

Correct repetition due to an error in the composition Athens, 16-04-2021 Prot. No.: 900 DECISION 7/2021 (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. 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 Authority took into account the following:

Complaint No. C/EIS/4505/26-06-2019 was submitted to the Authority, which concerns a telephone call for the purpose of political communication by the A to promote her candidacy in the national elections of July 2019. Specifically, according to the above complaint, the complainant received 1-3 Kifisias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 call to her personal mobile phone number ... from the number ... on ... on In the call, she was asked to "cross her name" (referring to the alleged candidate) in the upcoming election, while B's interlocutor stated that the complainant's details were on the lists she supplied them with.... However, as she states, in a communication she had with ..., she was told that she is not a member of the party, and therefore her name is not included in any list they distributed to the party's candidates. Then, she again called the complainant's political office, where Mr. C (the complainant's colleague) repeated to her that her phone number is on the lists.... The Authority, in the context of examining the complaint in question, sent the complainant the document No. C/EX/4505-2/25-07-2019 requesting her opinions on the complainants, taking into account the guidelines lines issued by the Authority for Political Communication. The complainant replied to the Authority with the memorandum No. C/EIS/8031/21-11-2019, in which she mentions, among other things, the following briefly mentioned: 1) Since ... she is a citizen in [region] F , has participated in ... electoral contests, and this results in maintaining a large electoral roll, i.e. with many contact details of voters which have been collected over the years. This is a list of too many people and it is possible that the complainant in question has joined either by declaring her details at some event as usual, or through a relative or friend. 2) The tactic she follows to promote her candidacy is to precede a phone call before sending an sms or to follow a phone call to confirm receipt of invitations to events. 3) The complainant had the possibility to refuse any communication, which she did not do. 4) In order to dismiss the complaint for the violation of the legislation regarding the sending of unsolicited e-mails made by

the complainant, the complainant confirms that her voter 2 list has been checked before the election campaign in its entirety, i.e. the details have been confirmed and they were updated months ago by a working group in her office. She also states that, since she belongs to the electoral roll of the complainant, she was probably called and was not found to confirm her information or did not refuse to continue communicating with her when she received the call. 5) It was not proven by the complainant herself that there was any communication with her from the office of the complainant, nor was it established whether telephone calls were made to her from the office of the complainant either in order to confirm her information or that she denied any communication. Subsequently, the Authority invited A to a hearing via video conference at the meeting of the Authority's Department on 11-11-2020, with document No. C/EX/6681/02-10-2020, 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 in question, the complainant was present via video conference, and she presented her 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. With reference to the more general obligation to satisfy the right of access with which each data controller is charged, it is pointed out that, according to the GDPR (see article 12 thereof), the data controller facilitates the exercise of the rights of data subjects, provides them the information on the action carried out following a relevant request without delay and in any case within a month of receiving the request¹, while also if it does not act on a request (including the case of exercising the right of access), then it informs the data subject, without delay and at the latest within one month of receipt of the request, for the reasons why it did not act as well as for the possibility of submitting a complaint to the supervisory authority and bringing legal action. 3. The issue of making unsolicited communications by any means of electronic communication, with or 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 protection of personal data in the field of electronic communications, which incorporated Directive 2002/58/EC

into the national legal order. In particular, regarding the issue of promotional telephone calls, with human intervention, for promotional purposes, in article 11 par. 2 of Law 3471/2006, it is defined that "It is not allowed to make unsolicited communications with human intervention (calls) for the above purposes, as long as the subscriber has declared to the provider of the service available to the public, that he generally does not wish to receive such calls. The organization is obliged to register these statements free of charge in a special list of subscribers, which is available to anyone interested." 4. Therefore, for telephone advertising calls with human intervention 1 This applies not only in the context of a request subject to the exercise of the right of access (art. 15 of the GDPR), but also for any other request pursuant to art. 15 to 22 of the GDPR. 4 the "opt-out" system is applied and these telephone calls are allowed, unless the called party has declared that he does not wish them. According to this system, natural or legal persons can address their objections, regarding the processing of their data, either specifically, directly to the data controller (i.e. the advertiser), as an expression of opposition based on art. 21 of the GDPR (so the data controller must have a special procedure for this purpose that ensures that the subscriber's telephone number will be excluded from any telephone promotional/advertising action of the data controller in the future), or in general, through their registration in the specialist subscriber list of the provider. The law provides for the establishment of an "opt-out" register with each operator and the subscriber can indicate free of charge to his telecommunications service provider that he does not wish to receive direct marketing telephone calls. Advertisers must obtain from all providers up-to-date copies of the Registers of article 11 of Law 3471/2006 and ensure that they have available the subscribers' statements made up to thirty days before the telephone call was made. This period of thirty days has been deemed necessary (see relevant Decisions 62-67/2016 of the Authority) so that the controllers have the possibility to process the registers. 5. Especially for political communication and in accordance with the Authority's guidelines regarding the processing of personal data for the purpose of communication of a political nature, taking into account both article 11 of the 3471/2006, as well as Directive 1/2010 of the Authority for political communication but also the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data which is in effect from 25 May 2018, the following applies:

a) Political communication is of interest from the point of view of the protection of personal data, takes place at any time,

pre-election or not, by political parties,

MPs, MEPs,

factions and holders of elected positions in local government or

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candidates in the parliamentary elections, the European elections

Parliament and local government elections. These faces

become data controllers, in accordance with Regulation (EU)

2016/679, article 4, para. 7) as long as they define its purpose and method

processing. For example, when MPs or candidate MPs

they receive data from political parties and process it for

their personal political communication, they also become responsible

processing. In this capacity they must be able to demonstrate

compliance with their obligations and processing rules.

b) The telephone calls of political content with human

intervention carried out through public communications networks

are also allowed without the consent of the subject, unless the person invited

has previously stated that he does not wish to receive such calls

("opt-out" system), in accordance with article 11 par. 2 of Law 3471/2006, as

apply. The conditions mentioned in article 11 par. 2 of n.

3471/2006, as applicable, must be met in order to show that the

processing is necessary for the purposes of the legal interests that

seeks the controller, based on article 6 paragraph f

Regulation (EU) 2016/679 and for political communication via telephone

human intervention calls made through services

"of the information society"², e.g. Viber, Whatsapp, Skype, FaceTime, etc.

when calls are made to phone numbers belonging to

subscribers to the public communications network. For political communication through phone calls with human intervention by those in charge processing must receive from all providers up to date copies of the registers of article 11 of Law 3471/2006 and ensure that they have available of subscribers they have carried out up to thirty days before its realization phone call.

Further, when making a telephone call the caller must the statements

2 See No. 4 par. 25 of the GDPR.

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informs about the identity of the person in charge and the identity of the executor when the call is made by executors, not to conceal or falsify him calling number and to inform at least about the possibility of exercising it right of access. It is noted that the exercise of the right erasure against a controller should not be confused with registration of the article. 11 of Law 3471/2006, as the second indicates the subscriber's wish to exclude his number from each telephone promotion of any controller, and not a specific one.

6. In this particular case, the complainant, based on the above, carried out, as a controller, political communication with making phone calls with human intervention (i.e. no automated). Hence the legality of said policy communication is ensured if the conditions mentioned above have been observed

Considerations 4 and 5. From the controller's responses, the

following:

7. The controller does not state that he had received, before the making the phone calls, the "opt-out" registers of telecommunication providers in order to exclude, from promotional telephone actions, those telephone numbers for which he did not have special consent for this purpose to carry out the aforementioned calls. In this regard, it is noted that the data controller did not submit no evidence to show that he was making phone calls calls only to numbers for which he had special consent.

More generally, the controller did not provide detailed information to the Authority for the exact procedures it followed in its context communication policy (such as estimating the number of phone calls which carried out and specialization of the sources of the called numbers – beyond the general reference that these are elements which have gathered over the years either by the individuals themselves to some event, either through their relative or friend). It is noted that the person in charge processing refers to telephone confirmation and update

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of the items in the list it keeps, however even for the making these phone calls must have been observed referred to in the above Thoughts 4 and 5.

8. The controller does not state whether he provided, at the time of implementation of telephone calls, informing the called party about the possibility of exercising his rights – since he did not attach any other relevant element regarding his more general practice regarding the

making political communications telephone calls.

9. The controller did not adequately satisfy the right

access of the complainant.

10. No administrative sanction has been imposed on the person in charge in the past

processing by the Authority.

The Authority, taking into account the above established violations of

Article 15 of the GDPR and Article 11 of Law 3471/2006, as well as Article

13 of Law 3471/2006, judges unanimously that the conditions for imposition in

responsibility of the data controller according to article 58 par. 2 i) of the GDPR

administrative sanction, as well as the article 21 par. 1 item b' of Law 2472/1997

(which remains in force according to article 84 of Law 4624/2019) administrative

sanction, as cumulatively referred to in the operative part of the present, which in

in each case they are considered - by virtue of Article 83 of the GDPR - effective,

proportionate and dissuasive, taking into account the aggravating factors that

referred to in paragraphs 7, 8 and 9 hereof and the mitigating factors that

are referred to in paragraph 10 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

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above found violations of Article 15 of Regulation (EU) 2016/679

and Article 11 of Law 3471/2006, in accordance with Article 58 para. 2 i) of the GDPR in

combination with article 83 par. 5 of the Civil Code, and article 21 par. 1 item b' of n.

2472/1997, in conjunction with article 13 par. 4 of law 3471/2006.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou