

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 09-06-2020 Prot. No.: G/EX/3973/09-06-2020 A
P O F A S I NO. 13/2020 (Department) The Personnel Data Protection Authority Haraktira met as a Department composition at
its headquarters on 29-01-2020 at 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: The following were
submitted to the Authority: a) with no. prot. C/EIS/4269/14-06-2019 complaint b) with no. prot. C/EIS/4279/18-06-2019
complaint c) with no. first G/EIS/4280/18-06-2019 complaint, d) the one with no. prot. C/EIS/4283/18-06-2019 complaint, which
concern the receipt of unsolicited political communication by A (hereinafter "complainant") for the promotion 1-3 Kifisias St.,
11523 Athens, Tel: 210 6475600, Fax : 210 6475628, contact@dpa.gr / www.dpa.gr of his candidacy in the parliamentary
elections. In all the above complaints it is stated that on ..., at approximately the same time, the complainants received a short
text message (SMS) from the complainant, which was of a political nature with the aim of promoting his candidacy for the
upcoming, during the disputed period, parliamentary elections of July 7, 2019, without – as the complainants claim – having
any previous relationship with him. According to the above-mentioned complaints a' and d', the telephone number on which the
message was received was secret and was known to a small number of close people. The Authority, in the context of
examining the complaints in question, sent the complainant with no. prot. C/EX/4283-1/27-06-2019 document in which he
requested his opinions on the accused, taking into account the guidelines issued by the Authority for political communication.
The complainant replied to the Authority with no. prot. C/EIS/4949/12-07-2019 document. In this document it is stated that
there has never been a problem of harassment in the past regarding the political communication carried out by the
complainant, regularly sending e-mails to his political friends. The complainant raises an issue regarding the non-existence -
according to his claims - of the complaints, due to the fact that none of them bears the complainant's handwritten or electronic
signature. Especially with regard to complaint c, the complainant considers that it is incomplete stating that it does not include

the phone number of the complainant where the promotional message was received. 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. Regarding the specific cases, only the complainant in case a asked the complainant to delete his data, which he also satisfied. Then the Authority called with no. prot. C/Eξ/6199/12-09-2019 document the complainant in a hearing in order to discuss the above a'-d' complaints as well as the general practice followed by the candidate for communication 2 of a political nature by electronic means. At the meeting of 09-25-2019, the complainant and the lawyer of Leonidas Kotsalis with AMDSA ... attended, who presented their views orally. The complainant, after receiving a deadline, filed the no. prot. C/EIS/8534/06-12-2019 memorandum. In the memorandum, the allegations regarding the non-existence and groundlessness of the complaints and the lack of prior recourse to the data controller as developed in no. prot. C/EIS/4949/12-07-2019 his document. He states that the specific sending of SMS messages to persons who were not scheduled to receive communications of a civil nature is due to human error, unconscious negligence, because during the specific mass sending, some telephone numbers from the personal agenda of the complainant were also included to which he had no intention of contacting . The complainant's personal agenda includes several thousand contacts due to the positions of responsibility he held from time to time. He points out that no lawsuit or lawsuit has been filed regarding the sending of SMS messages in question, nor has there been any other complaint in the past. It claims that the need to mention the right to object to SMS messages is doubtful, as there is no specific reference to SMS messages in par. 1 and 3 of article 11 of Law 3471/2006 and due to the limited content of the SMS message there is no room for to make this special mention. In any case, he will make sure that every future post includes the appropriate link. Regarding his compliance with the law on personal data, which he knows very well and because of his professional status, he states that his political office maintains a paper file of citizens' consents to receive political communication messages. It also states that no harm was caused to the complainants and that it tried to remove the consequences by not sending any more messages. The Authority, after examining the elements of the file, the hearing process and after hearing the rapporteur and the assistant rapporteurs, 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 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 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: 4 The 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 political data parties and process them for their personal political communication, they become and these controllers. In this capacity and based on its principle accountability² must be able to demonstrate compliance with obligations them and the 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, 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 it legal to send messages when email details collected in the context of a previous invitation to participate in some

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

5 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 with possibility to exercise the right to object in an easy and clear way, and this in 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 short text messages

(SMS). The legality of the shipment is ensured if the above has been observed

in the above Thoughts 4, 5. From the responses of the data controller they arise

The following:

7. The controller's claim of inadmissible appeals is submitted

useless, as the sending of the specific messages is not disputed. In

in any case, the Authority examines complaints submitted electronically, without

they are required to be manually or digitally signed. Besides, regardless of her

of each individual complaint, the Authority reserves the right to examine

ex officio compliance with the legislation on personal data protection

character (law 4624/19 no. 13 par. h'). That is why the Authority examined the general

practice followed when using electronic means of communication, exc

of the specific complaints.

8. Regarding the controller's claim that complaint c is incomplete,

because it does not list the phone number to which it was downloaded

promotional message, it is noted that this number is derived from the data

contact number of the complainant listed in the complaint and which

communicated to the complainant.

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9. In response to the controller's claim that the subject of

data must first appeal to the controller and only if not

satisfied to appeal to the Authority, it is pointed out that the violation has already been completed

by sending the SMS, regardless of the exercise or not of the latter

rights of the subject before the controller. In each case

the previous exercise is not a condition for the complaint to the Authority

right before the controller.

10. 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.

Instead, it turned out that their personal information was obtained in the context

professional relationship, which is not related to his political activity

controller. It is also noted that, beyond the specific four

complaints, the controller did not provide relevant data for others either

persons to whom you have sent political communication messages. Therefore it is accepted

that the controller, in violation of article 11 par. 1 and 3 of the

3471/2006, sent political communication messages both to the complainants and

and to thousands - according to his statement - of recipients whose information he possessed in

his personal agenda and for which no precedent can be proven

similar contact.

11. The data controller did not provide the Authority with information regarding him

exact number of recipients of these messages while this was expressly requested, therefore not

cooperated with the Authority on this matter.

12. The controller did not provide the data subject with the possibility to

exercises the right to object in an easy and clear way, to every SMS message

political communication, in violation of article 11 par. 4 of Law 3471/2006.

13. The data controller, also due to his professional status, had full knowledge of it

of the applicable legal framework for political communication of a political nature and

Authority guidelines that had been published and sent to politicians

parties as early as the beginning of April 2019.

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14. The controller, with the exception of the event referred to in paragraph 11, cooperated with the Authority by responding without delay to the documents for clarifications, providing the information requested also during its meeting Authority and in the memorandum he filed.

15. No administrative sanction has been imposed by the Authority on controller,

Taking into account the above, the Authority considers that, taking into account the article 13 of 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 its operative part present, which is considered proportional to the gravity of the 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 monetary fine that is appropriate in the specific case according to the special ones circumstances thereof, amounting to three thousand five hundred euros (3,500.00) euros, for the above established violations of Article 11 of Law 3471/2006.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou

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