

(Department) The Personal Data Protection Authority met in composition Department at its headquarters on 15-04-2020, upon the invitation of its President, 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 Konstantinos Menoudakos, and the alternate members Grigorios Tsolias, Evangelos Papakonstantinou, as rapporteur, and Emmanuel Dimogerontakis, in place of the regular members Charalambos Anthopoulos, Konstantinos Lambrinoudakis and Eleni Martsoukos, respectively, were present, who, although they were legally summoned in writing, they 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 No.

C/EIS/5279/29-09-2019 was submitted to the Authority by A, which concerns the making of telephone calls to his telephone number on behalf of B, for promotion of the latter's candidacy in the parliamentary elections of July 2019. In particular, according to the above complaint, on ..., Sunday, the complainant received two calls on his personal mobile phone ... from the number ... around 10.30 am. and 7.00 p.m. about. During the second call on the 1st which he answered, the interlocutor (without revealing her identity) stated that she was calling on behalf of the complainant and the purpose of the call was to inform her about her participation as a Candidate for Parliament in the Parliamentary Elections of July 7, 2019. The complainant states that his telephone number (...) is registered in the register of article 11 par. 2 of Law 3471/2006 maintained by the telecommunications service provider with which he has a contract (COSMOTE). This registration has been carried out since 15/9/2017. Furthermore, the complainant states in his complaint that, during the above-mentioned conversation, the caller did not inform about the possibility of exercising the right of access to the data held by him, nor did he provide any of the information in Article 14 of the General Data Protection Regulation (hereinafter, GDPR) regarding the processing of his data. Furthermore, the complainant did not receive, as he states, any response to the letter of protest and exercise of rights of access and information he sent to the complainant from ... (his relevant letter is attached to the complaint). The complainant also attaches to his complaint a detailed statement of calls to his cell phone on ..., which shows only the answered call, as well as a photo snapshot of his cell phone screen showing both calls he reports. The Authority, in the context of examining the complaint in question, sent the complainant the document No. C/EX/5279-1/03-09-2019 requesting her opinions on the complainants, taking into account the guidelines lines issued by the Authority for Political Communication. Subsequently, due

to not receiving a response¹, the Authority re-sent, to another postal address, the document No. C/EX/5279-2/25-10-2019. Following this, the complainant responded to the Authority with document No. G/EIS/7987/19-11-2019, in which she states that, following the assurance of her office managers, the name or telephone number or possible capacity or 1 The original registered mail, to the address that the complainant initially mentioned in his complaint, was returned to the Authority as unsolicited, while the Authority also did not receive a response to the relevant e-mail sent to the address 2 possible party identities of the complainant are not in her office's database. Therefore, the call can only be attributed to inadvertent error, expressing regret for any inconvenience caused. Then the Authority called with no. prot. C/EX/1133/11-02-2020 document B in a hearing at the meeting of the Department of the Authority on 26-02-2020, in order to discuss the complaint in question as well as the general practice followed for communication of a political nature by electronic means. At the said meeting, the complainant was present, as well as Andreas Gavalas, Lawyer (...) and C, an associate of the political office of B. As the complainant mentioned, among other things, during her hearing before the Authority, the phone calls to promote of her candidacy were carried out by a group of female volunteers who first phoned friends, but in various cases a friend could indicate the phone number of another friend. No telecommunications provider requested a registry of Article 11 of Law 3471/200 in relation to the aforementioned telephone promotions. In the case of the specific complaint, the said call was made by mistake. It is noted that, although the complainant was given the opportunity to submit a written memorandum within a specific period after the date of her hearing before the Authority, she did not subsequently submit a memorandum. 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, CONSIDERED 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 competence to supervise the implementation of the provisions of the GDPR, this law and other 3 regulations concerning the protection of the individual from the processing of personal data. 2. According to art. 4 pc. 7 of the GDPR, a data 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 personal data processing". 3. Pursuant to Article 15 of the GDPR, the data subject has the right to receive from the controller confirmation as to whether or not the personal data concerning him or her are being processed and, if this is the case, the right to access the data of a personal nature. Among the information provided

to the data subject if he exercises the said right of access are: "a) the purposes of the processing, b) the relevant categories of personal data, c) (...), d) (...), e) the existence of the right to submit a request to the controller for correction or deletion of personal data or restriction of the processing of personal data concerning the data subject or the right to object to said processing, f) the right to submit a complaint to a supervisory authority, g) when the personal data is not collected from the data subject, any available information about its origin, h) (...)". 4. With reference to the obligation to satisfy the right of access with which each data controller is charged, it is pointed out that, according to the GDPR (see art. 12 thereof), the data controller facilitates the exercise of the rights of the data subjects, provides them the information on the action taken following a relevant request without delay and in any case within a month of receiving the request², 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 for which ² 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 did not act as well as for the possibility of submitting a complaint to the supervisory authority and bringing legal action. 5. The more specific 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 telephone promotional 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 it 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." 6. Consequently, the "opt-out" system is applied 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 5 available the statements of the subscribers that have been 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. 7. Especially for political communication 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 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 applies: a) Political communication is of interest to 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, they must be able to demonstrate compliance with their obligations and processing rules. b) Telephone calls of 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 Regulation (EU) 2016/679 and for political communication through telephone calls with human intervention made through "information society" services³, e.g. Viber, Whatsapp, Skype, FaceTime, etc. when the calls are made to telephone numbers belonging to subscribers of the public communications network. For political communication through telephone calls with human intervention, the controllers must receive from all providers updated 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 from 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 of the article in the register. 11 of Law 3471/2006, since the second indicates the subscriber's will to exclude his number from any telephone promotional action by any controller, and not a specific one. 8. In this particular case, the complainant, based on the above, carried out, as data controller, political communication by making telephone calls with human intervention (i.e. non-automated). Therefore, the legality of the communication policy in question is ensured if the above considerations 5, 6 have been complied with. the "opt-out" registers of the telecommunications providers in order to exclude, from promotional telephone actions, those 3 See No. 4 para. 25 of the GDPR 7 the telephone numbers for which he did not have special consent to make the calls in question. In this regard, it should be noted that the data controller did not submit any evidence to demonstrate that he only made phone calls to numbers for which he had specific consent. More generally, the data controller did not submit a written memorandum to the Authority after his hearing and, therefore, did not provide detailed information to the Authority about the exact procedures he followed in the context of the communication policy (such as an estimate of the number of telephone calls he made and specificity of the sources of the numbers called – beyond the general word-of-mouth report that these are friends, but also people referred by friends). 10. The data controller did not, during the telephone calls, provide information to the respondent regarding the possibility of exercising his rights - since, apart from not disputing the relevant content of the complaint, he did not attach any other relevant information regarding the general his practice of making political communication telephone calls. 11. The data controller did not satisfy the complainant's right of access, and also did not provide him with relevant information on the reasons for which it was not possible to respond to the satisfaction of said right. 12. No administrative sanction has been imposed on the controller by the Authority in the past. 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, considers that the conditions for enforcement against him 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 8 in accordance with Article 84 of Law 4624/2019) of administrative sanction, as cumulatively referred to in the operative part of the present, which in any case are judged - by virtue of Article 83 of the GDPR - effective, proportionate and deterrent, taking into account the aggravating factors referred to in paragraphs 9, 10 and 11 hereof and the mitigating factors referred to in paragraph 12 hereof.

FOR THESE REASONS It imposes on B, as data controller, the effective, proportional and dissuasive administrative fine appropriate to the specific case according to its special circumstances, in the amount of three thousand Euros (3,000.00) Euros, for the aforementioned violations of Article 15 of Regulation (EU) 2016/679 and art. 11 of Law 3471/2006, according to the article 58 para. 2 i' of the GDPR in combination with article 83 para. 5 of the GDPR, and the article 21 par. 1 item b' of Law 2472/1997, in conjunction with Article 13 par. 4 of Law 3471/2006.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou