

(Department) The Data Protection Authority of a Personal Character met as a Department composition at its headquarters on 6.12.2017 at 10:00 a.m. following the invitation of its President, in order to review the two (2) cases mentioned in the present history. The Deputy President, Georgios Batzalexis, who was in the way of the President of the Authority, Constantinos Menoudakos, and the alternate members Panagiotis Rontogiannis, Charalambos Tsiliotis, as the rapporteur of the first case, and Grigorios Tsolias as the rapporteur of the second case, in replacement of the regular members Antonio Symvonis, Spyridonos, were present. Vlachopoulos and Charalampos Anthopoulos respectively, who, although legally summoned in writing, did not attend due to obstruction. Present without the right to vote were Fereniki Panagopoulou, legal auditor-lawyer, as assistant to the rapporteur Mr. G. Tsolia, Dimitrios Zografopoulos, legal auditor-lawyer, as assistant to the rapporteur Mr. X. Tsiliotis and Irimi Papageorgopoulou, employee of administrative department, as secretary. The Authority took into account the following: The following two cases were brought before the Authority for adjudication, which are litigated together due to similarity and relevance. 1. With the no. prot. APDPH C/EIS/7981/7-11-2017 his request the private doctor A asks the Authority whether the use of health data of B by him before the Single Member Court of First Instance of Athens is in accordance with the legislation on the protection of personal data , in order to counter the action for damages for tort and moral damage that B has brought against himself (as well as other treating doctors) before the Single-Member Court of First Instance of Athens (reg. no. Dikogr. ...—regular procedure) with a hearing set for ... . According to the claims of 1 2 B, doctor A committed a medical error when performing a medical intervention to correct his nasal septum. 2. Submitted to the Personal Data Protection Authority under no. prot. C/EIS/5672/27-07-2017 application of the association with the name "..."), as controller, with which the Authority is requested to grant the required by the provisions of article 7 par. 2 item. (c) of Law 2472/1997 processing license for the presentation before the legally competent court of sensitive personal data of C, which the association keeps in its files, for the purpose of defending its rights and, in particular, for the purpose of rebutting the lawsuit that C has brought against him, with the object of various requests from the dependent labor contract, which - according to his claims - linked him to the said association. The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteurs, who were present without the right to vote and left after the discussion of the case and before the conference and decision-making, following a thorough discussion , **CONSIDERED ACCORDING TO THE LAW**

1. Because the provisions of articles 2 par. b', 4 par. 1 and 7 par. 2 item. c' of Law 2472/1997 determine the terms and

conditions for the legal processing of sensitive personal data related to health. With the provisions of articles 5 par. 3 and 13 par. 3 item b' of Law 3418/2005 (Code of Medical Ethics) provides for the exceptional granting of medical certificates to a third party, as long as it has a legal interest and is proven by the conditions for lifting medical confidentiality. Furthermore, article 11 par. 3 of Law 2472/1997 stipulates that, if the data is communicated to third parties, the subject is informed of the communication before them.

2. Because, in accordance with the provisions of article 6 of Law 2472/1997: "1. The controller is obliged to notify the Authority in writing of the creation and operation of a file or the start of processing. 2. With the notification of the previous paragraph, the data controller must necessarily state: a) His name or surname or title and his address. b) The address where the file or the main equipment supporting the processing is installed. c) The description of the purpose of processing the personal data contained or to be included in the file. d) The type of personal data existing or to be processed or contained or to be included in the file. e) The period of time for which it intends to carry out the processing or keep the file. f) The recipients or categories of recipients to whom it communicates or may communicate the personal data. g) The possible transfers and the purpose of the transfer of personal data to Third Countries. h) The basic characteristics of the system and the security measures of the file or processing. 3. The details of the previous paragraph are registered in the Registry of Files and Processing maintained by the Authority. 4. Any change in the data referred to in paragraph 2 must be notified in writing and without delay by the person in charge to the Authority".

3. Because, from the combination of the provisions of articles 5 and 7 of Law 2472/1997, it follows that the collection and any further processing of simple and sensitive personal data is permitted, in principle, if the data subject has given his consent. However, the collection and any further processing of both simple and sensitive personal data is permitted, exceptionally, and without the consent or despite the refusal of the subject, in the cases limited by law. In particular, it is allowed, for simple data, in particular, under the conditions of article 5 par. 2 item. (e) and for sensitive data, in particular, under the conditions of article 7 par. 2 item (c) of Law 2472/1997. Specifically, it is allowed, in the first case, when "the processing is absolutely necessary for the satisfaction of the legitimate interest pursued by the controller or the third party or third parties to whom the data is communicated and on the condition that this clearly outweighs the rights and interests of the persons in which the data refer to and their fundamental freedoms are not affected", and in the second, which also includes data concerning social welfare, when "the processing concerns data that the subject himself makes public or is necessary for the recognition, exercise or defense of a right before a court or disciplinary body". This last condition applies, as the Authority has judged, to simple data as well (see, in particular, the Authority's decisions 27/2001, 75/2001 and

2/2011 and 111/2011). 3 4 4. Because, in accordance with the provisions of article 7 par. 1 item (c), 2 and 3 of Law 2472/1997, as applicable: "1. The collection and processing of sensitive data is prohibited. 2. As an exception, the collection and processing of sensitive data is permitted, as well as the establishment and operation of a relevant file, after permission from the Authority, when one or more of the following conditions are met: (...) c) The processing concerns data that is made public the subject itself or is necessary for the recognition, exercise or defense of a right before a court or disciplinary body. (...) 3. The Authority grants a license to collect and process sensitive data, as well as a license to establish and operate a relevant file, upon request by the controller. If the Authority finds that sensitive data is being processed, the notification of the file, in accordance with Article 6 of this law, is equivalent to an application for the granting of a license. The Authority can impose terms and conditions for the most effective protection of the right to privacy of subjects or third parties (...)" 5. As the Authority has judged, the aforementioned provisions shall be applied jointly whenever a third party applicant submits an application to a data controller for the transmission to him of sensitive personal data of their subject, which are kept in the files of said data controller, for the purpose the recognition, exercise or defense of the third party right before a court or disciplinary body. In these cases, the permission to process sensitive personal data is granted only to the data controller and at the latter's request, without legitimizing the third party for this (See also the Authority's decisions 110/2013, 125/2013 and 130/2013). As the Authority has also judged, it follows from the above that, when the data controller refuses to satisfy the third party's request for - after invoking the legitimate interest in this regard - the provision of a document, because it considers that it contains sensitive personal data subject to them and the granting of a license by the Authority is required, he is obliged to address the relevant application to it, in order for the Authority to judge, weighing the compliance or not of the conditions, according to the above provisions, if the relevant license can be granted (See in particular the Authority's recent decisions 110/2013, paragraph no. 2, 125/2013, paragraph no. 4, and 130/2013, paragraph no. 3). 6. Because, furthermore, the provisions of article 7A of Law 2472/1997 define, among other things, the following: "1. The data controller is exempted from the obligation 4 5 to notify article 6 and from the obligation to obtain a license under article 7 of this law in the following cases: a) When the processing is carried out exclusively for purposes directly related to a work or project relationship or to the provision of services in the public sector and is necessary for the fulfillment of an obligation imposed by law or for the execution of the obligations from the above relationships and the subject has previously been informed. (...) c) When the processing is carried out by associations, companies, associations of persons and political parties and concerns data of their members or companies, as

long as they have given their consent and the data is not transmitted or shared with third parties. The members or partners are not considered third parties, as long as the transfer is made to them for the purposes of the aforementioned legal entities or associations, nor the courts and public authorities, as long as the transfer is required by law or court decision. (...) 2. In all the cases of paragraph 1 of this article, the data controller is subject to all the obligations provided for by this law and is required to comply with special processing rules issued by the Authority in accordance with paragraph 3 of article 5 of of this law". 7.

Because, according to article 914 of the Civil Code, whoever damages another illegally and culpably has an obligation to compensate him. Furthermore, according to Article 932 of the Civil Code, in case of tort regardless of the compensation for the property damage, the court can award a reasonable monetary satisfaction due to moral damage. 8. Because in no. 1 considered case, doctor A requests to use the complete medical file of patient B that he keeps in the practice, in order to refute a claim for compensation before the Single Member Court of First Instance of Athens (reg. no. Dikogr. ... — regular procedure) for tort and moral damage that B has brought against himself and other attending physicians, as set forth in the history of the present case. Through the use of B's medical file, doctor A wants to prove that B's alleged state of health and his general development are not due to his own medical error. 9. The intended processing purpose is consistent with the aforementioned provision of article 7 par. 2 item. c' of Law 2472/1997. At the same time, the principle of proportionality of the data is fulfilled (article 4 par. 1 letter b of Law 2472/1997), as through the provision of the medical file the competent court will be able to know whether the damage caused to B is interest on the treatment of the plaintiff's health problem by doctor A, which is contrary to the commonly accepted 5 6 rules of medical science. Doctor A must, as data controller, inform, in accordance with the provisions of article 11 paragraph 3 of the 2472/1997, B for the use of his personal data by him before this use. 10. Because, in the 2nd case under consideration, the following emerges from the file's data: Submitted to the Personal Data Protection Authority under no. prot. C/EIS/5672/27-07-2017 application of the association "...", as controller, with which the Authority is requested to grant the required by the provisions of article 7 par. 2 item. (c) of Law 2472/1997 processing license for the presentation before the legally competent court of sensitive personal data of C, which the association keeps in its files, for the purpose of defending its rights and, in particular, for the purpose of refuting the action that C has brought against him, with the object of various requests from the dependent labor contract, which - according to his claims - connected him to the said association. In the present application, the association "...", as controller, mentions, among other things, the following: "With the date of ... and with no. against ... his action before the Thessaloniki Magistrate's Court, which was set to be discussed on ...

(fig. 1) and with a postponement to ... (fig. 3), C, also turned against the association claiming that he was hired with the specialty of supervisor -keeper to work during the time intervals from August ... to March ... and from ... to ... by us. For the reasons and reasoning stated in the attached lawsuit, the plaintiff requests that the association be ordered jointly and severally with another person to pay the amount of €7,878.31 and additionally the amount of €1,197.18 with legal interest. According to the claims of the plaintiff, these amounts correspond to a difference in daily wages, allowances and gifts. However, in his lawsuit, he does not mention the fact that he himself was a substance user and a member of the association... The importance of the status of the opposing party as a member of the association lies in the fact that - according to Greek science - in order to establish whether dependent work is really being provided or if it is a case of voluntary work, among other things, the social qualities of the giver of the work, the motivations for the provision of the work, as well as any existing kinship or social relationship between him and the recipient of the work. Therefore, the fact that the plaintiff, C, was a former substance user and a member of the association, is a fact of major importance for the defense of the 6 7 association before the Thessaloniki Magistrate's Court, as the basis of the claims - according to the claimant's claims - is completely different. services to it. Clearly, this element is crucial not only to invoke it, but also to prove it for the rebuttal of the lawsuit against us, by presenting (decision of the Board of Directors on the approval of his application to become a member, the association's certificate of in particular details of his registration as a member, excerpt from the membership book). At the same time, the attempt of our opponent to disassociate himself from the association, appearing as an alleged employee, is not only proven by his failure to mention any element in his lawsuit, but also results from a specific document kept in our Archive, a photo of which is presented to you. Specifically, it is about the "Table of Volunteers...". There appears the name and details of the opposing party recorded and then erased with an eraser (...). He took this action himself, when there was a rupture in our relations, in an attempt to hide everything that would connect us. It follows, therefore, that in addition to the above documents, the presentation of this specific document is also necessary for our defense, as in this way it will be proven that the opponent's attempt to hide the truth, which he knows very well, in any way. Because the association keeps a legal file with the above sensitive personal data of C pursuant to paragraph c of paragraph 1 of article 7A of Law 2472/1997, which it does not transmit or communicate to third parties. Because the applicant has a demonstrable legal interest in using the file he legally keeps for the reasons detailed above and specifically 1. to present before the hearing Court the act of the Board of Directors of the association which approved the entry of C, covered by the names of the remaining members whose entry was approved as shown in Fig. 2. To

issue a certificate of the exact time of registration of C in the membership book of the association and for this to be used further, specifically to appear before the hearing Court, otherwise to present an excerpt from the membership book, in which C appears registered, covered by the names of the other members, as shown in Fig. 8. Present before the hearing Court the list of volunteers in which C himself has intervened by deleting his name , covered with the names of the remaining members as shown in figs. 5. and 6. Because, all the otero files contain critical information, which concern C's mental and physical health and for this reason constitute his sensitive personal data. 7 8 Because, even if the above information is considered simply personal data, we still do not have the possibility to use it before the aforementioned Court, because the subject of it has not provided us with relevant consent, nor would it ever provide us with such consent, given that it is pending the treatment of our burden".

11. Because, the purpose of processing, which is presented by the association "...", as responsible processing, for the presentation and appeal before the competent court of as above sensitive (as far as related to his state of health) data C's personal nature consists in the need to defend his rights and, specifically, in the need to refute the lawsuit that C has brought against him as mentioned above, with regard to various requests from the contract of dependent of work, which - according to his claims - connected him with the said association. Under in this sense, the intended purpose of processing is based on the aforementioned provisions of articles 7 par. 2 and 4 par. 1 item (a) of Law 2472/1997, while it is also fulfilled the principle of proportionality (necessity and affordability) of the above data of a personal nature, in accordance with the provisions of article 4 par. 1 item (b) of Law 2472/1997.

12. Since, however, in the present case, there is no case of provision by the Authority license to the association "... on the basis of the provisions of article 7 par. 2 item (c) of N. 2472/1997 for the presentation by this association before the legally competent court of the above sensitive personal data of C, which the this association keeps in its records, as controller, for its purpose

defense of his rights. And this, because the association "...", as responsible processing, in principle legally keeps the above data of C and conducts processing them on the basis of the aforementioned provisions of articles 4 par. 1 and 7A par. 1 item (a) and (c) of the same law. And the presentation and invocation by the body "..." of these data before the legally competent court, for the purpose of defending his rights, does not constitute transmission to a third party, so that a special permit from the Authority is required, provided on the basis of the provisions of article 7, paragraph 2 item (c) of Law 2472/1997, since, as the Authority consistently judges in these cases, the competent courts are not considered as third parties. Consequently, the association as responsible processing, is not obliged to inform C that the above sensitive data of a personal nature will be brought before the competent court, for the purpose

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of the rebuttal of his action.

13. Because, in the first and second case under consideration by the Authority, the opposite was argued proposal on the same subject. Because the Authority has already issued decisions on the grant license to a private doctor (see index Decisions 51/2012 and 53/2014).

14. Because pursuant to the provision of article 5a par. 1 of the Operating Regulations of the Authority, the cases must be referred to the Plenary, in order to be investigated unanimously as relevant and to rule on the issues that arise against the investigation of these and are related, as far as the referred cases are concerned, to the compliance with the legal conditions for the granting of a license by the Authority. Hence, because there are contrary suggestions, the Department decides to refrain from the issue decisions on the substance of the cases and their referral to the Plenary, in order to determine whether each of them requires the granting or not by the Authority permission for the requested, as detailed above, processing of sensitive

personal data.

#### FOR THOSE REASONS

The Authority refers, for reasons of not issuing conflicting decisions, the considered similar and related cases as a whole in the Plenary, which will decide on the issues that refer to the rationale.

The Honorable President

The Secretary

George Batzalexis

Irini Papageorgopoulou