

Correct repetition due to an error in the composition Athens, 16-04-2021 Prot. No.: 901 DECISION 8/2021 (Department) The Personal Data Protection Authority met in a composition of the Department at its headquarters on 02-12-2020 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, the regular member Charalambos Anthopoulos Evangelos Papakonstantinou, as rapporteur, in place of the regular member Konstantinos Lambrinoudakis, who, although he was legally summoned in writing, did not attend due to a 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. alternate member and the The Authority took into account the following:

Complaint No. C/EIS/1717/06-03-2019 was submitted to the Authority, which concerns the receipt of unsolicited political communication (sms) by A for promotion of his candidacy in the municipal elections of 1-3 Kifissias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 According to the above complaint, the complainant received on ..., on his mobile phone number ... a short text message (SMS) from the complainant (as the sender of the message the last name of the complainant "A" appeared), which was of a political nature for the purpose of promoting his candidacy in the upcoming municipal elections of ..., without having - as the complainant claims - any previous relationship with him. The Authority, in the context of examining the complaint in question, sent the complainant the document No. C/EX/1717-1/19-03-2019 requesting his opinions on the complainants, taking into account the guidelines lines issued by the Authority for Political Communication. The complainant responded to the Authority with the memorandum No. C/EIS/6683/04-10-2019, in which he mentions, among other things, the following briefly mentioned: 1) To promote his candidacy, he used all the legal means, including short text messages via mobile phones (sms). The sending of these messages was mass, i.e. not personalized to selected persons or telephone numbers, it was not addressed to anyone personally and did not touch any personal information of the recipient. In fact, regarding the recipients, when they were sent, the complainant did not even know if they were voters in Municipality F. 2) The lists of mobile phones that were used for sending the messages, were delivered to him either by candidate municipal councilors and concerned persons controlled by those, either from lists previously used by other politicians in any degree of involvement in elections, or from the Internet where telephone numbers were posted that related to the promotion or advertising of their owner and the capacity he has (e.g. professional advertising, etc). 3) The said sending of messages, which

of course was used as a method of promotion by all candidates, does not constitute a violation of Law 3741/2006, nor does this case fall under the mandatory granting of the 2 possibility to the complainant to object to the use of his telephone since the number used was freely accessible to third parties. The Authority, then, with document No. C/EX/1717-2/06-11-2019, invited the complainant to a hearing via video conference, 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 11-11-2020, A was present via video conference, who presented his views orally. The complainant was given a deadline, but did not file a statement. 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, in accordance with Article 3, Article 11, Paragraph 3 of Law 3471/2006, e-mail contact details obtained legally, in the context of the sale of products or services or other transactions, 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) ¹ See definition in article 1 par. 2 of Directive 1/2010 of Authority 4 if they define the purpose and manner 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 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 media is permitted without human intervention and without the consent of the data subject only if the following conditions are met cumulatively: (a) The contact information has been lawfully obtained in the context of previous, similar contact with the data subjects, and the subject at the time of data collection was informed of its use for the purpose of political communication, 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. is it legal to send messages when mail 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 such information was obtained in the context of a professional relationship, such as electronic data

² As defined in article 5 par. 2 of the GDPR

for example the use of the client 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

is required to clearly and clearly state the identity of the sender or

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

and a valid address to which the recipient of the message can

requests termination of communication.

6. In this particular case, the complainant, as controller

carried out political communication by sending short writings

messages (sms). The legality of the shipment is ensured if they have been observed

those mentioned in the above Thoughts 4, 5. From the answers of the person in charge

processing results in the following:

7. The controller did not provide evidence that

the required prior consent of the recipient had been secured

of the sms message in question. On the contrary, the complainant notes that

used multiple sources (other candidates, web sites)

and that the shipment was made en masse, without knowing at the time of their shipment whether the

recipients were voters in the Municipality in which he was a candidate, i.e

because communication took place without any of them being present

legality conditions described in the above Considerations 4 and 5.

Furthermore, the data controller has not demonstrated that it follows procedures,

regarding the sending of short text messages for purposes

communication policy, which ensure that the above are met

conditions of legitimacy.

8. The controller did not provide relevant information about other persons in which he sent messages of political communication, nor did he identify him exact number of messages sent.

9. The controller did not provide the complainant as a subject of given the possibility to exercise the right to object in an easy way and clear, in the contested sms message of the complaint.

10. The controller cooperated satisfactorily with the Authority, since

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responded to the document for clarification, providing the information that were requested, as well as during the Authority's meeting.

11. No administrative sanction has been imposed by the Authority in the past 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 considered effective, proportional and deterrent, taking them into account aggravating factors referred to in paragraphs 7, 8 and 9 hereof and mitigating factors referred to in paragraphs 10 and 11 hereof.

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 Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou