

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 07-10-2019 Prot. No.: G/EX/6758/07-10-2019 A
P O F A S I NO. 36/2019 The Personal Data Protection Authority met, at the invitation of its President, at a regular meeting at its headquarters on 24.09.2019, in order to examine the case referred to in the present history. Konstantinos Menudakos, President of the Authority, and the regular members of the Authority Spyros Vlachopoulos, Konstantinos Lambrinoudakis, as rapporteur, and Charalambos Anthopoulos were present. Regular member Eleni Martsoukou and her alternate member Emmanouil Dimogerontakis did not attend due to disability, although they were legally summoned in writing. Georgia Panagopoulou, specialist scientist-auditor as assistant rapporteur, attended the meeting, by order of the President. Irini Papageorgopoulou, an employee of the Administrative Department of the Authority, was also present, by order of the President, as secretary. The Authority took into account the following: The Authority reviewed forty-seven (47) complaints regarding unwanted telephone calls made with or without human intervention and with the purpose of promoting products or services of the companies "HELLINI ETAIREIA TELECOMMUNICATIONS AND TELEMATICS APPLICATIONS ANONYMOUS COMPANY" FORTHNET S.A. (hereinafter Forthnet) and FORTHNET MEDIA "FORTHNET Anonyme Company of Subscription Television, Provision of Telecommunication Services and Participations" S.A. (hereafter Forthnet Media). The complaints concerned either the making of calls to telephone numbers that were registered at 1-3 Kifisias St., 11523 Athens, Tel.: 210-6475600, Fax: 210-6475628, contact@dpa.gr, www.dpa.gr register "opt-out" of the subscriber's provider (i.e. the register of article 11 par. 2 of Law 3471/2006) or to telephone numbers whose subscribers had specifically expressed to Forthnet (which has been assigned by Forthnet Media the carrying out promotional actions) their objection to receiving calls for the aforementioned purpose. FORTHNET S.A. and FORTHNET MEDIA A.E. were legally summoned to a hearing before the Authority twice. In particular, the relevant hearings were held (after the satisfaction of the respective postponement requests of the companies) on 8-12-2015 and on 28-6-2016, while in both cases the aforementioned companies had previously received knowledge of all the complaints , with any additional documents, which would be the subject of the hearings. Also, in both cases the companies were given a deadline and submitted, on time, relevant memoranda. and Article 13 of Law 2472/1997. In addition, with regard to the violations of Article 11 of Law 3471/2006 and Article 13 of Law 2472/1997, the Authority examined in detail each relevant complaint in combination with the respective allegations of the companies, as well as the overall procedures, the which are followed in order to ensure compliance with the conditions set out in said provisions. In the cases where the complainants provided complete information on the making of the call(s) (date and time of the calls, called party and

calling number, information regarding the registration of the subscriber's number in the register of article 11 par. 2 of Law 3471/2006 or by exercising a special objection to the data controller, i.e. the Forthnet company), the Authority considered that the complaints in question should be accepted since the information in question is the only one that the complainant has the ability to know and report, and the controller has the burden of proving that the call was not made - e.g. by submitting to the Authority all the log files of outgoing calls during the critical period of time from his partner, to whom the calling number belongs (see also paragraph 7, p. 21 of decision 67/2016). There are also complaints, as specified in paragraph 7 of said decision 67/2016, which Forthnet accepted. Moreover, in cases of complaints which Forthnet did not accept and for which there was no complete documentation or cases for which the telephone number of the called subscriber had not been included in the register of article 11 of Law 2 3471/2006 during the period in which the complaint concerns and it did not appear that a right of objection had been specifically exercised in accordance with Article 13 of Law 2472/1997, the Authority considered the said complaints to be unfounded (see paragraph 7, p. 22 of decision 67/2016). Based on the above, the Authority considered a total of thirty-four (34) of the original forty-seven (47) complaints as well-founded and imposed a total fine of 24,000 Euros for violation of articles 11 of Law 3471/2006 and 13 of Law 2472/1997, which is broken down (i.e. measured) into 1000 Euros for each established violation of more than ten, taking into account the difficulty of implementing the provision of Article 11 of Law 3471/2006 and the fact that telecommunications providers advertise their services with thousands of phone calls (including the co-advertisement of Nova services) at which point a small number of complaints can be justified. With the same decision, the Authority addressed a recommendation to Forthnet to follow specific procedures in the context of making phone calls for promotional purposes, in order to apply what is mentioned in paragraphs 2 to 5 of decision No. 67/2016, but also in order to improve the procedures that follows in relation to the making of advertising calls, in accordance with the points mentioned in paragraph 8 of the decision in question. Forthnet, with document No. C/EIS/7360/15-11-2016, submitted to the Authority a remedy request for the revocation or amendment, in part or in whole, of decision 67/2016. In it, he claims the following: i) that there is a violation of the right to a prior hearing because he was not informed of the threatened penalty, but he considered that the hearing is aimed at improving the process of maintaining the register of Article 11 of Law 3471/2006, ii) that in four complaints, a period of more than twelve months has passed from the moment complaints a', c', d' and e' were submitted until the time the complaints were forwarded by the Authority to the company, which is therefore unable to investigate them, through log files, to refute the complainants' allegations. Furthermore, it considers that it cannot process the already maintained call log

files which are kept for the purposes of Law 3917/2011 and that the special conditions mentioned by the Authority for its cooperation with processors must apply for the future , as there were no call log files to its external partners during the period under review, iii) lists its opinions on each of the thirty-four (34) complaints that were found to be well-founded, disputing that the 3 violation is proven for each of them, iv) with the sanction imposed, the Authority violates the principles of proportionality, good administration, leniency and equality. The Authority, after examining all the elements of the file, after hearing the rapporteur and the clarifications of the assistant rapporteur, who left after the debate and before the conference and decision-making, and after a thorough discussion, THINKS ACCORDING TO THE LAW 1 . Article 24 par. 1 of Law 2690/1999 (KDDiad) states that "If the relevant provisions do not provide for the possibility of exercising, according to the next article, a special administrative or interlocutory appeal, the interested party, for the restoration of material or moral damage to his legal interests caused by an individual administrative act may, for any reason, upon his request, request, either from the administrative authority that issued the act, its revocation or amendment (remedial request), or, from the authority that is in charge of the one that issued the act, its annulment (hierarchical appeal)". In the sense of the provision, the request for treatment aims to revoke or modify the challenged individual administrative act for legal or factual defects of it that go back to the regime under which it was issued. 2. Forthnet and Forthnet Media were informed by the Authority about the content of complaints a', c', d' and e', which are included in decision 67/2016, with the number prot. C/EX/7253 /26-11-2014 document, with which their opinions were requested on them (along with a set of other complaints). Subsequently, Forthnet submitted to the Authority the document No. C/EIS/2057/01-04-2015 in which it presents its views on the complaints in question. Subsequently, in all the calls sent to the above companies for their hearing before the Authority, such as are described in detail in the history of decision 67/2016, it is stated that in relevant meeting will also discuss all the complaints that had already been forwarded in the above companies (including, therefore, the above complaints). After the hearing on 8-12-2015, in case No. C/EIS/6525/14-12-2015 memorandum of Forthnet, the opinions on said are listed again of complaints, while the same views were repeated in case No. C/EIS/4371/12-07-2016 memorandum after the 28-06-2016 hearing of the companies before the

Principle. Therefore, the first reason of the request for treatment is unfounded, as the Forthnet had taken full notice of the complaints, clearly enjoying themselves the right to a prior hearing.

3. As detailed in paragraph 5 of decision 67/2016, in accordance with article 10 of Law 2472/1997, the respective controller must receive the appropriate organizational and technical measures to ensure legality in general of the processing and must ensure that the processors act without breaking the law. The Authority in the contested decision determined at one year the time period of keeping the external data of calls made by the controller for the purpose of investigation from him (and by extension from the competent authorities, such as the APDPH) of validity of the complaints or complaints of invited subscribers (point 5 of rationale, pp. 18-19). However, until the decision on the complaints is issued, the data controllers had this obligation and should have themselves determine the appropriate measures without waiting for the Authority's decision. Indeed, the observance of this data, for the purpose of investigating complaints which is necessary in view of the extremely weak position of the respondent subscriber or telephone user to exercise his rights against callers, in no way related to the obligation of a provider, such as Forthnet, to comply with them provisions of Law 3917/2011, but it is an obligation of every advertised medium phone calls. Finally, it is not only the non-observance of the data that constitutes an infringement of calls and the incomplete typing of a call, but also the omission to the right to object is properly satisfied, when proven by its evidence file that this has been exercised, as in the present case. Therefore and O second ground of the remedy request is unfounded.

4. In relation to the specific calls that Forthnet is complaining about

request for treatment, the following are found:

i) For complaint a', Forthnet states in its memos that the subscriber had contacted the company since October 2011 asking to be deleted from its lists, with the last communication between them on 15/12/2011 via electronic mail (e-mail). Forthnet also reports that it has registered the number of the subscriber in the special register of objections on 15/3/2015 (i.e. after lapse of three years from the exercise of the right of objection). Besides, at

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In its memos, Forthnet states that it began maintaining the expert registry of objections from 1/9/2014. Therefore, it clearly follows that Forthnet had not satisfy the right to object correctly.

ii) For complaint c', Forthnet, although essentially accepting that the subscriber had been summoned, he validly argues that it was erroneously admitted because they were not provided complete documentation of the calls that are the subject of this complaint. Therefore, the relevant reason raised with the application for treatment must be made accepted.

iii) For complaint d', with the new data submitted by Forthnet it appears that, if and the subscriber's number was written in the register of his provider (On Telecoms), that provider did not send it to Forthnet. Therefore, in view of new information filed by the company, this complaint should be dismissed.

iv) For complaint e', Forthnet states that the number is registered to registry of his provider from 1/11/2013 (calls made on 12/12/2013 and 17/12/2013), as well as that he entered the subscriber number in the special register of objections on 15/3/2015. The applicant is not accurate with the application remedy Forthnet's claim that said complaint was forwarded to it thereafter the lapse of twelve months from the date of submission of the complaint to the Authority,

since this transmission took place in November 2014. Therefore, the violation is

complete and substantiated, this claim must be rejected.

5. The other issues raised with the treatment request, as set forth

summarized above in the history of the present, have already been thoroughly examined and

deemed justified by decision 67/2016, and the applicant essentially repeats

the arguments of its pleadings and does not plead or adduce new ones

evidence to support her claims. Therefore, there is no reason

review of the other complaints and the other issues of the application

treatment.

FOR THOSE REASONS

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The Personal Data Protection Authority:

Amends decision 67/2016, as follows:

a) the complaints with elements c' and d' are rejected.

b) the amount of the fine is modified to 22,000 euros.

The president

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou

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