

Correct repetition due to an error in the composition Athens, 16-04-2021 Prot. No.: 902 DECISION 9/2021 (Department) The Personal Data Protection Authority met in a composition of the Department at its headquarters on 26-11-2020 at the invitation of the President of, in order to examine the case referred to in the history of the present. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Constantinos Menoudakos, and the alternate members Evangelos Papakonstantinou, as rapporteur, and Grigorios Tsolias, in place of the regular members Konstantinos Lambrinoudakis and Charalambos Anthopoulos respectively, who, although legally summoned in writing, attended they did not attend due to disability. Regular member Spyridon Vlachopoulos, although legally summoned in writing, did not attend due to disability. The meeting was attended by order of the President, Ioannis Lykotrafitis, expert scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: Complaint number C/EIS/4680/02-07-2019 was submitted to the Authority, which related to the sending of unsolicited political communication (SMS message) by A to promote the candidacy in the parliamentary elections of ... According to the above complaint, the complainant received on ..., on his mobile phone 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 his phone with the number ... a short text message (SMS) from the complainant (as the sender of the message is the number ...), which was of a political nature for the purposes of promoting her candidacy in the upcoming parliamentary elections of ..., without having - as the complainant claims - any previous relationship with her nor with the political party with which she was a candidate. The Authority, in the context of examining the complaint in question, sent the complainant the document no. prot. lines issued by the Authority for Political Communication. The complainant responded with document No. G/EIS/6284/18-09-2019, in which, among other things, the following are briefly mentioned: 1) In addition to speeches, gatherings, interviews and all kinds of politics events, for the purpose of political communication it has also chosen to send text messages (sms), which is carried out exclusively by its political office. 2) The recipients of said sms messages are natural persons included in her civil record. 3) Practice political communication with respect to the current legislation and, in particular, to the provisions of the Authority's Directive 1/2010 regarding the processing of personal data for the purpose of political communication. For this reason, recipients of short text messages (sms) have always been provided with the possibility to easily and clearly exercise the right to object to receiving political communication messages. 4) The telephone number in question was legally registered in her file, as a contact element with a specific natural person, as a subject of personal data. However, the individual in question in her file was not the alleged current owner of the telephone

number in question and the complainant, but another individual 2, from whom the telephone number in question had been lawfully obtained as part of a contact policy. 5) The complainant did not effectively exercise any of the rights of information, access or objection before the complainant, as data controller. On the contrary, he sent the complainant a response sms with an abusive character, to which, due to its character, the complainant did not respond, but deleted the telephone number in question from the directories she keeps in her files. The Authority then sent the complainant the document No.

C/EIS/4680-2/27-09-2019 requesting additional clarifications. The complainant responded again with document No.

C/EIS/8025/20-11-2019, in which she mentions, among other things, the following briefly mentioned: 1) The telephone number in question was legally registered in her file in the name: "B, ..., [area] F". Therefore, the complainant states that there is a question of legalization of the complainant for submitting the complaint. 2) The legal basis of the processing in question (sending a short written message - sms of political communication) is article 4 par. 5 of Directive No. 1/2010 of the Authority. 3)

A check on the "Reverse Phone Number Lookup – 11888" application revealed that the telephone number in question ... is not registered in the name of the complainant C, which establishes both the inadmissibility and the groundlessness of the complaint. Furthermore, the complainant supplemented his initial complaint, initially with his document No.

C/EIS/6291/18-09-2019, following a relevant question from the Authority, with which he was notified of No. prot.

C/EIS/6284/18-09-2019 document of the complainant. In this supplemental document, the complainant states that the telephone number in question belonged to a parent and was transferred to his name on ... after the parent's death. In addition, he did not request the deletion of his number because the method for deletion 3 suggested by the complainant was considered unacceptable and possibly dangerous (visiting an unknown website and opening an unknown online file). Subsequently, the complainant sent a new supplementary document, No. C/EIS/8029/21-11-2019, in which he states that the telephone number belonged from ... to approximately ... to the mother of B, and then until ... to D's father. He believes that before ... they had participated in a telephone conference. However, he states that he is certain that they have had no contact with any other political body since ... and after due to health problems, both of whom are now deceased. ... where they had probably given the number as In response to what the complainant states in her document No. C/EIS/8025/20-11-2019, the complainant sent the No. C/EIS/ 8184/26-11-2019 supplementary document. In it he states that, as explained to him by his provider ..., the reason the 11888 app still shows the old owner of the phone number is that he, as the new owner, has requested that his details not be shown in phone books, so the service 11888 shows the old owner. In any case, together with the document in

question, he provided a certificate of the owner of the connection with the telephone number in question from his provider.

Subsequently, the Authority invited the complainant to a hearing with document No. prot C/Eξ/4680-1/07-07-2020 in order to discuss the above complaint as well as the general practice followed by the candidate for the communication of a political nature by electronic means. At the meeting of 07-17-2020, Sotirios Papamichail was present with ..., who presented his views orally. Subsequently, the complainant submitted the memorandum No. C/EIS/5374/31-07-2020, supplementary to the first one. In said memorandum, in addition to the previous documents, the following are briefly stated: 1) The complainant falsely states on the complaint form that he is the owner of the telephone number in question, he did not answer questions no. 2, 4 3 and 4 and therefore the possibility of filing a complaint is not documented. 2) The complainant did not request deletion from the record, and consequently his right to appeal to the Authority is weakened. 3) The telephone number belonged successively from ... to ... to the complainant's mother, who had provided the complainant with the relevant information in the context of personal/political contact, and from ... to ... to the complainant's father. Even assuming that the complainant was/is the owner of the number, he did not exercise the right to object. 4) For the purpose of political communication, the complainant exclusively uses her political file, which includes a list of personal and political contacts and has not used a list from any party or other body. The list of personal contacts has been compiled exclusively by her from ... to date. 5) With reference to the change of political organization with which the complainant was a candidate in the elections, the complainant notes that the time of including the contact details of her personal contacts in the list or the previous political and electoral choices of these contacts are not a criterion which prejudices their political and electoral attitude. In every election, the parties and candidate MPs address all citizens and the will and decision of the voters based on what they have voted for in previous elections is not discounted. In any case, the complainant states that there is no change in the person in charge and the purpose of processing, nor the subject of the data. 6) Regarding the provision of the possibility to exercise the right to object by sending a replying free SMS message (from the recipient to the original sender) , the complainant states that this is not the case it is technically possible according to SMS sending companies. Only in the services of 5-digit numbers is this possible. 5 It is noted that the Authority in the past with case number C/EX/2886-1/26-

04-2012, following two complaints for sending unsolicited political communication by e-mail, he had informed the complainant in detail about the no. 1/2010 Directive of the Authority. The Authority, after examining the elements of the file, the hearing process and after hearing the rapporteur and the assistant rapporteur, who withdrew after the discussion of the case and

before the conference and decision-making, after a thorough discussion, THOUGHT IN ACCORDANCE WITH THE LAW 1.

According to article 4 par. 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 by article 11 of Law 3471/2006 on the protection of personal data data in the field of electronic communications. According to this article, such communication is permitted only if the subscriber expressly consents in advance. Exceptionally, according to article 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 for the direct promotion of 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 collection and use of his electronic data and this during the collection of contact data, as well as in every message, in case the user had not initially objected to this use. Moreover, according to paragraphs 1 and 4 of article 13 of the same Law 3471/2006, in terms of compliance with this law, the Personal Data Protection Authority has the powers of Law 2472/1997, as applicable from time to time, and imposes the sanctions provided by this last law in case of violation of the provisions of the above Law 3471/2006. 3. Especially for political communication through electronic media without human intervention and in accordance with the Authority's guidelines regarding the processing of personal data for the purpose of political communication, taking into account both article 11 of Law 3471/2006, and the Directive 1/2010 of the Authority for political communication as well as 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: The policy communication¹ 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, European Parliament elections 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 parliamentarians or candidate parliamentarians receive data from political parties and process

it for their personal political communication, they also become responsible 1 See definition in article 1 par. 2 of directive 1/2010 of Authority 7 processing. In this capacity and based on the principle of accountability² they must be able to demonstrate compliance with their obligations and processing rules. 4. When political communication is carried out using electronic means of communication, without human intervention, through public communication networks, as is the case of electronic messages (e-mail), the communication requires, according to article 11 par. 1 law 3471 /2006, as applicable, the prior consent of the data subject, subject to paragraph 3 of the same article, as applicable. It is also pointed out that short text messages (SMS) are also e-mails according to the definitions of Law 3471/2006 and Directive 2002/58/EC. 5. Political communication using electronic means is permitted without human intervention and without the consent of the data subject only if the following conditions are cumulatively met: (a) The contact information has been legally obtained in the context of previous, similar contact with the data subjects; and the subject during the collection of the data was informed about its use for the purpose of political communication, he was given the opportunity to object to this use but did not express it. The previous contact need not be purely political in nature, e.g. it is legal to send messages when mail was collected in the context of a previous invitation to participate in an event or action, regardless of its political nature. On the contrary, it is not considered to constitute a similar contact and it is not legal to use electronic contact information for the purpose of political communication when such information was obtained in the context of a professional relationship, such as for example the use of the client file by a candidate for parliament. the electronic data (b) The controller must provide the data subject with the possibility to exercise the right to object in an easy and clear way, and this in every political communication message. Each communication is required to clearly and clearly state the identity of the sender or the person for whose benefit the message is sent, as well as a valid address to which the recipient of the message can request the termination of the communication. 6. In this particular case, the complainant, as data controller, carried out political communication by sending short text messages (SMS). The legality of the mission is ensured if the above considerations 4, 5 have been observed. From the responses of the data controller the following emerges: 7. Regarding the assertion of the data controller that the data subject must first appeal to the data controller and only if he is not satisfied to appeal to the Authority, it is pointed out that the violation has already been completed by sending the message (whether it is an e-mail or an SMS), regardless of whether or not the subject's rights are subsequently exercised before the data controller. In any case, the prior exercise of a right before the controller is not a condition for the complaint to the Authority. 8. The controller did not provide evidence that the required prior consent of the recipient of the SMS

message had been secured, or that there had been a previous similar contact/communication. Also, the contact details of the recipient of the complaint messages had not come into his possession in the context of a previous similar contact with him. On the contrary, the personal data used by the controller declares that it was obtained in the past from a political event, without, however, providing relevant evidence to prove its claim as to the source of its origin or that consent was obtained from the then owner. telephone number. Regarding the last claim, it should be pointed out that the legislation for the protection of personal data applies in this case to the actual user of the telephone connection, regardless of the person whose details 9 the connection has been registered or identified in accordance with what is accepted from the jurisprudence of the ECtHR in the context of the interpretation of Article 8 ECHR³. It is also noted that, apart from the specific complaint, the data controller did not provide any relevant information about other persons to whom he sent political communication messages. 9. The controller did not specify to the Authority the exact number of messages that were sent. 10. The controller provided, in the disputed SMS messages of the complaint, to the data subject information about the possibility to exercise the right to object.

11. The controller had full knowledge of the applicable legal framework

for political communication of a political nature and guidelines

lines of the Authority which had been published and sent to the political parties

already from the authorities ..., especially since in the past they had been presented before it

Authority related complaints and the Authority had informed the person in charge

processing for the legal framework with a relevant document.

12. The controller cooperated with the Authority by responding to the documents

for clarifications, providing the information requested and at

meeting of the Authority and in the memorandum he submitted.

13. No administrative sanction has been imposed in the past by the Authority on

controller.

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

3471/2006 the conditions for enforcement against the person in charge are met

processing, based on the one hand, article 13 of Law 3471/2006, in combination with the

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 n.

4624/2019, of the administrative sanction, referred to in the operative part hereof,

which is deemed effective, proportionate and dissuasive, taking them into account

3 Valentino Acatrinei v. Romania, 18540/04, 25.6.13, § 53; M.N. and Others v. San Marino, 28005/12,

7.7.2015, § 53, Kruslin v. France, 11801/85, 24.4.1990, § 26; Lambert v. France, 23618/94, 24.8.1998;

Benedik v. Slovenia, 62357/14, 24.4.2018, §§ 75,112-114.

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aggravating factors referred to in paragraphs 7, 8, 9 and 11 hereof and

the mitigating factors mentioned in paragraphs 10, 12 and 13 of this.

FOR THOSE REASONS

The Personal Data Protection Authority:

It imposes on A the effective, proportionate and dissuasive administrative

fine that is appropriate in the specific case according to

more special circumstances thereof, amounting to two thousand euros (2,000.00) euros, for the

as above found violations of article 11 of law 3471/2006.

The Secretary

Irini Papageorgopoulou

The Deputy President

George Batzalexis

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