

(Department) The Personal Data Protection Authority met in composition Department at its headquarters on 19-02-2020 upon the invitation of its President, in order to examine the case referred to in the present history. Charalambos Anthopoulos appeared as chairman, hindered by the President of the Authority Constantinos Menoudakis and the Deputy President Georgios Batzalexis, the substitute members Evangelos Papakonstantinou and Emmanuel Dimogerontakis, seraphs replacing the regular members Konstantinos Lambrinoudakis and Eleni Martsoukou respectively, who, although legally elected , did not attend due to disability, and the alternate member Grigorios Tsolias, as rapporteur with the right to vote. George Roussopoulos, expert scientist-auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, attended the meeting as secretary. The Authority took into account the following: Complaint No. C/EIS/4904/12-07-2019 of A was submitted to the Authority, which concerns the receipt of an unsolicited political communication (SMS message) for 1 promotion of his candidacy B in the parliamentary elections of .... In particular, according to the complaint, the complainant received on ..., on his mobile phone number, an SMS message with "B" appearing as the sender, which was of a political nature for the purposes of promoting the complainant's candidacy in the upcoming, during the disputed period , parliamentary elections of May 26, 2019, without having any previous relationship with him. The message was "ON SUNDAY ... WE DECIDE ABOUT OUR LIVES. WE VOTE..., WE SUPPORT B! FOR EXCEPTION ...". The complainant also states that he contacted the above telephone number and, when asked about the origin of the number, was told as a source a regional department of a professional body in which he was previously registered due to his professional status. The complainant now lives in another city. The Authority, in the context of examining the complaint in question, sent the complainant the document no. prot. C/EX/4904-1/09-08-2019, with which he requested his opinions on the complainants, taking into account the guidelines it has issued on political communication. The complainant responded to the Authority, in a short period of time, with his document No. C/EIS/5808/26-08-2019, in which he briefly states the following: 1) He accepts the sending of the message as part of the activity notification of his candidacy in the parliamentary elections. 2) He states that the recipients were obtained after selecting his mobile phone contacts, as well as from the corresponding messages he had sent in the previous parliamentary elections in 2015. 3) Knowing that the law had to be followed, he tried to make a further selection of recipients. 4) His office landline number was also included in the message, so that, in case of inconvenience, the recipient could request the exemption from a possible subsequent shipment. 5) Some of the elements of the list drawn up by ... came

from 2 colleagues of the complainant, members of the professional body, as before the 2015 elections, he was ... of the ... committee of the regional department. 6) The complainant was the only recipient who complained, when contacted they acknowledged the mistake and removed him from the recipient list. Then the Authority called with no. prot.

C/EX/7600/05-11-2019 document the complainant in a hearing during the meeting of the Authority's department on 04-12-2019, during which the above mentioned complaint was discussed as well as the general practice followed for the communication of a political nature by electronic means. At the said meeting, the complainant was present, who presented his views orally and subsequently submitted the memorandum No. C/EIS/8441/04-12-2019. In it, in addition to the original memorandum, the following are mentioned: 1) The complainant had received a similar message in the 2015 elections as well without protesting. 2) The messages were sent to a list extracted from the candidate's mobile phone. A relevant sample of the extracted file is provided. 3) The complainant considers that there is a previous contact and relationship. 4) The writing of the text "FOR EXCEPTION..." and the telephone number of the complainant's office indicates that, if the recipients so wish, they are excluded. The candidate's associates had been explicitly instructed to send SMS only to persons with whom there were already previous electronic contacts and who had not requested their exclusion, so they had accepted them. 5) The practice of the accused is not different from what all candidate MPs did. 6) There was no intention to disturb the complainant. 3 The Authority, after examining the elements of the file, the hearing and after hearing the rapporteur and the assistant rapporteur, who left after the discussion of the case and before the conference and decision-making, and after a thorough discussion, OUGHT AGREE BY 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. 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. 4 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 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: political communication<sup>1</sup> 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 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 accountability<sup>2</sup> 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.

1 See definition in article 1 par. 2 of Directive 1/2010 of the Authority

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

5

also that short text messages (SMS) are also messages

email according to the definitions of Law 3471/2006 and

Directive 2002/58/EC.

5. Political communication using electronic media is allowed without

human intervention and without the subject's consent

data 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

subject during the collection of the data informed about their use with

for the purpose of political communication, he was given the opportunity to express

objection to this use but did not express it. The previous contact did not

it is necessary to have a purely political character, e.g. is it legal

sending messages when email information was collected

in the context of a previous invitation to participate in an event or

action, regardless of its political character. On the contrary, it is not considered that

constitutes similar contact and is not legal to use electronics

contact details for the purpose of political communication when the

such 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) O

controller must provide the data subject with

ability to exercise the right to object in an easy and clear way, and

this in every political communication message. In every communication it is required to

the sender's or person's identity is clearly and distinctly stated

for whose benefit the message is sent, as well as a valid one

address to which the recipient of the message can request its

termination of communication.

6. In this particular case, the accused, based on the above,

carried out, as a controller, political communication by dispatch

short text messages (SMS). Hence its legality

delivery is ensured only if the above mentioned have been observed

paragraphs 4, 5. From the responses of the data controller, the

following:

7. The data controller had not obtained their prior consents of a person to whom he sent a political communication message. Also, the contact details of the recipient of the message had not been entered into his possession in the context of previous similar contact with him. On the contrary, the personally of data were acquired in the frame previous one activity in a professional and trade union body, which does not is related to the specific political activity of the person in charge processing.

8. The controller did not specify to the Authority the exact number of messages that were sent. Relatively speaking, it only states that it sent to contact list extracted from his mobile phone.

9. The controller provided the data subject with ability to exercise the right to object in an easy and clear way. In fact, the complainant exercised his right of access by telephone and objection and the controller responded.

10. The data controller, due to his status, had full knowledge of the applicable law legal framework for political communication of a political nature and Authority guidelines that had been published and sent to

political parties as early as the beginning of April 2019.

11. The controller cooperated with the Authority by answering no delay in the documents for clarification, providing the information that were requested both during the Authority's meeting and in the memorandum it submitted.

12. No administrative sanction has been imposed on the controller in the past from beginning.

7

Based on the above, the Authority unanimously judges that, in accordance with Article 11 of Law 3471/2006 the conditions for enforcement against the person in charge are met processing, based on article 13 of Law 3471/2006 in conjunction with article 21 par. 1 item b' of Law 2472/1997 and with Article 84 of Law 4624/2019, of administrative sanction, referred to in the operative part of the present, which is considered proportional to the gravity of the violation.

FOR THOSE REASONS

The Personal Data Protection Authority:

It imposes, on B, the effective, proportional and deterrent administrative fine that is appropriate in the specific case according to special circumstances thereof, in the amount of one thousand euros (1,000.00) euros, for the above established violation of article 11 of Law 3471/2006.

The Chairman

The Secretary

Charalambos Anthopoulos

Irini Papageorgopoulou

8