

Athens, 05-24-2022 Prot. No.: 1253 DECISION 26/2022 The Personal Data Protection Authority met as a Department, via teleconference, on Wednesday 05-11-2022, at the invitation of its President, in order to examine the case referred to in the history of the present. Georgios Batzalexis, Deputy President, due to the interference of the President of the Authority, Constantinos Menoudakos, and the alternate members Demosthenes Vougioukas, as rapporteur, and Maria Psalla, in place of regular members Konstantinos Lambrinoudakis and Grigorios Tsolia, who, despite being legally summoned in writing, were not present. attended due to disability. The meeting was attended by Leonidas Roussos, as assistant rapporteur and by order of the President, Irini Papageorgopoulou as Secretary, an employee of the Authority's administrative affairs department. The Authority took into account the following: Complaint No. C/EIS/1365/25-02-2021 was submitted to the Authority, which concerns the receipt of unsolicited political communication, via short text messages (SMS), by A, to promote his candidacy in the last Parliamentary elections, as well as best wishes. The messages are attached to the supplementary letter numbered C/EIS/785/21-01-2022. 1-3 Kifisias St., 11523 Athens, Tel.: 210-6475600, Fax: 210-6475628, contact@dpa.gr, www.dpa.gr -1-

In the complaint, the complainant, B, states that "When he was Deputy Minister ... Mr. A refused to deal with my issue about ... and accruals in the federation where I belong and my letter was never even answered. Leaving .. X someone had the audacity to (illegally) take my details and to this day I receive sms for wishes and for voting". With the original number G/EIS/788/21-01-2022, the complainant encloses his letter, dated 18-09-2014, addressed to the Deputy Minister ... and which was recorded by the special office of the Deputy Minister of ... X (hereinafter "X") of the Ministry ... and in the signature of which he had stated his e-mail address, as well as his mobile phone number. In addition, with the supplementary number C/EIS/785/21-01-2022, the complainant attaches the messages he received from the complainant with wishes during the periods of Christmas and Easter of the year 2020, Christmas of the year 2019 , but also the name day of the complainant in the same year, as well as a pre-election message on July 5 of the same year with sender "A" and content "...". The Authority, in the context of examining the complaint in question, sent the complainant the document with reference number C/EXE/852/17-03-2021 in which he requested his opinions on the complainants, taking into account the guidelines it has issued by the Authority for Political Communication. As she did not receive a response, she sent on 16-11-2021, again, an email to the complainant reminding her of the document in question. The complainant responded with the memorandum with reference number G/EIS/7899/02-12-2021. The memorandum states that "apparently" the complainant addressed his political office, while he denied the political nature of the congratulatory messages, citing decisions of the Authority and national courts

on the issue in question. With reference to the pre-election message above, the complainant in his memorandum complains about the time of submitting the complaint, considering that the complainant had also received other relevant messages, while stating that his colleagues moved immediately to remove the telephone number of the complainant from the lists them, within a period of two weeks from the relevant -2- his request to this effect by email on 02-09-2021, which was repeated on 02-13-2021, with an offensive tone as he claims. With document No. C/EXE/2885/14-12-2021, the Authority invited the complainant to substantiate his above claim that the complainant addressed his political office, given that the latter had stated that he addressed the Deputy Minister of Sports, submitting his letter to the Special Office of the Deputy Minister of .. X, as evidenced by the protocol number issued. With his response numbered G/EIS/8457/29-12-2021, the complainant claims that the complainant allegedly addressed him personally, while the Deputy Minister's political office was operating in the Deputy Ministry, reporting directly to him, which among other things he took care of his personal communication with the citizens and the editing of his personal correspondence, as a deputy minister and therefore the above letter and the more general communication with the complainant was the subject of management of the above political office. With the supplementary letter No. C/EIS/788/21-01-2022, the complainant stated again that the above letter was submitted to the Ministry and not to any political office and that it is addressed to the complainant due to his capacity, without to know about the operation of the political office in question, while wondering since when Ministry protocol is identified with political offices. With the document number C/EXE/807/30-03-2022, the Authority invited the complainant, as data controller, before it at its meeting on Wednesday 13-04-2022, to provide further clarifications and to thoroughly state his views on the complaint. The complainant attended and supported what he had stated in writing with his above memoranda, asking again about the time of submitting the complaint in relation to the time of processing the data. The Authority, after examining all the elements of the file and referring to the distribution of the hearing, after listening to the rapporteur and the clarifications of the assistant rapporteur and after a thorough discussion, -3- DECIDED IN ACCORDANCE WITH THE LAW 1. According to art. 4 pc. 7 of the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data and for the free movement of such data (hereinafter, the Regulation), which is in force since May 25, 2018, as controller is defined as "the natural or legal person, public authority, agency or other entity that, alone or jointly with others, determines the purposes and manner of processing personal data". 2. The issue of making unsolicited communications by any means of electronic communication, without human intervention, for the purposes of direct commercial promotion of products or services and for

any kind of advertising purposes, is regulated in article 11 of Law 3471/2006 on the protection of personal data data in the field of electronic communications, which incorporated Directive 2002/58/EC into the national legal order. According to this article, such communication is permitted only if the subscriber expressly consents in advance. Exceptionally, according to art. 11 par. 3 of Law 3471/2006, e-mail contact details obtained legally, in the context of the sale of products or services or other transaction, may be used to directly promote similar products or services of the supplier or to serve similar purposes , even when the recipient of the message has not given his consent in advance, provided that he is provided in a clear and distinct manner with the possibility to object, in an easy way and free of charge, to the collection and use of his electronic data and that during the collection of the contact details, as well as in each message, in case the user had not initially objected to this use. 3. Especially for political communication through electronic means without human intervention and in accordance with the Authority's guidelines regarding the processing of personal data for the purpose of political -4- communication, taking into account both article 11 of Law 3471/2006, as well as the Directive 1/2010 of the Authority for political communication and the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data which has been in force since May 25, 2018, the following apply : Political communication is of interest from the point of view of the protection of personal data, carried out in any period of time, pre-election or not, by political parties, MPs, MEPs, factions and holders of elected positions in local government or candidates in parliamentary elections, the elections of the European Parliament and local government elections. These persons become data controllers, in accordance with Regulation (EU) 2016/679, article 4, item 7) as long as they define the purpose and method of processing. For example, when MPs or candidate MPs receive data from political parties and process it for their personal political communication, they also become data controllers. In this capacity, they must be able to demonstrate compliance with their obligations and processing rules. 4. When political communication is carried out using electronic mediacommunication, without human intervention, through public communication networks, as is the case of electronic messages (e-mail), h communication requires, in accordance with article 11 par. 1 Law 3471/2006, as applicable, the prior consent of the data subject, subject to of paragraph 3 of the same article, as applicable. It is also pointed out that soon text messages (SMS) are also e-mails

according to the definitions of Law 3471/2006 and Directive 2002/58/EC.

5. Political communication is allowed using electronic media without a human intervention and without the consent of the data subject only

if the following conditions are met cumulatively:

(a) Contact Information has been lawfully obtained in the context of previous, similar contact with the data subjects, and the

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subject during the collection of the data informed about their use with for the purpose of political communication and did not object to this use. THE previous contact need not be purely political in nature, e.g.

is it legal to send messages when email details

collected in the context of a previous invitation to participate in some

event or action, regardless of its political character. On the contrary, no

is considered to constitute similar contact and is not legal to use

electronic contact information for the purpose of political communication when

this information was obtained in the context of a professional relationship, such as for example the use of the customer file by a candidate for parliament.

(b) The controller must provide the subject of

given the possibility to exercise the right to object in an easy and

clear, and this in every political communication message. In every communication

the sender's identity is required to be clearly and clearly stated

person for whose benefit the message is sent, as well as a

valid address to which the recipient of the message can request it

termination of communication. Consent must be given in an unequivocal affirmative

action which constitutes free, specific, express and full knowledge

indication of the agreement of the data subject in favor of the processing of

data concerning it.

6. According to PYS 88/1985 "On the organization and operation of political offices (Government Gazette 142□/2-8-1985), as it was members of the Government and deputy ministers" amended and applied, in conjunction with article 56 of PD 63/2005, in Deputy Ministry..., was foreseen and was in operation, a political office Deputy Minister.

7. According to article 12 par. 3 of the GDPR, the data controller provides to data subject information about the action performed upon request under Articles 15 to 22 without delay and in every case within one month of receipt of the request. The deadline in question may be extended by two more months, if required, if received

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considering the complexity of the request and the number of requests. THE controller informs the data subject of said extension within one month of receipt of the request, as well as for the reasons of the delay. If the data subject submits the request with electronic means, the information is provided, if possible, by electronic means, unless the data subject requests otherwise.

8. In this particular case, the complainant, as controller carried out political communication by sending short text messages (SMS). The legality of the mission is ensured by whether the referring to the above Thoughts 4, 5. From the answers of the person in charge processing results in the following:

9. The controller did not provide evidence that it had ensure the required prior consent of the recipient

SMS messages, or that there had been a previous similar contact/communication, he only claimed that the complainant had "obviously" addressed the politician of the office at the Ministry, which due to the time that has passed, no can substantiate. According to the evidence in the file, the complainant had addressed the data controller in its context of the latter's competence as Deputy Minister..., by sending a letter to same as filed and recorded in the private office of the Deputy Minister at X of the Ministry ..., since the former was an employee of a federation which falls under the said ... Accordingly, the original communication of the complainant expressing his work request to the competent body and Deputy Minister where belonged does not indicate a similar contact, in the sense of the law, with the political of a communication nature, namely for the purpose of supporting his party and/or of the same in the Parliamentary elections. Besides, it does not appear at all that the complainant had been informed about the said use of his data so that he could be given the possibility to express his objection.

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10. The Complainant did not respond to the Complainant's requests for deletion of his contact details and termination of the unsolicited mission communication, as well as his relevant update, although as it turns out no continued the mission, effectively satisfying his counterclaim.

11. The data controller cooperated with the Authority by responding to reminder, however, and not the original, document for clarifications, providing the information requested in the memorandum he filed.

12. No administrative sanction has been imposed by the Authority on the person in charge in the past processing,

Based on the above, the Authority unanimously judges that according to Article 11 of Law

3471/2006, but also article 12 of the GDPR, the conditions for enforcement in burden of the controller, based on the one hand on article 13 of Law 3471/2006, on combination with article 21 par. 1 item b' of Law 2472/1997 and with Article 84 of Law 4624/2019, and on the other hand, article 58 par. 2 sec. i' of the Regulation and article 15 par. 6 of Law 4624/2019, of the administrative sanction, referred to in its operative part present, which is judged to be proportional to the gravity of the violation.

FOR THOSE REASONS

It imposes, on the accused, A, the effective, proportional and deterrent administrative fine appropriate to the specific case according to the special circumstances thereof, in the amount of two thousand euros (2,000.00) euros, for the above established violations of articles 11 of Law 3471/2006 and 12 of the GDPR.

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The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou

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