

Athens, 24.03.2022 Prot. No.: 748 DECISION 17/2022 (Department) and the alternate members The Personal Data Protection Authority (hereinafter "Authority") met in the composition of the Department via video conference on 02-17-2021 at 10:00 a.m. 00 am, 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, Evangelos Papakonstantinou, as rapporteur, and Grigorios Tsolias, in place of regular members Charalambos Anthopoulos and Konstantinos Lambrinoudakis, respectively, who, although legally summoned in writing, did not attend due to obstruction, attended. Regular member Spyridon Vlachopoulos, although legally summoned in writing, did not attend due to disability. The meeting was attended by order of the President, Efrosyne Siougle, specialist 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 No. C/EIS/3886/30-05-2019 was submitted to the Authority by A (hereinafter "complainant"), in which he complains about receiving unsolicited political communication by B (hereinafter "complainant") by sending a short text message (SMS) to his mobile phone on 24/5/2019, without having any relationship whatsoever with the complainant, without having ever given him his phone number and without having consented to the sending of such 1 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr messages. The Authority, in the context of examining the complaint in question, sent the complainant the document no. prot. C/EX/3886-1/08-07-2019 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 to the Authority with document No. G/EIS/6499/27-09-2019, in which he states the following: 1) In the context of the pre-election campaign for the European elections of 26 May 2019, he paid all possible effort in order to maintain a balance between the candidate's right to free communication with citizens within the framework of the constitutionally guaranteed right to be elected and the protection of the personal data of citizens that are processed due to the pre-election period. 2) The complainant is a person with quite intense political activity, who has been placed many times publicly through his articles and blog posts in favor of him... and specifically in favor of the party.... In these publications, he discloses to the general public his personal contact data, such as his name, mobile phone and email address. 3) Therefore, it becomes clear that the complainant's personal data was collected from a legitimate source. Any reader of his publications could, in the context of political dialogue, comment under his texts or send him an e-mail message or a written SMS on the mobile phone. As long as the subject himself has made public his personal information and his political views and does not write under a pseudonym

or anonymously, there is no room for doubt that he has in fact given his consent to their processing in pursuit of political dialogue. 4) Article 11 par. 1 of Law 3471/2006 provides that political communication carried out using electronic means of communication requires the prior consent of the data subject. Exceptionally, it is allowed, in accordance with article 11 paragraph 3 of the same law, without the consent of the data subject, as long as the conditions mentioned in this paragraph are met cumulatively. Article 7 par. 2 item c' of Law 2472/1997 stipulates that, without the consent of the Data subjects, the processing is permissible, as long as the subject makes public the data concerning him. 5) Both the accused and his associates, before carrying out political communication with a large portion of the electorate, consulted the Article 13 Register maintained by the Authority, in which all persons who do not wish their information to be processed for advertising purposes are registered, into which political communication is classified. The complainant, although it is a well-established tactic of party combinations and candidates in all election contests to send written messages and contact voters by phone asking for their political support, did not exercise his right to object with the commonly called "opt-out" system. The complainant did not address his objections, regarding the processing of his data, either specifically addressing the complainant as the controller or generally through his registration in the register of article 11 par. 2 of Law 3471/2006. Subsequently, the Authority invited the complainant with summons No. C/EX/1508/24-02-2020 to attend the meeting of the Authority's Department on Wednesday 03-04-2020 in order to discuss the said complaint as well as the general practice followed for communication of a political nature by electronic means. At this meeting, the attorney-in-fact of the accused Emmanuel Troulis, (...), was present and verbally presented the request to postpone the discussion of the case, which had already been submitted with the 26/02/2020 e-mail message. The Authority accepted the postponement request and set the meeting for 03-18-2020. Due to the restrictive measures to deal with the coronavirus pandemic, the meeting of 3 18-03-2020 was postponed and the Authority with no. prot. C/EX/4074/12-06-2020 call invited the complainant to a hearing on 19-06-2020. In the meeting of 6-19-2020, the attorney of the accused Emmanuel Troulis participated. The complainant received, during this meeting, a deadline and submitted, on time, the memorandum No. C/EX/4408/24-06-2020, in which he mentions, in addition to what he mentioned in the first reply document, the following : The complainant states that the SMS messages are not sent from some four or five digit number, to which the recipients cannot reply or object. On the contrary, as can be seen from the present complaint, the message was sent from a mobile phone with the possibility for the respective recipient to exercise their right to object in an easy and clear way by declaring that they do not wish to receive messages of political content. It also states the following "(...) Finally, I would like to

underline that the telephone numbers of all personal data subjects are obtained in a legal manner and from legal sources.

More specifically, these are citizens who have attended one of my election rallies or have voluntarily given me their card with their details for some political reason. Indeed, in holding political office since the year I have come into contact with countless constituents, who have voluntarily, without pressure, given me their contact details. Likewise, A's contact information was given to me by him himself since it was registered in my phone file from the time he was registered [in the faction] ... (see attached list in electronic format (excel), at which time the said brief was sent to him text message (sms) (...)). The complainant provided a list of [the faction's] registrants ... in a locked, read-only, excel file with the details of 33,547 people, including the details of the complainant. The complainant specified that, for obvious reasons, after the complaint to the Authority, the information of the complainant was highlighted in red and the word "DELETED" was placed next to it. 4 The Authority, after examining the information in the file, after hearing the rapporteur and the clarifications from the assistant rapporteur, which was present without the right to vote and withdrew after the discussion of the case and before the conference and decision, after thorough discussion, HELD ACCORDING TO LAW 1. By the provisions of articles 51 and 55 of the General Data Protection Regulation (Regulation (EU) 2016/679 - hereinafter "GDPR") combined with those of articles 9 and 84 of law 4624/2019 (Government Gazette A' 137) it follows that the Authority has authority to supervise the implementation of the provisions of the GDPR, this law and other regulations concerning the protection of the individual from the processing of personal data, and its instructions and regulatory acts issued before the GDPR are valid, as long as they do not conflict with the GDPR and the regulations of Law 4624/2019 in accordance with the transitional provisions of Article 83 paragraph 2 of the same law. 2. Pursuant to Article 5 para. 2 of the GDPR, the controller bears the responsibility and is able to demonstrate compliance with paragraph 1, i.e. with the principles set out to govern the processing of personal data. 3. According to article 4 par. 7 of the GDPR, a data 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". 4. 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, which incorporated Directive 2002/58/EC into the national legal order. According to this article, such communication is permitted only if the subscriber expressly consents in advance. Exceptionally, in accordance with Article 11 para. 3 of Law 3471/2006, e-mail contact details obtained legally, in the

context of the sale of products or services or other transactions, 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 collection and use of 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, in accordance with paragraphs 1 and 4 of article 13 of the same law 3471/2006, as regards the observance of this law, the Authority has the authority to impose the sanctions provided for by law 2472/1997 in case of violation of its provisions above Law 3471/2006. 5. The concept of unsolicited communications in article 11 par. 1 of Law 3471/06 also includes political communications. Especially for political communication through electronic means without human intervention and in accordance with the Authority's guidelines 1/20191 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 GDPR, the following apply: Political communication² 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 the GDPR, article 4, para. 7). and the way 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, they must be able to demonstrate compliance with their obligations and processing rules. 6. 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 3471/2006³ and Directive 2002/58/EC⁴. Consent, in accordance with Article 4 para. 11 of the GDPR, must be provided with a clear positive action which constitutes a free, specific, explicit and fully informed indication of the agreement of the data subject in favor of the processing of the data concerning him. 7. 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 and did not object to this use. The previous contact need not be purely political in nature, e.g. is it legal to send messages when the electronic 3 See article 2 par. 8 of Law 3471/2006, as amended by article 168, par. 1 item c' of Law 4070/2012 (Official Gazette A 82/2012). 4 See request 67 of Directive 2009/136/EC amending Directive 2002/58/EC 7 mails were 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 client 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 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. 8. In this case, the complainant, based on the above, carried out, as a data controller, political communication by sending a short text message (SMS), i.e. by automated processing of the complainant's personal data. Therefore, the legality of the mission is ensured if the provisions mentioned in the above Considerations 6 and 7 have been observed. From the responses of the data controller the following emerges: 9. Regarding the allegation of the complainant that he consulted the register of article 13 par. 3 of Law 2472/1997 which the Authority keeps before carrying out political communication, it is emphasized that in accordance with Article 13 par. 3 Law 2472/1997 the Authority keeps a register with the identity and contact information of persons who do not wish their data to be the subject of processing by anyone, for the purposes of promoting the sale of goods or the provision of services remotely. This processing does not include promotion using electronic media, which is regulated by the more specific Law 3471/2006. 10. The alleged data controller did not provide evidence to demonstrate, as it should have based on the principle of accountability, that the required prior consent of the recipient of the SMS message had been secured and was provided with a clear affirmative action, which constitutes a free, specific, explicit and fully informed indication of the agreement of the data subject in favor of the processing of the data concerning him. 11. Also, the complainant did not prove that the contact information of the recipient of the message of the present complaint came into his possession in the context of a previous similar contact with him, as he claims. Although he states that he received the complainant's contact information from him (which however the complainant denies in the text of the present complaint) since it was registered on his mobile phone from

the time the complainant was registered [in the faction] ..., he does not provide any relevant evidence to prove his claim about the source of their origin, nor does he even claim that the other conditions for political communication without the consent of the data subject are met, i.e. informing the complainant, during the collection of his data, about their use for political purposes communication and the non-objection to this use. 12. The data controller did not, in the disputed SMS message of the present complaint, provide the data subject with the possibility to exercise the right to object in an easy and clear way. The message in question does not contain any information on the exercise of this right or a relevant objection option. 13. The data controller did not specify to the Authority the exact number of messages that were sent but only referred to political communication with a large portion of which the Article 13 Registry kept by the Authority was consulted. of the electoral body, before 14. The argument of the accused that article 7 par. 2 item applies. c' of Law 2472/1997 (now Article 9(2e) GDPR) cannot be accepted because when political communication is carried out using electronic means of communication without human intervention, the more specific provisions of article 11 of law 3471/2006.

15. The question of the legality of keeping the record with the registered members [of lineup] ... by the accused is not the subject of sub examination of a complaint and for this reason the Authority reserves the right to examine this issue ex officio.

16. The controller cooperated with the Authority in responding to the documents for clarifications, providing the information requested and at meeting of the Authority and in the memorandum he filed.

17. No other complaint, other than this one, has been filed against him controller, while no administrative measures have been imposed in the past sanction to the controller by the Authority.

18. Based on the above, the Authority unanimously judges that according to 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, of the administrative sanction, which is mentioned in the operative part of the present, which is judged to be proportional to its gravity

offense, taking into account the aggravating factors referred to in paragraphs 10-12 hereof and the mitigating factors referred to in paragraphs 16-17 hereof.

FOR THOSE REASONS

The Personal Data Protection Authority

It imposes on B the effective, proportionate and dissuasive administrative fine that is appropriate in the specific case according to more special circumstances thereof, amounting to three thousand euros (3,000.00) euros, for the as above found violations of article 11 of law 3471/2006.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou