct or delete personal data. 7. Furthermore, according to the documents that the complainant herself presented, she never invoked a violation of the provisions of Law 2472/1997 in the context of her complaint to the Ombudsman and to the Inspector General of Public Administration, in the context of the application access to documents to the Athens Hearing Prosecutor, in the context of the lawsuit he filed before the Athens Misdemeanor Prosecutor against the Members of the Disability Certification Center Primary Committee (KEPA), as well as in the context of the lawsuit he brought at the expense of the Greek State according to art. 105 – 106 IASNAK. 8. Requests for copies by the Authority to search and obtain on behalf of the complainant any personal data held and processed by the Ministry of Labour, Social Security and Social Solidarity and the EFKA in the context of its request 11 for certification of her illness as a disability should be rejected, as the Authority has no relevant competence. In addition, even if it is considered that the above constitutes access and information requests for the personal data held, these are submitted and satisfied directly to and by the data controller himself and not through the Authority (StE 4597/2015 1st NOMOS Publication) . 9. On the contrary, it emerged that the complainant's right to information and access provided by the provisions of articles 11 and 12 of Law 2472/1997 by the EFKA regarding the names of the doctors-members of the Special Body of Health Committees of the KE.P. A., as the data subject is entitled to know, among other things, the identity and full contact details of the data controller and/or his representative (see article 11 par. 1 sub. a' of Law 2472/1997), as well as any person who is employed by the controller and processes personal data in order to fulfill the tasks of the controller, without of course being the processor (see European Commission analysis at https://ec.europa.eu/info/

law/law-topic/data-protection/reform/rules-business-and-organizations/obligations/controller-processor/what-data-controller-or-data-processor_en and Article 29 Working Group Opinion 1/2010 on the concepts of u of the controller and the processor of 16-02-2010, WP 169. In particular, from the no. first ... from ... a document from the IKA Administration to the attorney of the complainant, B, it appears that her request was rejected

to know the names of the doctors who participated in his committee

K.E.P.A. “as it involves the processing of sensitive data and data

of a personal nature for the following serious reasons" (p. 5), namely that no

the relevant legal relationship, the right to its recognition is precisely described

for which the requested information is deemed absolutely necessary and appropriate, i.e

in view of a specific recognition, exercise or defense of a right before

court or disciplinary body, that the requested data cannot

assessed as absolutely necessary and appropriate for the purpose of the processing

them, as it is implied as well as that the legal interest and the corresponding

right, compared to the corresponding ones of the holders of personal data,

it is not obviously superior to the latter. In addition, the presentation was requested

prosecutorial order, which should, according to the same document, be

fully justified and not merely a transmission of the relevant application

without the express expression of the opinion of its author.

Regarding the above, it should first be noted that the name

of the committee members or their status as doctors is not sensitive

personal data, as erroneously understood in the above

answer.

In addition, in the grounds for rejection of the request for information and access

no reference was made to the provisions of articles 11 and 12 of Law 2472/1997 but

in legal framework and procedures outside the legal framework for protection

of personal data.

Furthermore, the IKA in the same document, in order to reject the relevant request, understood that "(c) Your legitimate interest and corresponding right, compared to the counterparts of the carriers of personal data, it does not excel apparently of the latter", without invoking the relevant legal authorities bases for the processing of personal data and without citing them facts on the basis of which he concluded to reject the relevant request.

Finally, the "requirement" to produce a prosecutor's order overlooks that the provisions of Law 2472/1997, as special, override other general provisions of legislation, concerning the transmission of personal data, as it is the provision of article 25 par. 4 para. b' of the KODKDL (n. 1756/1988) for prosecutorial orders and does not exempt the controller from the compliance with his obligations based on Law 2472/1997 (cf. CoE 1817/2018 para. 7 and 9, 1st Publication NOMOS).

It should be noted that the data controller, while rejecting it relevant request, did not inform the data subject of his right to appealed to the Authority nor communicated his answer to the Authority pursuant to art. 12 par. 4 of Law 2472/1997 and, therefore, the legal provision was not applied in this case framework for the protection of personal data.

Therefore, the data controller had to, according to article 11 par. 1 sec. a' in combined with Article 12 of Law 2472/1997 a) to inform the complainant of

the identity of the medical members of the committee, as well as for its right to appeal to the Authority, and b) communicate his response to the Authority.

10. In view of the above, the Authority, taking into account, on the one hand, its gravity

violation of articles 11 and 12 of Law 2472/1997 which was also proven on

offense caused by it to the data subject, on the one hand, the

the fact that the controller did not apply the legislation on

protection of personal data, deems that it should be imposed

to EFKA, as data controller, the provision provided in article 21 par. 1 sec.

a' of Law 2472/1997 necessary and proportionate sanction referred to in

dispositive.

The beginning:

FOR THOSE REASONS

1. She considers that EFKA, as data controller, should have informed her

complainant about the identity of the medical members of the committee, as well

and for its right to appeal to the Authority, and to notify it

his response to the Authority for the reasons stated in its rationale

present.

2. Enforces EFKA, as controller, for non-observance of the as

above obligation of prior notification of the complainant and non-complainant

notification of his response to the Authority and for the reasons that

refer to the rationale of the present, the sanction of the warning,

pointing out that he should henceforth inform the applicants

against the decisions of the Health Committees of the KE.PA.A. for

identity of the medical members of said committees as well as for the

their right to appeal to the Authority.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou