

**Number: 2717/2006**

**The Misdemeanour Judicial Council of Athens**

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Consisted from Athanasia Kakoussi, President of the Misdemeanour Court, Styliani Mileta and Georgios Aktipis, Judges of the Misdemeanour Court.

A meeting was held on 23-2-2006 in the office of its President in the presence of Georgios Prassas, Public Prosecutor of the Misdemeanour Court and the clerk, Georgios Nonnikos, in order to decide upon the following criminal case:

Criminal charges have been filed against Dimitrios Fotiou, son of Lambros for a) violation of articles 1, 2, 3 & 22 par. 4, 6 of L. 2472/97 etc. and main interrogation has been conducted. After its completion, the Public Prosecutor has introduced the court file in this Council with his written proposal no: ΕΓ 46-05/158/8, having as follows:

I hereby introduce before You, in accordance with section 308 par. 1 sub-par. a of the Code of crim. Proc., the attached penal interrogative court file against Dimitrios Fotiou, son of Lambros, resident of Athens (at 9 Varika street), accused for violation of article 22 par. 4 of L. 2472/1997 and attempt of fraud (sections 42 par.1 and 386 par. 1 sub-par. a' of Penal Code) and I hereby state the following:

In accordance with article 1 of L. 2472/1997 the object of this Law is the institutions of the terms and conditions for the process of personal data in order to be protected the rights and fundamental freedoms of natural persons and more specific, their private life. Article 2 of L. 2472/1997 provides that, as personal data are considered any kind of information applied to the subject of data, while as the person in charge of the process is meant any person which determines the purpose and way of the personal data process. Furthermore, articles 4,5,6,7,11,12 and 13 of

L. 2472/1997 provided that, it is prohibited the process of personal data

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of natural persons when it is made: a) without the previous written notification to the Authority for the protection of personal data, with regards the collection, filing and in general process of personal data from all persons in charge for the process, b) without the previous consent of the authority, when concerns process of sensitive personal data, c) without the consent of the subject of personal data, unless it falls into the strictly provided exceptions, when the process is necessary: 1) for the performance of contract, in which any contracting party is the subject of data or for the taking of measures after the application of the subject during the pre-contractual stage, 2) for the fulfillment of an obligation of the person in charge of process, imposed by the law, 3) for the safekeeping of vital interest of the subject if it is under any physical or legal incapacity to grant its consent, 4) for the performance of any public interest project or project falling into the exercise of public power, performed by public authority or having been entrusted from it either to the person in charge of process or to a third party, to which the data are notified and 5) for the satisfaction of the equity interest pursued by the person in charge of process or by a third party or third parties to which the data are notified and subject to the terms and conditions that, it obviously exceeds the rights and interests of these persons to which the data refer to and are not offended the fundamental freedoms of them and d) without the previous information of the subject of data which is the term and condition for the effective exercise of the rights of access and objections of the latter. Finally, article 22 paragraph 4 of the above law provides penal sanctions for anyone who without having right intervenes by any way in records of personal data or takes knowledge of these data or steals, misquote, damages, destroys, process, communicates, announces, make them available to non entitled persons or permits to these persons to have access in those data or exploits them in any way and in accordance with par. 6 of the same article, if the culpable of this action was intended to

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gain for himself or for third person illegal profit or cause damage to third party, is punished with imprisonment up to ten years and monetary penalty from Drs. 2.000.000 up to 10.000.000 (see Athens Court of Appeal 3833/2003, Nom. B. 2004.27).

Furthermore and in accordance with par. 1 of section 386 of penal Code "whoever with the purpose to gain for himself or for a third party illegal profit causing damage to foreign property by persuading another person to commit, omit or tolerate action knowingly presenting false facts as true or with the illegal concealing or suppressing of true facts, is punished with a jailing penalty of three at least months and if the damage caused is particularly great, with a jailing penalty of two years". From this provision arises that, in order to be committed the crime of fraud it is required: a) the intention of the perpetrator to gain for himself or third party illegal profit but not the accomplishment of this purpose, b) the knowingly presentation of false facts, that is true facts concerning the past or the present time, as true or the illegal concealing or suppressing of true per the above meaning facts, being the causative cause from which someone has been misled to commit, omit or tolerate actions and c) damage of foreign per Civil law property, which has a causative connection with the misleading actions or omissions. In accordance with the meaning of the aforementioned provision which consists the culpable action of fraud, the fraudulent misleading which is one of its three elements, may be caused with three alternative mixed ways which are different in the meaning between them, that is, either with the presentation of false facts as true or with the illegal concealing of true facts or by suppressing them. The two first ways consist the cases of the positive fraudulent conduct, while the third is the case of fraud committed with omission and is accomplished when the perpetrator is obliged either by the law or by the contract or from previous action to inform the sufferer the actual situation but despite that, he omits to inform him. On the contrary, the fraud committed with

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illegal concealing consists as the one committed with false presentation, a crime of action. But the first presupposes another than the concealing action of the perpetrator, previous or present, which is aiming to the camouflage of the truth and leads to the sufferer's misleading because of the concealing of the truth. It is not also required a unity between the deceived and the person suffering the damage and the fraud may be committed as well by a litigant party in civil trial, who with the purpose to support false allegations, invokes and submits false evidential means, creating in this way to the court an erroneous judicial presumption, which may result to the issue of a judgment damaging the proprietary interests of the opponent (See SC 1246/1990 – Pin. Chr. MA' 538, SC 1123/1991 Pin. Chr. MB' 52, SC 1270 Pin. Chr. MC' 1023, SC 1323/1993 Pin. Chr., MC' 1142, SC 1636/1995 Pin. Chr. MST' 1036, SC 1651/1995 Pin. Chr. MST' 1266).

Finally, in accordance with section par. 1 of Penal Code "if a person who has decided to commit a felony OR misdemeanor, attempts action including at least commencement of execution, is punished in case the felony or misdemeanor has not been completed, with a reduced penalty (section 83)". From this provision it arises that, in order to have an attempt, the perpetrator must proceed with an action which is part of the objective substance of the crime and leads to the immediate completion of it or has such a direct and necessary connection with it so that, per common knowledge, to be considered as part of it to which directly leads if will not be prevented for any reason (see SC 988/1999 Pin. Chr. N' 450, SC 989/1999 Pin. Chr. N' 500, SC 1280/1999 Pin. Chr. N' 631). From the lawfully conducted and completed (section 270 par. 1 sub-par. a' and 308 par. 4 of Code of penal proc.) main interrogation and in particular the sworn witnesses testimonies, the documents and the accused defense, the following true facts are proved:

Further to the information notified to the Security Directorate of Attica (Sub-Command of prosecution of financial crimes, smuggling of

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antiquities and Vice/Dept. of prosecution of electronic crime) pursuant to which, as of the middle of December of the year 2004, an unidentified perpetrator, using the internet electronic address <http://www.dirtyworks-greece.info/> was deceiving innocent visitors of this website, falsy and knowingly informing them that, he could assist them to solve various personal problems of them (posting to public services, transfer of students, legalization of illegal constructions etc.) bleeding at the same time from them in exchange of his services various sums through the notified to him number of their credit card, arising from Euro 700 up to 1,500, the police officers of the above department, Michael Tsatsaris and Evangelos Vassilakis, pretending that they are interested about the above, have entered on 25-1-2005 in this website, where they found out that there was a text, though which, the creator of it, Dimitrios Fotiou (accused) was falsy and knowingly presenting that, he could assist to a successful participation of them to ASEP contests and was asking as remuneration for his services, the amount of Euro 1.000, which he did not succeed to collect as the police officers gave him a non existed credit card's number. After that and on 12-2-2005 a research was carried out in the accused house where found and seized among others, a lot of CD-ROM and diskettes (see the respective report of house research and seizure), where the latter had written, recorded and stored the numbers of credit cards of various visitors of his website, their safety codes and the data of their identity cards, creating in this way a file of personal data, without the consent of the above persons and having not notified in writing to this respect the authority of personal data protection, with the purpose to gain illegal profit consisting to the use from his part of the credit cards numbers and their safety codes for on line orders and purchases of various products by debiting their cards.

In view of the above, serious inferences of guilty result against the accused which justify his committal before the competent penal court. In

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1) <sup>ft</sup><sub>Z</sub>,

consequence thereof and in accordance with sections 309 par. 1 case e' and 313 of code of crim. Proc. , to be indicted to the court of the three member Athens Court of Appeal , which pursuant to the provisions of article 22 par. 14 of L. 2472/1997 par. 1' case d' of L. 1756/1988, 119 par. 1', 122 par. 1', 128 par. 1' and 129 case a' of code of crim. Proc., has the local and subject matter jurisdiction, in order to be judged for the aforementioned punishable actions. Finally, in application by analogy of section 315 par. 1 of code of crim. Proc., must be get in force the restrictive terms and conditions for the payment of a monetary guarantee of Euro 3.000 and his appearance in the police station of the place of his residence within the first five days of each calendar month, which have been imposed to him by virtue of the order no: 5/2005 of the 27th regular interrogator of the Athens Misdemeanor Court, as this measure is considered as absolutely necessary in order to be secured his appearance in the court and to serve any penalty which may be imposed to him.

For these reasons

I hereby propose: A) Dimitrios Fotiou, son of Lambros and Vassiliki, born in Ioannina in the year 1970, resident of Athens (at 9 Varika street), a sculptor, non married, Greek national of Chr. Orthodox religion, to be indicted before the Three member Athens Court of Appeal to be judged as culpable of the fact that in Athens and in the following periods of time, he committed the following crimes punished with deprivative of freedom penalties:

- 1) During the period from 15-12-2004 till 12-2-2005 he has processed without having this right, personal data with the purpose to gain for himself illegal profit and in particular, he has created in the internet a website under the electronic address <http://www.dirtyworks-greece.info> alleging that, he is in the position to assist in the solving of various personal problems (posting to public services, transfer of students, legalization of

illegal constructions etc.) against a remuneration from 700 up to 1.500 Euro and asked the visitors of the specific website to complete a special registration form writing the numbers of their credit cards, their safety codes and their identity data and then he wrote, recorded and stored the aforementioned information which consist personal data in the meaning of art. 2 case a' of L. 2472/1997 in various CD-ROM and diskettes, without the consent of the above persons and having not notified in writing to this respect the authority of personal data protection, with the purpose to gain illegal profit consisting to the use from his part of the credit cards numbers and their safety codes for on line orders and purchases of various products by debiting their cards,

- 2) On 25-1-2005 having decided to commit the misdemeanor of fraud, he attempted action including at least commencement of execution but he did not complete the action from external impediments and not from his own will. More specific, having the intention to gain illegal profit he attempted to cause damage to foreign property convincing another person to commit an action with the knowingly presentation of false facts as true, alleging in the under AI mentioned website to the police officers, Michael Tsatsaris and Evangelow Vassilakis that, he could contribute to their successful participation in ASEP content and asked as remuneration for his services the amount of Euro 1.000 which he should collect by debiting their credits cards, but he did not succeed in achieving his purpose for reasons independent of his will owing to the fact that, the police offers notified to him a non existed number of credit card and thus, he could not withdraw the above mentioned amount and

B) to be kept the restrictive terms and conditions for the payment of monetary guarantee amounting to Euro 3.00 and and his appearance in the police station of the place of his residence within the first five days

of \_each calendar month, which have been imposed to him by virtue of the order no: 5/2005 of the 27<sup>th</sup> regular interrogator of the Athens Misdemeanor Court till the final sit in judgment of the above charges against him.

Athens, February 21<sup>st</sup> 2006

The Public Prosecutor

Georgios V. Prassas

District Attorney to the Court of First instance

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The Council heard the Public prosecutor, who having orally unfolded his above proposal, left from the chambers.

**HAVING STUDIED THE FILE  
IN CONSIDERATION OF THE LAW**

Criminal charges have been instituted against the accused Dimitrios Fotiou, son of Lambros, resident of Athens at 9 Varika street for: a) violation of articles 1, 2, 3 and 22 par. 4, 6 of L. 2472/1997 re "protection of a person from the process of personal data" and b) attempt of commitment of fraud (sections 42 par. 1 and 368 par. 1a of

In accordance with art. 3 par. 2 of P.D. 47/205: "the lifting up of secrecy does not apply only to the direct communication but any type of communication, conducted through a network of communication or provider of communication services, which the subscriber or the user uses against whom is taken the measure of lifting up". Per paragraph 2 of the same as above article: "the kinds and types of communication subject to the lifting up of secrecy are in particular the following: a)....

e) Communications through Internet... .i) value added services which are over the previous types of communication, being especially: 1) the automatic telephone operator... 4) the electronic mail, 5) the access in websites, 6) the access to data base, 7) the electronic transactions.."

In accordance with paragraph 1 of article 4 of L. 2225/1994, the lifting  
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of secrecy is permitted in order to be discovered the felonies provided in this paragraph, among which is not included the felony of violation of art. 22 par. 4, 6 of L. 2472/1997-re "protection of a person from the process of personal data".

From the conducted main interrogation and in particular from the witnesses sworn testimonies, the documents of court file in conjunction with the accused defense, the following true facts are proved:

Anonymous telephone denunciations had been made to the Sub-command of Financial crimes prosecution, smuggling of antiquities and Vice/5<sup>th</sup> dept. of prosecution of electronic crime of the Security command of Attica, pursuant to which unknown perpetrators they were deceiving through the internet address <http://www.dirtyworks-greece.info/gr> against the payment of a fee innocent visitors of the website and speculated against them, promising posting to the public services, transfers of student legalization of illegal constructions, successful participation in contests of ASEP and in general the solution of any matter concerning similar problems of the website visitors. In accordance with the sworn testimony dated 25-1-2006 of the police officer, Michael Tsatsaris who serves in the above department from a visit made in this website, it was found out that, it was actually mentioned in it that, postings are made in public services, transfers of students etc., after the notification of personal data and the numbers of the person concern credit cards. The above police officer pretending the person concern gave the data of the police officer, Evangelos Vassilakis and a fake number of credit card in order to successfully pass the ASEP contest against an amount of Euro 1.000. As the number was fake, the police officer could not ascertain whether this amount had been drawn from the account but it was ascertained in accordance always with his testimony that, the perpetrator was storing the numbers of credit cards, their safety codes and the identity data of the person concern, aiming to gain illegal profit against him. Further a police investigation and an

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electronic trapping, there were discovered the electronic traces of the /1711: accused and in a lawful investigation conducted in his house in the early hours of 12-2-2005, there were found and forfeited among others, a hard disc of electronic computer, printed material, handwritten notes, the amount of Euro 1.400, two deposit books, three credit cards and a lot of CD-ROM, diskettes of E/C with the website's material. The Sub-Command of prosecution of financial crimes, smuggling of antiquities and Vice/5<sup>th</sup> division of prosecution of electronic crime of the Security command of Attica, with its document under ref. no: 7519/199-q/13-2-2005, has submitted to the Criminal investigations Command/Laboratories - Graphology division, for a laboratory examination, the above forfeited electronic corpus delicti, that is, one hard disc, 10 diskettes 3,5", three diskettes ZIP 100 MB and 12 discs CD & DVD, with the following queries: a) Whether the forfeited corpus delicti contain data of childish pornography, b) if there are among the forfeited electronic corpus delicti data of the above website (off-line) and in positive reply to be checked and certified if there is in them and especially in a file, which consists a form for the record and submission of identity cards and credit cards of the internet users, which shall visit the website, a "mechanism" permitting the storage of the aforementioned data on a data base or elsewhere, enabling the owner of the website to find them or if in the same file (form of data recording), the relevant sub-connector was leading to the creation of another website and whether the recorded data in the initial website were lost after the latter's transloading, c) if in the electronic mail of the accused were any messages proving action of gaining illegal profit from him and d) if it is possible to be located whether the storage mechanism of data had been dissembled in case which is not included in the forfeited corpus delicti, as this website had been published in the mass media, printed and electronic press many days before its localization from the relevant service.

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The criminal investigations Command/5<sup>th</sup> division of judicial graphology – Sector of examination of digital corpus delicti, with its document under ref. 3022/21/351-a/13-5-2005, has requested the above service to communicate with the District Attorney who has the subject and local matter jurisdiction in order to be asked whether the present case may be subject to the application of section art. 19 par. 1 of Constitution, L. 2225/1994, L. 3115/2003 and P.D. 47/2005 and if it is required or not the lifting up of confidentiality of communications in order to proceed with the laboratory examination of the said corpus delicti. From the data of the court file, it is not proved that, the above laboratory examination was carried out and could not be done since the lifting up of the communications' confidentiality is not permitted in the specific case, because the violation of art. 22 par. 4 of L. 2472/1997 for which charges have been filed, does not fall in the provided by art. 4 par. 1 of L. 2225/1994 cases for which is permitted the lifting up of the confidentiality.

The accused, who is a graduate of the School of Fine Arts in his defense before the interrogator of the 27<sup>th</sup> regular division of Athens, has alleged that, during his studies he has been involved with new forms of art and in particular the NET ART that, this website belongs solely to this sector of art that, the capacity of his computer ends with the analytical presentation of his website having no any capacity to receive or store number of cards, personal data or other personal data of its visitors that, at the end of the website there is a note that, this is a fictitious company and its incorporator, the data of which are given, does not bear any responsibility for any credulity of its visitors and he made a presentation of this work of him on 2-2-2005 during a radio interview in the broadcast station "NET 105.8" from the journalist, Spyros Frementitis. The latter in his sworn testimony of 4-3-2005, confirms the fact of interview, during which the accused has explained what he was presented in the Internet and that, he pursued to make

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known the NET ART. The same witness, testifies in January 20<sup>th</sup> or 21<sup>st</sup> that, he had localized the specific website of the accused that, in the same day he found his telephone number in the website and that, he had personally ascertained that, whether someone was giving his data in the form **or** not, the reply was the same in both cases that is "congratulations, the company's employees shall communicate with you shortly" and that, studying the website he found out that, though it someone could reach the owner's personal website, being the accused, who was explaining who was and what was exactly the issue he was presenting.

The witness, Dimitrios-Nikolaos Skoufis, Informatics professor of the Athens University in his sworn testimony of 15-2-1005 mentions that, he had visited, being involved with the NET ART, the website which the accused had formed and it was obvious that he had not the ability to collect though the website personal data of any visitor or to make any financial transactions though it.

From the above mentioned facts and taking into consideration that, it could not be ascertained by the laboratory, as it is not permitted the lifting up of confidentiality, whether in the records of the above website, which is a form for entering and filing of identity data and credit cards of the internet users, there is a "mechanism" permitting the storage of the aforementioned data in a base data or elsewhere, enabling the owner of website to find them and in the accused electronic mail or other programs of correspondence-text are included messages, proving actions of gaining illegal profit from his part. It is also not proved that, the accused has processed without having the right for that personal data aiming to gain illegal profit. It is not further proved that, the accused had the intention to mislead any visitor of the said website and it is missing therefore the substantial substance of the attributed to him action of fraud attempt, which is not substantiated objectively in any case because it does not exist in this case the element of another

person misleading that is, the false presentation of fact leading to the creation, maintenance or support of the deceived misunderstanding because, the police officer, Michael Tsatsaris knew from the very beginning that, whatever is mentioned in this website does corresponded to the truth and he simply pretended that, he was interested .about in order to localize the electronic traces of the accused.

From the above mentioned have not arisen per Council's opinion, sufficient inferences of guilty that, the accused Dimitrios Fotiou, son of Lambros has committed the following punishable actions: a) violation of articles 1, 2, 3 and 22 par. 4, 6 of L. 2472/1997 re " protection of person from the process of personal data" and b) attempt of fraud for which charges have been filed. In consequence thereof, it must not been pressed charges against him for these actions in accordance with sections 309 par.1 a and 310 par. 1a of the code of crim. Proc. It must also be waived the no: 5/2005 order of the interrogator of the 27th regular division of Athens, by virtue of which have been imposed to the accused the restrictive terms and conditions of guaranteeing for an amount of Euro 3.000 and his appearance to the Police Station of his residence once within the first five months of every month and to be ordered the return per section 303 par. 1 of the code of crim. Proc. of the amount of guarantee being Euro 3.000 to the depositor, Lambros Fotiou, son of Fotiou as evidenced from the report of guarantee under ref. no: 122/2005 of the clerk of the First Instance Court of Athens. Finally, it must not be included provision about the expenses, since the penal prosecution has been ipso jure exercised.

### **FOR THESE REASONS**

The Council decides that, no charges shall be pressed against Dimitrios Fotiou, son of Lambros, resident of Athens at 9 Varika street for: : a) violation of articles 1, 2, 3 and 22 par. 4, 6 of L. 2472/1997 re " protection of person from the process of personal data" and b) attempt

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of fraud (sections 42 par. 1 and 386 par.1a of Crim. Code), actions which have been committed from him in Athens during the period from 12-12-2004 till 12-2-2005 and on 25-1-2005 respectively.

To waive the no: 5/2005 order of the interrogator of the 27<sup>th</sup> regular division of Athens, by virtue of which have been imposed to the accused the restrictive terms and conditions of guaranteeing for an amount of Euro 3.000 and his appearance to the Police Station of his residence once within the first five months of every month.

It orders the return of the sum of guarantee amounting to Euro 3.000 to the depositor, Lambros Fotiou, son of Fotios.

It was decreed in Athens on March 30<sup>th</sup> 2006 and issued on 18-9-2006.

The President

The clerk

Atnanassia Kakoussi

Georgios Nomikos

Seen and certified  
The reporting Judge  
(sgd) Georgios Aktypis

True official copy

Athens same day

The clerk,

Assimoula Salani (signature-seal of Court)

Authentication of photostatic copy by the Lawyer Elias Zouvias

True translation of the attached document

The translator

Eleni karvouni

