

GREEK REPUBLIC Athens, 25-09-2020 AUTHORITY FOR THE PROTECTION OF PERSONAL DATA Prot. No.:

G/EX/6512/25-09-2020 A P O F A S I NO. 35 / 2020 (Department) The Authority for the Protection of Personnel Data

Charaktira met as a Department composition at its headquarters on 19-02-2020 at 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, as rapporteur, in place of the regular members Konstantinos Lambrinoudakis and Eleni Martsoukos respectively, who, although were legally summoned in writing, did not attend due to disability, and the alternate member Grigorios Tsolias, also as rapporteur with the right to vote. 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. The Authority took into account the following:

Complaint number C/EIS/4787/05-07-2019 was submitted to the Authority, which concerns the receipt of unsolicited political communication (SMS message) from A to promote the candidacy of in the parliamentary elections of .... In particular, according to the above complaint, the complainant received on ..., on his mobile phone a short text message (SMS) with the last name of the complainant "A" appearing as the sender, which was of a political nature for purposes 1-3 Kifisias St. , 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, [contact@dpa.gr](mailto:contact@dpa.gr) / [www.dpa.gr](http://www.dpa.gr) promoting the candidacy of the complainant in the upcoming, during the disputed period, parliamentary elections of ..., without having - as claimed by complainant – any previous relationship with him. The Authority, in the context of examining the complaint in question, sent the complainant the document No. C/EX/4787-2/25-07-2019 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 the memorandum No. C/EIS/6914/11-10-2019, in which he mentions, among other things, the following briefly mentioned: 1) For the information about his candidacy in the elections, he sent a text message (sms) to phone numbers of persons belonging to his close family circle, as well as to some of his close friends and wider acquaintances and social contacts, with whom he maintained friendly communication. The contact details of these persons are purely his personal contacts which were collected in the context of exclusively personal or domestic activity. 2) In this context, he also contacted the complainant, having the conviction that his communication with him took place exclusively in the context of his personal or domestic activity. Therefore, the specific message was not sent in the context of political communication, but of a friendly communication with the complainant, whose

purpose was to inform him about his upcoming candidacy in the elections. For this reason, it considers that Regulation 679/2016 does not apply in this case, as it is the processing of personal data by a natural person in the context of an exclusively personal or domestic activity and therefore without connection to any professional or commercial activity.

Subsequently, the Authority invited the complainant to a hearing during the meeting of the Authority's department on 04-12-2019 with document No. C/EX/4787-4/06-11-2019. After the No. C/EIS/8491/05-12-2019 request for postponement of the complainant, the Authority with its document No. C/EX/4787-5/05-12-2019, called again the complainant in a hearing during the meeting of her department on 11-12-2019, in order to discuss the above mentioned complaint as well as the general practice followed for the communication of a political nature by electronic 2 means. At this meeting, the complainant attended and presented his views orally, while after the complainant received a deadline, he filed the first memorandum No. C/EIS/146/10-01-2020 supplementing the first memorandum. In this memorandum, in addition to the original memorandum, the following are briefly stated: 1) It was the first time that he ran for office and throughout the pre-election period he operated in a legitimate manner and faithfully observing the requirements of the law. 2) He sent only one text message (sms) shortly before the election day, to telephone numbers obtained from the list of members of the party with which he was a candidate and to numbers that he himself had stored in his telephone device and in his telephone directory . These numbers belong to persons in his close family circle, to his close friends and to his wider acquaintances and social contacts, with whom he maintained communication. The complainant belongs to this case, as they met due to the fact that the company where the complainant worked had several times collaborated with the football team, where the complainant worked as a manager and thus they had developed a close relationship. In this context and having the conviction that his communication with him took place exclusively in the context of their personal acquaintance, he thought that he could send him a message in order to inform him of his candidacy. 3) The reason he didn't add the delete option to the message he sent was because he didn't intend to send another message, so he felt there was no need to include such a thing since the message would only be one and strict character limits. 4) In no case did he intend, nor did he wish to cause any discomfort or violate personal data of the specific friend or any of his fellow citizens. The Authority, after examining the elements of the file, the hearing process and after hearing the rapporteur and the assistant rapporteur, who left after the discussion of the case and before the conference and decision-making, after thorough discussion, 3

CONSIDERED BY 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. 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. 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 sanctions provided by this last law in case of violation of the provisions of the above Law 3471/2006. 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 Directive 1/2010 of the 4th Authority for political communication as well as the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personnel data

character 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 personal protection

data, is carried out in any period of time, pre-election or not, from

political parties, MPs, MEPs, factions and holders of elected positions

in the local government or candidates in the parliamentary elections, its elections

European Parliament and local government elections. These faces

become data controllers, in accordance with Regulation (EU) 2016/679, art

4, item 7) as long as they define the purpose and method of processing. For example,

when MPs or candidate MPs receive political data

parties and process them for their personal political communication, they become

and these controllers. In this capacity and based on its principle

accountability<sup>2</sup> must be able to demonstrate compliance with their obligations

and processing rules.

4. When political communication is carried out using electronic means

communication, without human intervention, through public communication networks, such as

is the case of electronic messages (e-mail), communication

presupposes, in accordance with article 11 par. 1 Law 3471/2006, as applicable, the previous

consent of the data subject, subject to paragraph 3 thereof

of the same article, as applicable. It is also noted that short text messages (SMS)

are also emails under its definitions

Law 3471/2006 and Directive 2002/58/EC.

5. Political communication is allowed using electronic media without a human

intervention and without the consent of the data subject only if

the following conditions are met cumulatively:

(a) The contact information has been lawfully obtained in the context of a previous,

similar contact with data subjects, and the subject during collection

of the data informed about its use for the purpose of political communication, of

was given the opportunity to object to this use but did not.

The previous contact need not be purely political in nature, e.g. is

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

<sup>2</sup> As defined in article 5 par. 2 of the GDPR

collected as part of a previous invitation to participate in an event or action, regardless of its political character. Rather, it is not considered to recommend similar contact and it is not legal to use electronic contact information for the purpose of political communication when such data was obtained in the context business relationship, such as the use of the customer file by parliamentary candidate.

(b) The data controller must provide the data subject with ability to exercise the right to object in an easy and clear way, and this to everyone political communication message. It is required to be clearly mentioned in every communication and clearly 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 may request the termination of the communication.

6. In this particular case, the complainant, as controller carried out political communication by sending a short text message (SMS). The legality of the shipment is ensured if the conditions mentioned in above Considerations 4, 5. From the responses of the data controller, the following:

7. The controller did not provide evidence that it had ensure the required prior consent of the recipient of the message SMS. Instead, the complainant's personal information was obtained in the context of previous activity, which is not related to the specific policy activity of the controller, i.e. the communication in question was carried out without meeting any of the conditions of legality which are described in the above Considerations 4 and 5. Moreover, the data controller does not demonstrated that it follows procedures regarding the sending of messages

email for political communication purposes, which to

ensure that the above legality conditions are met.

8. The controller did not provide relevant information about other persons to whom sent political communication messages, nor provided the Authority with information regarding the exact number of recipients of these messages.

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9. The data controller did not provide the disputed SMS message of the complaint to data subject the possibility to exercise the right to object in a way easy and clear.

10. The controller cooperated with the Authority by responding to the document on clarifications, providing the information requested also during its meeting Authority, and in the memorandum he submitted.

11. No administrative sanction has been imposed by the Authority on the person in charge in the past processing,

Based on the above, the Authority unanimously judges that according to Article 11 of Law

3471/2006 the conditions for enforcement against the data controller are met, with

based on the one hand, article 13 of Law 3471/2006, in combination with article 21 par. 1 item b

of Law 2472/1997 and with Article 84 of Law 4624/2019, and on the other hand Article 58 par. 2 sub.

i' of the Regulation and article 15 par. 6 of Law 4624/2019, on the administrative sanction, which

referred to in the operative part of the present, which is judged to be proportional to its gravity

violation.

FOR THOSE REASONS

The Personal Data Protection Authority:

It imposes on A the effective, proportionate and dissuasive administrative money

fine appropriate to the specific case according to the special circumstances

of this, in the amount of two thousand euros (2,000.00) euros, for the violations identified above

of article 11 of Law 3471/2006.

The member of the Authority

The Secretary

Charalambos Anthopoulos

Irini Papageorgopoulou