

Athens, 07-10-2021 Prot. No.: 2252 DECISION 46/2021 (Department) The Personal Data Protection Authority met as a Department at its headquarters on Wednesday 6-10-2021, following the invitation of its President, in order to examine the case referred to in the present history. The Deputy President, Georgios Batzalexis, in opposition to the President of the Authority, Konstantinos Menoudakos, and the regular members Konstantinos Lambrinoudakis, as rapporteur, Spyros Vlachopoulos and Charalambos Anthopoulos, were present. At the meeting, by order of the President, Leonidas Roussos, expert scientist - auditor, was present as an assistant rapporteur. Irini Papageorgopoulou, an employee of the Administrative Department of the Authority, attended as Secretary. The Authority took into account the following: Complaint No. C/EIS/3770/27-05-2019 was submitted to the Authority, which concerns the receipt of unsolicited political communications by SMS messages from A (hereinafter, controller) to promote his candidacy in the last municipal elections. The message is attached to the complaint. In the complaint, complainant B states that he received an SMS without having any previous relationship with the complainant and without being a resident of the specific municipality and without ever having any dealings with him. He also mentions that on 27/05/2019, after his third attempt to contact him, Municipality X informed him that his phone number will be deleted from their lists, as well as that to his first relevant request he received as a response to contact the Municipality X, confirming both the lack of knowledge of the rules 1 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr and the use of the Municipality's structures by the specific campaign . It is also claimed that A, having access to the telephone lists of the Municipality as Mayor, used them to attract potential voters. As part of his campaign, he sent him several sms, the last 3 of which are described in his complaint, on 19/5/2019 ..., 22/5/2019 ..., and 24/5/2019 ..., respectively, with content "...", "...", and "...". The Authority, in the context of examining the complaint in question, sent the complainant the document no. prot. C/EX/3770-1/12-07-2019 in which he requested his opinions on the complainants, taking into account the guidelines lines issued by the Authority for Political Communication. The complainant responded with the memorandum No. C/EIS/5569/09-08-2019. The memorandum states, among other things, that the contact details of the aforementioned complainant were obtained in the context of previous contact with the data subject. The complainant adds: "In particular, our relevant file comes from members/friends of the faction, candidates or even current municipal councilors, as well as from data collected by ..." (I am attaching the relevant document), data for which an effort is made to update them, to the extent that this is possible. It should be noted that the file used for electronic communication does not include any other element other than the mobile phone, as a result of which it becomes practically impossible to identify any person, effectively making the relevant

processing as processing of non-personal data. Most likely, in this particular case, by mistake and momentary human error due to the relatively large number of recipients (about 2,000), there was an incorrect entry regarding the telephone number, with the result that the relevant SMS was sent to a citizen of a different municipality. In any case, as soon as we became aware of the relevant complaint, we immediately took appropriate action. More specifically, following a relevant re-check, the complainant's phone number was deleted from our file. The above is also confirmed by the complainant himself, given that no SMS was sent to him after receiving and checking his relevant request. The possible slight delay in communication, which the complainant points out, is due to the fact that the person in charge of the faction, due to her workload during the pre-election period, was not constantly present at my 2 polling station." With the document No. C/EX/1131/11-02-2020, A was summoned before the Authority at the meeting of 02-19-2020, as data controller, to provide further clarifications and to present thoroughly the his views on the complaint and the general practice followed for communication of a political nature by electronic means. In the context of the explanations given, it was clarified that the details of the citizens to whom communication is sent are not provided by "...", as stated, but by a special consent form. At the meeting of 02-19-2020, in addition to the complainant, Chariklia Zerva with AMDSA ... and Ira Chionis with AMDSA ... attended, legally, as his representatives, who presented their views orally. Subsequently, the data controller received a deadline and filed the memorandum No. G/EIS/1721/05-03-2020 on time. In the aforementioned memorandum, the data controller briefly states the following: In the context of the pre-election campaign of the complainant's faction, the collection and processing of telephone numbers of members and friends of the faction and citizens was initially carried out since there had been similar previous communication. With regard to the members and friends of the faction and in accordance with the "Guidelines on the processing of personal data for the purpose of communication of a political nature" issued by the Authority, for the communication of the political party with its members or with its friends that have membership rights in accordance with the provisions of the relevant statute, the consent results from the general consent of the member to participate in the political party. On the contrary, with regard to citizens who were not members or friends of the faction, there was a special form, which was attached to the memorandum with reference number C/EIS/1721/5-03-2020. The said form could be completed by the interested parties either during the various contacts and events of the combination or during their visits to the Municipality on "...", expressly stating that they consent to the sending of messages of a political and informative nature. None of the contact details came from the data file that Municipality X collects and maintains as a Data Controller for its own purposes. In order to legally inform the potential voters, the data controller

commissioned a third company, Y, to send 3 short written messages to the list of telephone numbers provided to it via usb stick. Therefore, the company in question undertook the conduct of the communication policy as the processor, following the conclusion of a relevant contract, which was attached to the controller's memorandum. In the messages sent by the company on behalf of the data controller, there was a clear and distinct reference to the identity of the sender and a valid e-mail address where the recipients of the messages could request the termination of the communication, as provided for in article 11 par. 3 of Law 3741/2006. Regarding the case under consideration, the telephone number of the complainant was accidentally entered in the relevant file. More specifically, due to human error, a wrong sequence of digits was performed. Upon the complainant's request to terminate the communication, the controller granted his request immediately and even deleted his number from the file. The Authority, after examining the elements of the file and taking into account what was announced during the above hearing, issued the decision no. 46/2020 Decision, after the relevant conference of 15.04.2020, by virtue of which a fine of three thousand euros (3,000.00 euros) was imposed for the violations of the provisions of articles 11 of Law 3741/2006 and 12 paragraph 3 of the GDPR . However, the Authority, in the context of an ex officio review of the said Decision, returns by modifying the latter and after re-examining the elements of the file and after hearing the rapporteur and the clarifications of the assistant rapporteur, who then left before the conference and the making a decision, and after a thorough discussion, IT WAS CONSIDERED ACCORDING TO THE 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". 4 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 3741/2006 on the protection of personal data in field of electronic communications. According to this article, such communication is permitted only if the subscriber consents to expressly in advance. Exceptionally, according to art. 11 par. 3 of Law 3741/2006, the legitimately obtained email contact information, in context of the sale of products or services or other transaction, they may be used to directly promote its similar products or services

supplier or to serve similar purposes, even when the recipient of the message has not given his consent in advance, under provided that he is provided in a clear and distinct manner with the possibility to opposes, in an easy way and free of charge, the collection and use of of electronic data and this during the collection of contact data, 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 communication of a political nature, taking into account both article 11 of Law 3471/2006 and Directive 1/2010 of Authority for political communication but also the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data character 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 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 candidates for parliament elections, European Parliament elections and local elections self-government. These persons become data controllers, according to the Regulation (EU) 2016/679, article 4, item 7) as long as they define the purpose and the method

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

of processing. For example, when MPs or candidate MPs they receive data from political parties and process it for personal political communication, they also become data controllers. With the

this capacity and based on the principle of accountability² 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 of 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 soon written

messages (SMS) are also emails according to

the definitions of 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,

of similar contact with the data subjects, and the subject at

collection of the data informed about its use for the purpose of the policy

communication, he was given the opportunity to object to this use but

he did not express it. The previous contact need not be purely political

character, e.g. is it legal to send messages when the electronic

mail were collected in the context of a previous invitation to participate in

any event or action, regardless of its political character. On the contrary, no

it is considered similar contact and it is not legal to use electronics

contact details for the purpose of the communication policy when these details

acquired in the context of a professional relationship, such as the use of

customer file from a candidate for parliament.

(b) The data controller must provide the data subject

2 As defined in article 5 par. 2 of the GDPR.

6

the ability to exercise the right to object in an easy and clear way, and this to any policy communication message. In every communication it is required to be mentioned clearly and clearly the identity of the sender or the person for his benefit to whom the message is sent, as well as a valid address to which the recipient of the message may request 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 mission is ensured by whether the referring to the above Thoughts 4, 5. From the answers of the person in charge processing results in the following:

7. The controller did not provide evidence that it had ensure the required prior consent of the recipients of SMS messages, or that there had been a previous similar contact/communication.

8. Moreover, from the evidence in the file it is not irrefutably proven that the right to object was duly exercised before the competent Manager Processing and therefore the consideration of the issue of satisfaction is omitted his.

9. The controller cooperated with the Authority by responding without delay in the documents for clarification, providing the information requested and at meeting of the Authority and in the memorandum he submitted.

10. 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 controller are met, based on

on the one hand, article 13 of Law 3471/2006, in combination with article 21 par. 1 item b' of n. 2472/1997, and on the other hand, article 58 par. 2 sec. i' of the Regulation, of the administration

7

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

FOR THOSE REASONS

Amends according to the above no. 46/2020 Decision and

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

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

8