

The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data<sup>13</sup> is the first obligatory international instrument in the area of personal data protection. It establishes the obligation of the countries that are signatories to this convention to secure the legal protection of basic human rights in connection with automatic processing of personal data.

The Convention stipulates that personal medical data is a special category of data that can be processed only if appropriate protection of data has been ensured. "Personal medical data" is data that pertains to the past, present or future physical and mental health of individuals. The data may pertain to a person that is suffering from a medical condition, a healthy person or a deceased person.

The Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data<sup>14</sup> amends the Convention by introducing the obligation for signatories to establish supervisory bodies and define in detail the cross-border flow of personal data to recipients who reside outside the states obliged by the Convention.

### 5.3. National Regulations

Disclosure of personal or family data that may adversely affect one's social standing or reputation, individually, in public or through the media, constitutes a criminal offence that is regulated by provisions of Article 172 of the Criminal Code. The provisions of this article could theoretically be extended to include the disclosure of HIV status by third parties. Special attention is given to situations when HIV status is disclosed with the intention of degrading or humiliating a person, particularly if sexual or other preference is disclosed together with the previously mentioned details, which may be related.

Every patient is entitled to have data communicated to medical workers treated as confidential information, and to full protection of privacy in the course of medical treatment.<sup>15</sup> The information received by medical workers in the performance of their duties is treated as confidential and is protected as an official and medical

13 *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, Official Gazette of FRY (International Treaties), 1/92 and Official Gazette of SCG, 11/05

14 *Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, Official Gazette 98/08 dated 23 October 2008

15 Health Care Law, Article 30

secret. The persons obliged to protect professional secrets (doctors, journalists, judges, etc.) are only allowed to reveal such information to competent bodies if the public interest requires such disclosure, for the purpose of achieving higher and justified goals. Medical workers are not allowed to reveal private information about a patient to any third party<sup>16</sup>. The data contained in the medical documentation is also treated as confidential. A medical worker in charge shall only be freed of the duty to keep medical data confidential if the patient consents to this in writing or otherwise clearly and unambiguously gives consent for disclosure, or if the responsible court passes a decision to that effect<sup>17</sup>. If the patient has issued such consent, the medical worker in charge is allowed to reveal the data on the health status of the patient. A family member may receive the data even without prior consent of the patient, provided that such a family member is of age and that such disclosure is necessary in order to avoid a health risk for the family member in question. This is not an obligation, but an option to be used at the doctor's discretion, if there is justified doubt that the patient is disregarding received instructions regarding prevention of further transmission of the infection.

The data contained in the medical documentation can be presented in the form of a record or transcript taken from the official medical documentation. Such a transcript has to be marked as confidential and can be provided only upon request of the court authorities, guardian, medical insurance organization or the authority in charge of statistics, when prescribed by law.<sup>18</sup>

Within the context of national legislation, the Constitution of Serbia does not guarantee the right to privacy as such; however, it contains general provisions that guarantee protection of personal data or stipulate that collection, storing, processing and use of personal data shall be regulated by law<sup>19</sup>. At the same time, it is explicitly regulated that any use of personal data for purposes other than those for which they were collected is prohibited and shall be prosecuted, except if it is required for the purpose of conducting a criminal procedure or protection of the security of the Republic of Serbia, as prescribed by the relevant laws.

Until recently, protection of personal data in Serbia was regulated by the Law on Personal Data Protection adopted in 1998, the provisions of which did not meet

16 Health Care Law, Article 30, paragraph 2

17 Health Care Law, Article 39

18 Ibid

19 Constitution of the Republic of Serbia, Article 42, paragraphs 1 and 2