

Opinion on the request of the Association of Obstetricians and Gynaecologists of Kosovo regarding the reporting of patients' personal data to the Commission for Medically Assisted Fertilization.

On 21.01.2016, the National Agency for Protection of Personal Data (*hereinafter the Agency*) received a request from the Association of Obstetricians and Gynaecologists of Kosovo (*hereinafter the AOGK*) about whether reporting of patients data to the Commission for Medically Assisted Fertilization (*hereinafter CMAF*) is in contradiction with the Law 03/L-172 on the Protection of Personal Data.

CMAF, on their request addressed to health institutions that perform the medically assisted conception requested the following data:

- Patient's personal data, age, year of birth, occupation, address;
- Times undergoing the IVF;
- The name of the doctor/doctors that have performed IVF.

Reporting of the personal data to the Commission for Medically Assisted Fertilization is not in contraction with the Law no. 03/L-172 on the Protection of Personal Data.

Pursuant to Article 38 (paragraph 1) of the Law no. 03/L-172 on the Protection of Personal Data (*hereinafter LPPD*), the National Agency for Protection of Personal Data (*hereinafter the Agency* ") shall advise public institutions in all matters regarding data protection, including interpretation and application of relevant laws.

Article 2, paragraph 1, subparagraph 1 of the Law on Protection of Personal Data (*hereinafter LPPD*) defines that the personal data is any information about a person identified or identifiable (data subject); identifiable person is a person who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.

Article 2, paragraph 1, sub-paragraph 16, any personal information revealing racial or ethnic origin, political or philosophical opinions, religious beliefs, trade-union membership or any information on health status and sex life, any entries in or removals from criminal records or records on minor offences that are kept on the basis of the law.

Sensitive personal data, under Article 6, paragraph 1, sub-paragraph 4 and 6 of LPPD can be processed for purposes of legitimate activities by institutions and if they are processed

by health care staff or personnel in compliance with relevant laws for the purposes of protection the health of society, individuals and the management or operation of health services.

Article 43, paragraph 1 of the Administrative Instruction no. 06/2013 for Medically Assisted Fertilization, defines that the health institution is obliged to maintain the registry of donors of reproductive cells, paragraph 2, subparagraph 1, 2, 3, 4 of the same article define that the register contains: personal data, data on health conditions of donors of reproductive cells an anamnesis data for the donor's parents, day, month and year when there the reproductive cells are donated, stored or used, the results of audits of donors and their gender analysis, data for pregnancy and childbirth of conceived by MAC, with donated reproductive cells.

Paragraph 4 of the same article defines that the health institution is obliged to submit a report with data from its registry to the Commission of MAC.

Considering your request, if reporting with data to the CMAF constitutes violations of LPPD provisions, consequently the request submitted by CMAF is not in contradiction with LPPD, as the health facilities that process sensitive data or more precisely perform medically assisted fertilization are required to draft a report with data from their register in CMAF.

Therefore, based on the principles of personal data processing, specifically Article 3, paragraph 1 and Article 5, paragraph 1, subparagraph 3 of LPPD, define that personal data shall be processed fairly and lawfully without violating the dignity of data subjects and lawful processing of personal data is that the processing is necessary for compliance with a legal obligation to which the controller is subjected, as a result the health institutions are required under the Administrative Instruction No. 06/2013 for Medically Assisted Conception to report to CMAF.

CMAF is obliged to secure the personal data at the time of reporting of the health institutions under Article 16, paragraph 2, which defines that data controllers and data processors shall describe in their internal acts the procedures and measures established for the security of personal data and shall nominate in writing competent persons who are responsible for filing system and those who, due to the nature of their work, shall process personal data.

Given the above arguments and considerations, it can be concluded that the reporting of personal data to the Commission for Medically Assisted Fertilization is not in contradiction with the Law no. 03 / L-172 on the Protection of Personal Data.