

39/2020 (Department) The Personal Data Protection Authority met in composition Department at its headquarters on 12-02-2020 upon 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 Evangelos Papakonstantinou and Emmanouil Dimogerontakis, as rapporteur, in place of the regular members Constantinos Lambrinoudakis and Eleni Martsoukou respectively, who, although legally summoned in writing, did not attend due to obstruction. The regular member of the Authority Charalambos Anthopoulos and his deputy Grigorios Tsolias, although they were legally summoned in writing, did not attend due to disability. 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/3742/27-05-2019 was submitted to the Authority, which concerns the receipt of unsolicited political communication (SMS message) to promote the candidacy of A in the European elections . In particular, according to the complaint, the complainant received on ... and time ..., on her telephone number, an SMS message from the complainant, for the purposes of promoting her above-mentioned candidacy for the upcoming, during the disputed period, elections for the European Parliament, without having any previous relationship with her. The Authority, in the context of examining the complaint in question, sent the complainant the document No. C/EX/3742-1/07-06-2019 requesting her opinions on the complainants, taking into account the guidelines lines issued by the Authority for Political Communication. The message was sent electronically (to the complainant's gmail.com account) and by post. The complainant received the document, by sending a registered letter, with a delay after repeating the sending on ...-...-2019 and after a previous telephone communication. As no response was received from the Authority after sending the document, with the no. prot C/EX/8140/25-11-2019 its document, invited the complainant to a hearing during the meeting of the Authority's department on 11-12-2019. Following an oral request for adjournment by the complainant's lawyer, the hearing was adjourned for the meeting of the Authority's department on 08-01-2020, during which the above mentioned complaint was discussed as well as the general practice followed for the communication of a political nature with electronic media. This meeting was attended by Ioannis Tsoukalas with ... and the complainant. The complainant submitted to the Authority an e-mail message which was communicated to her by the complainant (Authority file no. C/EIS/91/08-01-2020). With this message (No. Prot. Authority C/EIS/86/08-01-2020) the complainant stated that she wishes to withdraw the complaint stating the following: "I

wish to withdraw the above complaint, because I had previously granted consent me to Ms. A for political communication purposes". The complainant and her lawyer presented their views orally, in particular on the issue of the general practice followed for the communication of a political nature by electronic means, and although they were given a deadline, they did not file 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, and after thorough discussion 2 CONSIDERED AGREEMENT 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 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. 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 3 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 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) 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 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.

5. 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 with 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 4 for the purpose of political communication, he was given the possibility to object to this use but did not. The previous contact need not be purely political in nature, e.g. it is legal to send messages when the email data 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 customer 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 political communication message. 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.

6. The Authority, as defined in article 13 par. 1 h' of Law 4624/2019 has competence to carry out, ex officio or following a complaint, investigations or audits for the implementation of this law and other regulations concerning protection of the individual against the processing of personal data.

7. In this particular case, A, based on the above, carried out, as controller, political communication by sending an SMS message,

as appears from the text of the complaint. With her withdrawal
complaint, the Authority, as informed by the summons, examines ex officio only
the question of the general practice followed for political communication
character by electronic means. Therefore, the legality of sending from
the controller of SMS messages for political communication purposes
is ensured only if the provisions mentioned in paragraphs 4 above have been observed,

5. From the responses of the data controller the following emerges:

8. The controller did not prove that he had received previous ones

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consents of the persons to whom it sent policy messages
communication. He gave no clue as to how they came to be
in possession of the telephone numbers to which messages were sent, while
by the existing legislation (see no. 7 GDPR) must be able to
prove that consents were obtained.

9. The controller did not specify to the Authority the exact number of
messages that were sent.

10. The controller provided the data subjects with the possibility
to exercise the right to object in an easy and clear way, within the SMS.

11. The data controller, due to his professional capacity, had full
knowledge of the applicable legal framework for the political communication of a politician
character and the guidelines of the Authority which had been published and
sent to political parties already at the beginning of April 2019.

12. The controller did not cooperate with the Authority. He late to
received documents, while he did not provide clarifications at any stage and
information on the issues raised by the Authority.

13. No administrative sanction has been imposed on the controller in the past

from beginning.

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 the administrative sanction, referred to in the operative part of the present, which is judged to be similar to the gravity of the violation.

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FOR THOSE REASONS

The Personal Data Protection Authority:

It imposes on A the effective, proportional and deterrent administrative fine that is appropriate in the specific case according to special circumstances thereof, amounting to two thousand euros (2,000.00) euros, for the above established violation of Article 11 of Law 3471/2006.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou

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