

Athens, 03-29-2021 Prot. No.: 943 DECISION 4/2021 (Department) The Personal Data Protection Authority met as a Department via video conference on 01-20-2021 at 11:30, following the invitation of its President , in order to examine the case referred to in the present history. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Constantinos Menoudakos, and the alternate members Grigorios Tsolias and Evangelos Papakonstantinou, as rapporteur, in place of the regular members Charalambos Anthopoulos and Konstantinos Lambrinoudakis respectively, who, although legally summoned in writing, did not appear attended due to disability. Regular member Spyridon Vlachopoulos, although legally summoned in writing, did not attend due to disability. Konstantinos Limniotis, specialist scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Authority's administrative affairs department, as secretary attended the meeting, by order of the President. The Authority took into account the following: Complaint number C/EIS/3889/31-05-2019 was submitted to the Authority by A, as supplemented by letter number C/EIS/4190 /12-06-2019 document, which concern receipt of unsolicited political communication from B for 1-3 Kifissias Ave., 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) 1 promotion of his candidacy of the latter, as ... [region] F, in the ... elections of .... Specifically, the complaint is directed against "Municipality F - ... B". In particular, according to the above complaint, the complainant received two calls on ..., to her telephone number ..., as well as one call to the same number on ..., to promote the candidacy of the complainant in the upcoming, during the disputed period, ... elections. The calls were made from the telephone number ... and the complainant states that during the first telephone call she verbally informed that she does not wish to receive such calls. Furthermore, the complainant received, as she states in her complaint, three short text messages (SMS) of a political nature from the complainant, without having given specific consent for this. Regarding the messages, the complainant attached, in her supplementary document, a sample image (photograph) of her mobile phone screen showing the content of such a message, which appears to have been sent by sender "B" on ..., as well as the corresponding message (SMS) which she subsequently sent, expressing to the sender her objection to receiving such messages. Also attached is a sample image from a missed incoming call at ... and time .... The complainant, as she states, had not kept the rest of the SMS she had received, nor evidence of the other calls. The Authority, in the context of examining the complaint in question, sent the complainant the letter No. C/EX/3889-1/25-06-2019 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 document No. C/EIS/5832/26-08-2019, in which he states, among other things, the following: 1) The complainant's mobile

phone had been lawfully taken into possession of him, as three years ago she had contacted him to express her political friendship as well as to ask for help with her issue, for which she submitted an application to the Municipality (the application is attached to the complainant's answer 2). There were, according to his claims, other telephone communications, without her ever protesting. 2) During the pre-election period, the complainant was indeed summoned by his associates to find out about his pre-election activities, without ever expressing an objection. The first objection was expressed by sending an SMS, after the first round of elections, which, according to the complainant, may be due to the fact that he was defeated in the first round of elections. Immediately, her phone number was deleted from the complainant's contact lists and there was no further contact. The complainant also mentions that as ... he has made efforts for the Municipality's compliance with the General Data Protection Regulation. Also, for this specific issue, he requested the opinion of the Data Protection Officer of Municipality F, which opinion is also attached to the above response of the complainant to the Authority. He states that he agrees with the advisory opinion of the Data Protection Officer, which states, among other things, that since the complaint is not directed against the person of B as a natural person or ordinary citizen but against ... the Municipality of F, as an institution that is part of the structure of Municipality F, the assistance of the Data Protection Officer was correctly requested. As also stated, among other things, in the opinion of the Data Protection Officer, the complaint in question should not be examined by the Authority due to non-observance of proper procedure by the complainant (because she did not first address the data controller to exercise her rights ), while there are also deficiencies and vagueness in the information complained of for the following reasons: a) It is not stated whether the number of the complainant was registered in the register of article 11 of Law 3471/2006. b) Evidence (photos) is provided for only one call, which was unanswered, c) The complainant's claim that she had no contact with the complainant is not accurate, since in the message she sent to 3 express the objection (a screen sample of which has, as mentioned above, been attached to the complaint) it appears that the phone number of the complainant was in her contact list under the name "B ...", for which number the Data Protection Officer confirms that it is the personal phone number number of B. d) The complainant did not contact Mr. B's phone number to express her objection, while since she sent the message (SMS) on May 30, 2019 expressing her objection, she has not received any other political communication since then. Finally, the Data Protection Officer, in her above opinion, makes special reference, among other things, to the fact that Municipality F immediately took measures to comply with the General Data Protection Regulation from the very first day of its application, that no complaint has been filed against the Municipality for illegal processing of personal data, as well as that

abusive behavior should not be encouraged, burdening controllers with the burden of refuting non-existent complaints. The Authority, after examining the elements of the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, who was present without the right to vote and left after the discussion of the case and before the conference and decision-making, following a thorough discussion , CONSIDERED IN ACCORDANCE WITH THE LAW 1. It follows from the provisions of articles 51 and 55 of the General Data Protection Regulation (Regulation (EU) 2016/679 - hereinafter, GDPR) and article 9 of law 4624/2019 (Government Gazette A' 137) that the Authority has the authority to supervise the implementation of the provisions of the GDPR, this law and other regulations concerning the protection of the individual from the processing of personal data. 2. According to article 4 par. 7 of the GDPR, which has been in force since May 25, 2018, the controller is defined as "the natural or legal person, public authority, agency or other entity that, alone or jointly with 4 others, determines the purposes and way of processing personal data". 3. 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, which incorporated Directive 2002/58/EC into the national legal order. 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 the collection and using 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 penalties provided for by this last law in case of violation of provisions of the above Law 3471/2006. 4. With reference to 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 5 subscribers, which is available to anyone interested". Therefore, the "opt-out" system applies to the telephone advertising calls with human intervention and these telephone calls are allowed, unless the called party has declared that he does not want 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 receive from all providers up-to-date copies of the Registries of art. 11 of Law 3471/2006 and ensure that they have available the statements of the subscribers 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 edit the registers.

5. 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:

6 The 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 the GDPR, article 4, para. 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, they must be able to demonstrate compliance with their obligations and processing rules.

6. 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. 7. 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 and did not object to this use. The previous contact need not be purely political in nature, e.g. it is legal to send messages when the e-mail data 1 See definition in article 1 par. 2 of Directive 1/2010 of Authority 7 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. (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 message of political communication. 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. Consent must be provided by a clear positive action which constitutes a free, specific, explicit and fully informed indication of the data subject's agreement in favor of the processing of the data concerning him. 8. Telephone calls of a political content with human intervention made through public communication networks are also allowed without the consent of the subject, unless the called party has previously declared that he does not wish to receive such calls ("opt-out" system), according to the article 11 par. 2 of Law 3471/2006, as applicable. The conditions referred to in article 11 par. 2 of Law 3471/2006, as applicable, must be met in order to show that the processing is necessary for the purposes of the legal interests pursued by the controller, based on article 6 par. f ' of the GDPR and for political communication via telephone calls with human intervention made through "information society" services, e.g. Viber, Whatsapp, Skype, FaceTime, etc. when calls are made to phone numbers belonging to subscribers of the public communications network. For political communication through telephone calls with human intervention, the data controllers must receive from all providers up-to-date 8 copies of the registers of article 11 of Law 3471/2006 and ensure that they have available the statements of subscribers that have been made up to thirty days before making the phone call. Furthermore, when making a telephone call the caller must inform about the identity of the person in charge and the identity of the executor when the call is made by executors, not hide or falsify the caller's number and inform at least about the possibility

of exercising the right of access. It is noted that the exercise of the right to erasure against a data controller should not be confused with the registration in the register of article 11 of Law 3471/2006, as the latter indicates the subscriber's wish to have his number excluded from any telephone promotional action by any data controller , and not a specific one. 9. In this particular case, the complainant, based on the above, carried out, as a controller, political communication by making telephone calls with human intervention (i.e. non-automated), but also by sending short text messages (SMS). The data controller, in his capacity as ... F, requested, for the said complaint, the opinion of the Data Protection Officer of Municipality F. However, in this particular case, the complained processing concerns the action of B as a candidate ... in the ... elections and is not related to municipality F (regardless of the fact that the complainant, in her complaint form, also mentions Municipality F as information of the complainant). Therefore, he should not, in his capacity as ... during the disputed period, seek the advice of the Municipality's Data Protection Officer on the matter in question. 10. Therefore, the legality of said political communication is ensured if the provisions mentioned in the above Considerations have been observed. From the responses of the data controller the following emerges: i. The data controller had not obtained her prior consentcomplainant for political communication (this applies both to

shipping case

the case not

automated

the data

contact number of the complainant (ie her phone number) no

phone calls). Also,

SMS as much

and

for

9

had come into his possession in the context of a previous similar one

contact with her. Instead, her personal information was obtained on

context of his capacity as ..., where the complainant applied for

her issue and submitted a related written request to the Municipality. THE complainant makes a general reference to the fact that, during this communication, the complainant had expressed her political friendship, but it does not appear that she had consented to such communication. The fact that the complainant appears to have stored the staff phone number of ... on her phone, she doesn't show that she has there has been previous contact such that it is permissible n realization for policy purposes communication. telephones calls

ii. Especially for telephone calls, it is pointed out that the telephone number of the complainant does not appear to have been registered in register of article 11 of Law 3471/2006, given that she does not no mention of it – in which case, under conditions, it could it was permissible to make a call even without a previous one her consent. However, the controller does not state that it had obtain, before making the telephone calls, the registers "opt-out" of telecommunication providers in order to exclude, from phone promotions, those phone numbers for which he did not have special consent for this purpose making said calls – while, as mentioned above, no had received from the complainant special consent for her making such calls. On the contrary, for said calls political communication refers to the aforementioned communication which

she had with her, in the context of which she became aware of the telephone number her number.

iii. With regard to sending SMS, the controller – based on an SMS for which there are specific elements (content, date and time of dispatch, sender details) – not provided to data subject the possibility to exercise the right

10

opposition in an easy and clear way. However, the controller satisfied the right to object to receiving SMS of a political nature, when this was exercised by the complainant.

11.

The data controller cooperated with the Authority by responding to document for clarification, providing the information requested in memorandum he submitted.

12.

No other complaint, other than this one, has been filed against him controller, while no administrative sanction has been imposed in the past to the controller from the Authority.

13.

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, 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 Authority imposes, based on articles 21 of Law 2472/1997 and 13 par. 1 and 4 of Law 3471/2006, to B the sanctioning of the warning, for the above established violations of article 11 of Law 3471/2006.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou