PERSONAL DATA PROTECTION AUTHORITY Athens, 10-06-2020 Prot. No.: G/EX/3997/10-06-2020 A P O F A S I 10/2020 (Department) The Personal Data Protection Authority met in composition Department at its headquarters on 01-29-2020 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 Grigorios Tsolias and Emmanuel Dimogerontakis, as rapporteur, in place of the regular members Charalambos Anthopoulos and Eleni Martsoukos respectively, who, although legally summoned in writing, were present attended due to disability. They did not attend due to disability, although regular member Konstantinos Lambrinoudakis and his deputy Evangelos Papakonstantinou were legally summoned in writing. Konstantinos Limniotis and Georgia Panagopoulou, expert scientists and auditors, attended the meeting as assistant rapporteurs and Irini Papageorgopoulou, an employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: Complaints No. C/EIS/4728/04-07-2019 and C/EIS/4786/05-07-2019 were submitted to the Authority (hereinafter, a' and b' complaint respectively), which 1 concern receiving unsolicited political communication from A to promote the latter's candidacy in the parliamentary elections. In particular, according to the above-mentioned first complaint, the complainant received on ..., at her email address, an email from the complainant, which was of a political nature for the purposes of promoting her above-mentioned candidacy for the upcoming elections, during the disputed period , parliamentary elections of July 7, 2019, without – as the complainant claims – having any previous relationship with her. Accordingly, according to the above-mentioned second complaint, the complainant received on ..., ... and ..., on her telephone number, short text messages (SMS) of a promotional nature in view of the above-mentioned candidacy of the complainant (as the sender of the messages, the last name appeared of the complainant in Latin characters), without having – as the complainant claims – any previous relationship with her. Further, from the attached complaint files (screen samples capturing said short text messages), the complainant, after receiving the second message, asked not to receive any further messages by replying to said message, but a third message followed after from twenty (20) minutes. As the complainant also states, it was not possible to delete her phone number from the lists owned by the complainant, while the telephone number of the complainant did not appear in the messages she received. The Authority, in the context of examining the complaints in question, sent the complainant the document No. C/EX/4728-1/26-07-2019 requesting her opinions on the complainants, taking into account the guidelines lines issued by the Authority for Political Communication. The Authority also informed the complainants separately, with documents No. C/EX/4728-2/30-07-2019 and

C/EX/4786-1/30-07-2019 respectively. The complainant responded to the Authority with document No. C/EIS/5957/02-09-2019, in which she states the following: 1) She is a lawyer with a long tenure on the Board of Directors of ..., and holder of relevant the legal function of positions of responsibility. Because of the positions she held, 2 frequently updated her colleagues by e-mail about trade union, scientific and other developments, having a personal directory with their contact information. As she reports, no one ever complained – on the contrary, she had received a positive response even from colleagues who might not have voted for her. 2) The details of the complainants, who are her fellow lawyers, were in her personal list of colleagues. After all these years, he is unable to know on what specific occasion he obtained their details. It also states that complainants' details are publicly accessible through the European Union's e-justice/Find a lawyer portal. For the above-mentioned first complaint, it states that the complainant did not activate, in the e-mail message she received, the option to delete her from the list of recipients. Regarding the above-mentioned second complaint, it states that there was no technical possibility to provide a response message to delete messages, so the response sent by the complainant was never received. Furthermore, the complainant states that in art. 11 par. 1 and 3 of Law 3471/2006 does not refer to sms but only to e-mail, while also the list of subscribers of art. 11 par. 2 of Law 3471/2006 only concerns telephone calls, as expressly stated there but also indicated to her by the sms sending company to which she was assigned. Finally, the complainant states that she considers her action in question to have been part of an acceptable collegial communication, that it was not disturbing to the complainants and that it did not cause them any damage. Then the Authority called with no. prot. C/EX/4728-3/12-09-2019 document denounced in a hearing, during which the a' and b' complaints will be discussed as well as the general practice followed for the communication of a political nature by electronic means. At the meeting in question, the complainant was present, who presented her views and subsequently submitted, within the stipulated deadline, the 3 no. prot. C/EIS/6777/08-10-2019 memorandum. In said memorandum, the following are mentioned: 1) The complaints of her colleagues are - according to the claims of the complained-of - non-existent because they do not bear a signature, which is necessary for the validity of a document. It also claims that the complaints suffer from vagueness, because they do not mention the text of the e-mail message or short text message respectively that they concern (in the case of the first complaint, it states that the e-mail message was pasted as an image (screenshot) from the screen, without herself having access to the message, while in the case of the second complaint she states that she did not receive an attached file with the content of the message). 2) According to the claims of the complainant, the data subject must first appeal to the controller and only if not satisfied appeal to

the Authority. It also mentions the Authority's Decision 51/2018 in this regard, noting that in said Decision the procedure for exercising rights to the data controller is mentioned as a necessary condition for a subsequent complaint/appeal to the Authority. In the specific cases, according to the complainant, the data subjects (the complainants) did not contact her before appealing to the Authority, since the case file does not reveal any relevant communication. 3) Given that it was the first time she was a candidate in parliamentary elections, the said information she provided was a reminder of her trade union presence in ..., with simple information about her candidacy. Since the messages have a cost, she sent relevant information only to her colleagues and friends. 4) She had the contact information of her complaining colleagues in her personal directory from her union action. Accordingly, she had informed about her candidacy for the 2014 European elections, without receiving any complaints. 4 5) From the above, the complainant states that the exception of article 11 par. 3 of Law 3471/200, regarding obtaining prior express consent, was applicable in her case. 6) In the case of the first complaint, the e-mail message contained a provision to delete the recipient, which the complainant did not use. Also, in the case of the second complaint, the competent company informed her that the relevant possibility of deletion was not technically possible. The complainant states that she did not know that the provision of article 11, paragraph 3, also covers the case of short text messages (SMS), as this requires a special handling of the issue. She mentions that, in any case, her phone number was available to the complainant. The Authority, after examining the elements of the file, the hearing and after hearing the rapporteur and the assistant rapporteurs, who withdrew after the discussion of the case and before the conference and decision-making, after a thorough discussion, CONSIDERED LAW 1. According to art. 4 pc. 7 of the General Regulation (EU) 2016/679 for the protection of natural persons against data processingof a personal nature and for the free circulation of such data (hereinafter, the Regulation), 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 others, determine 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. 5 According to this article, such communication is only permitted 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 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: The policy 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 parliamentarians or candidate parliamentarians receive data from political parties and process it for their personal political communication, they also become 1 See definition in article 1 par. 2 of Directive 1/2010 of Authority 6 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. 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. 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 for the purpose of political communication, he was given the opportunity to object to this use but did not express it. 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 is 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 2 As defined in Article 5 para. 2 GDPR 7 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. 6. In this particular case, the complainant, based on the above, carried out, as a controller, political communication by sending both e-mails and short text messages (SMS). Therefore, the legality of the mission is ensured only if the above considerations 4, 5 have been observed. From the responses of the data controller the following emerges: 7. The data controller's claim of inadmissible appeals is presented without merit, as it is not contested sending the specific messages. In any case, the Authority examines complaints submitted electronically, without requiring them to be manually or digitally signed. Besides, regardless of each individual complaint, the Authority reserves the right to examine ex officio compliance with the legislation on the protection of personal data (law 4624/19 no. 13 par. h). For this reason, the Authority examined the general practice followed when using electronic means of communication, in addition to the specific complaints. 8. Regarding the fact that the data controller did not have access, from the complaints sent to him by the Authority, to the content of the said messages as described in the complaints, the following must be taken into account: :i) The data controller clearly had the possibility to ask the Authority to send him the complaints in question in such a form that he has access to the messages in question. ii) The controller already initially responded to the complaints he received with no. prot. C/EX/4728-1/26-07-2019 document of the Authority, without mentioning that it does not know the content of the messages, iii) In the case of the first complaint, the complaint form 8 mentioned the e-mail address of the complainant . In fact, the data controller mentioned that the complainant did not activate the option to be removed from the recipient list – therefore he investigated the complaint based on the complainant's email address. In the case of the second complaint, the complaint form indicated both the telephone number of the complainant to which the SMS was sent, as well as the exact dates and times when three (3) SMS were received. So, from the above, it can be concluded that the controller had every freedom to gain access to the messages concerning the complaints - both based on his own files - and through the Authority. In any case, he already initially provided his views on them, without raising the issue of their lack of clarity. Therefore, this contention cannot be accepted. 9. With reference to the controller's claim that the data subject must first appeal to the controller and only if he is not satisfied to appeal to the Authority,

it is pointed out that the violation has already been completed by sending the message (whether it is an e-mail or for SMS), regardless of whether or not the subject's rights are subsequently exercised before the data controller. In any case, the prior exercise of a right before the controller is not a condition for the complaint to the Authority. In this regard, it is pointed out that Decision 51/2018, which the data controller cites in support of his claim, does not mention such a thing at any point in its reasoning. 10. The controller had not obtained prior consents from the individuals to whom he sent political communication messages. Also, the
contact details of the recipients of the messages had not been entered into
possession of it in the context of previous similar contact with them. Instead,
their personal information was obtained in the context of a previous
trade union action, which is not related to the specific policy
controller activity.

11. The controller did not specify to the Authority the exact number of
messages that were sent. Relatively speaking, it only states that it sent to
his colleagues and friends, because of their costs.

12. The controller provided the data subject, for the
case of email, the ability to exercise it
right to object in an easy and clear way. However, he did not provide this
possibility for the case of short text messages (SMS).

13. The data controller, also 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.

14. The data controller cooperated with the Authority by answering no
delay in documents for clarification, providing the information that
were requested both during the Authority's meeting and in the memorandum it submitted.

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

from beginning.

Based on the above, the Authority considers that, taking into account article 13 thereof

Law 3471/2006, the conditions for enforcement against him according to article 21

par. 1 item b' of Law 2472/1997 on administrative sanction, referred to in

dispositive of the present, which is judged to be proportional to its gravity

violation.

FOR THOSE REASONS

The Personal Data Protection Authority:

Enforces, based on articles 19 par. 1 item. f and 21 of Law 2472/1997 and 13

par. 1 and 4 of Law 3471/2006, in A the effective, proportionate and

dissuasive administrative fine appropriate to the particular

case according to its special circumstances, amounting to three thousand

Euros (3,000.00) Euros, for the aforementioned violations of Article 11 of

Law 3471/2006.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou