

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 26-06-2018 Prot. No.: G/EX/5677/26-06-2018 A
P O F A S I NO. 51 / 2018 (Department) The Personnel Data Protection Authority Charaktira met as part of the Department at the invitation of its President at its headquarters on 18-10-2017, following the meeting of 12-07-2017 in order to examine the case referred to in the present history. The Deputy President, Georgios Batzalexis, who was in the way of the President of the Authority, Konstantinos Menoudakos, and the deputy members Panagiotis Rontogiannis, as rapporteur, Charalambos Tsiliotis and Grigorios Tsolias, to replace the regular members Antonios Symvonis, Spyridon Vlachopoulos and Charalambos Anthopoulos respectively, were present, who , although they were legally summoned in writing, they did not attend due to disability. The meeting was attended by order of the President, Ioannis Lykotrafitis, expert scientist - auditor as assistant rapporteur, and Irini Papageorgopoulou, employee of the Administrative Department of the Authority, as secretary. The Authority took into account the following: Complaint No. C/EIS/79/08-01-2013 of A was submitted to the Authority, according to which B sent an advertising short text message to the complainant via mobile phone (SMS) without obtaining his prior consent, while he did not satisfy the right of access he exercised. The complainant is attaching the text of the message that was sent to his mobile phone number ... on ... and related to the parliamentary elections of This content was: "B AYTH THN ÓPA THS MEGALHS EYTHYNHS, ΣΑΣ ΖΗΤΩ 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr TRUST. I LOVE YOU. B, BOYLEYTH'S (party) X". The complainant states in his complaint that he had never given his consent to the complainant to send political communication. Also, the complainant mentions in his complaint that, protesting the sending of the message in question, he had sent the complainant on ..., a document protesting the sending of the SMS, and, exercising the right of access, invited him to inform him, among other things, for his personal data that are or were processed by the complainant and their sources. Furthermore, he exercised the right to object to the processing of his personal data and requested their deletion. On ... the complainant responded with a document, inviting the complainant to send him his mobile phone number, his patronymic, as well as his status, in order to cross-reference and identify information, and subsequently to satisfy the request for information and deletion . The complainant disclosed all the information he requested, except for the status, stating that it is not necessary for the satisfaction of his rights. On ... the complainant replied to the complainant, stating that he has in the file of his civil office, a record with his name and mobile phone, accompanied by the indication: "District Media Journalist" as well as the contact details of the newspaper where he worked at the time , but does not provide any information on how these items came into his possession, nor if he has the complainant's consent. He

also states that, following the complainant's request, he deleted his information from his file. The Authority then, in the context of investigating the above complaint, sent the complainant the document No. C/EX/5304/08-09-2014. In this, the Authority reminded that in the past, following the submission of relevant complaints for sending unsolicited electronic communication by e-mail, it had already sent him its document No. C/EX/2852-1/26-04-2012 regarding the legal way of carrying out political communication using electronic means of communication without human intervention, in accordance with its Directive No. 1/2010. Finally, the Authority called on the complainant, as stipulated in article 12 of Law 2472/1997, to immediately inform the complainant about the exact origin of his personal data, which he kept until It is noted that, according to what the complainant stated in his reply to the complainant, he deleted his personal data from his files by satisfying the right of objection, which the complainant had exercised, at the same time as the right of access. With document no. prot. C/EIS/6776/07-11-2014, the complainant informed the Authority about his out-of-court response to the complainant. In it, he informed him that political parties during pre-election periods enable their candidates for public office to use a list of persons friendly to them for the purpose of political communication. Similarly, (party) X provided him with a list in the pre-election periods in which he was a parliamentary candidate, among them ... and In this list, the complainant states that the names of persons who had in any way developed a friendly relationship either with X or with his executives, who served in positions of responsibility in the central or regional administration, were included. The complainant notes that apparently the complainant's mobile number had come from this directory, while no other personal file existed, but he used only the party directory for his political communication. Finally, he states that the said list he used in the previous pre-election periods has been deleted, as he is no longer active in the public sphere. The complainant with his document No. G/EIS/6758/06-11-2014, as it was supplemented with No. G/EIS/6759/06-11-2014 and G/EIS /6760/06-11- 2014 documents, states that, because the above answer of the complainant does not cover him, he insists on his initial appeal before the Authority based on article 13 of Law 2472/1997. In fact, the complainant came back with his document No. C/EIS/89/05-01-2017, reminding the Authority of the need for the examination of his appeal to be completed as quickly as possible. With the document No. C/EX/5051/30-06-2017, B was summoned before the Authority at the meeting of 12-07-2017, as data controller, to provide further clarifications and to thoroughly present the his views on the complaint. At the meeting of the Authority on 12-07-2017, Chrysanthi Adamakopoulou with AMDSA ... was legally present, as a representative of the complained controller, who presented her views orally and answered questions from the members of the department. Subsequently, the complainant was given a deadline and filed the

memorandum No. G/EIS/5719/28-07-2017 on time. In this memorandum, the accused data controller briefly mentions the following 3: In the context of his political activity, apart from speeches, rallies, interviews and all kinds of political events, he had chosen for the purpose of political communication and the sending of only one SMS message before each election (parliamentary elections 2000, 2004, 2007, 2009 and 2012). This dispatch was made by his political office and the recipients of the SMS messages in question were the natural persons included in the file he kept in his political office. This file consisted primarily of the file that X had at his disposal on the grounds that the natural persons included there had given their consent to the party's competent bodies (mainly local and prefectural organizations), as members or friends of X, to receive political communication messages regarding his activities, as well as the activities of the complainant as a candidate for parliament, a sitting member of parliament and a parliamentary representative and minister of the same party. Also, in the same file were included personal data of natural persons, who had requested to receive political communication from the complainant, either by coming to his political office, or after contacting him or his associates. In particular, he notes that the personal data of the complainant came in this year ... with the above list given to him by X, before the parliamentary elections in September of The same list, without changes, was delivered to him before the parliamentary elections... He states that he is aware that this is a file that has been created with all the legal formalities, while noting that it is impossible for any Greek who politicizes with any political party in parliamentary elections to check whether the party he politicizes with and which provides him with the file of political communication, has for each registration of personal data the document consent of every registered citizen. Also, the complainant argues that the complainant had a professional (consultant in the District) and friendly relationship with X, and that was the reason he was interested in receiving information about X's activities and his own. In addition, he states that he has visited the region both as the parliamentary representative of X, when he toured Epirus on ..., and on ... as a minister, at which time he met with local official bodies, as well as all the local bodies and M.M. journalists. Therefore, he considers it reasonable that, in these visits, complainant 4, either as a journalist or as an adviser to the Region, came into contact with his colleagues and reaffirmed his interest in receiving political communication from him. Regarding the obligation to disclose his file in question, the complained controller declares that he is exempt from this obligation, based on article 7A par. 1 item. 3rd Law 2472/1997. The complainant also states that in the past he exercised his political communication with respect to the relevant legislation and the more specific Guidelines of the Authority. He also notes that this is proven by the fact that there was never any complaint from the thousands of natural persons who were recipients of his political communication, while the

Authority never notified him of another complaint against him or was informed about it. The Authority, after examining the aforementioned elements, examining and mentioning what was said during the meeting of 12-07-2017, heard the rapporteur and the clarifications of the assistant rapporteur, who then left before the conference and the decision-making, and then thorough discussion, CONSIDERED ACCORDING TO THE LAW 1. Article 2 of Law 2472/1997 defines that "personal data" is "any information that refers to the data subject". "Data subject" is "the natural person to whom the data refer, and whose identity is known or can be ascertained, i.e. can be identified immediately or indirectly, in particular on the basis of an identification number or on the basis of one or more specific elements characterizing the his physical, biological, mental, economic, cultural, political or social status". In this context, the e-mail address of a natural person is personal data, since it can function as an element of indirect identification of its owner, allowing communication with him, while in several cases it even contains details of the owner's name. It should be noted that, according to Opinion 4/2007 of the working group of Article 29 of the E.U. on the concept of personal data, especially in the operation of online services, indirect identification information such as an e-mail address can in some cases sufficiently distinguish an individual from others within a specific set, even if the verification of his name. According to article 2 par. g) Law 2472/1997, as "controller", any natural or legal person who determines the purpose and manner of processing personal data is defined. 2. Article 4 of Law 2472/1997 stipulates that personal data to be lawfully processed must: a) be collected in a lawful and lawful manner for specified, clear and lawful purposes and undergo lawful and lawful processing in view of the purposes of these? b) be relevant, appropriate, and no more than is required each time in view of the purposes of the processing? c) be accurate and, if necessary, be updated? d) to be kept in a form that allows the identification of their subjects only during the period required to carry out the purposes of their collection and processing. 3. When the purpose of the processing is the direct commercial promotion of products and services for advertising purposes using automatic calling systems, the more specific article 11 of Law 3471/2006 on the protection of personal data in electronic communications applies. In particular, according to par. 1 of the above article, "the use of automatic dialing systems, in particular using facsimile (fax) or e-mail devices, and more generally the making of unsolicited communications by any means of electronic communication without human intervention, for purposes directly commercial promotion of products or services and for any kind of advertising purposes, is allowed only if the subscriber expressly consents in advance". 4. According to article 6 of Law 2472/1997, the data controller is obliged to notify the Authority in writing of the creation and operation of a file or the start of processing. 5. According to article 12 of Law 2472/1997, everyone has the right to

know whether personal data concerning him is or has been the subject of processing. To this end, the data controller has an obligation to respond in writing. The data subject has the right to request and receive from the data controller, without delay and in an understandable and clear manner, information, which includes all personal data concerning him, as well as their origin, the purposes of the processing, the recipients or recipient categories. If the controller does not respond within fifteen (15) days or if his response is unsatisfactory, the data subject has the right to appeal to the Authority. In the event that the data controller refuses to satisfy the request of the interested party, it communicates its response to the Authority and informs the interested party that it can appeal to it.

6. The Authority has issued Directive No. 1/2010 on political communication, which applies to political parties, parliamentarians, MEPs, factions and holders of elected positions in local government or candidates in parliamentary elections, regardless of the time period this is carried out, pre-election or during the election period. The Directive stipulates that every political communication action must be in accordance with the general principles governing the processing (collection, use, transmission, etc.) of personal data, as well as with the special provisions concerning the processing of personal data for the purpose of advertising. Consequently, it specifies the rules in the field of political communication based on the legislative provision of Article 11 of Law 3471/2006. For example, as a similar contact that would allow the sending of messages, provided that the controller enables the exercise of the right to object, is understood any contact without its political character being necessary, e.g. the invitation and participation in an event or activity, but not the previous professional contact. According to article 4 of the said Directive, the use of electronic means of communication presupposes, in accordance with article 11 par. 1 Law 3471/2006, the prior consent of the data subject. Obtaining consent is necessary even when the controller has access to electronic contact information from legitimate sources, such as phone numbers from the phone book. Paragraph 5 of article 5 of the same Directive defines conditions under which the use of contact information for political communication by sending e-mail messages, short text messages (SMS) and multimedia messages (MMS) is permitted, even without the prior consent of the subjects. However, even if this exception were to apply, the controller should provide the data subject with the possibility to exercise the right to object in an easy and clear way, and this in every political communication message.

7. In the case under consideration, the complained controller sent a short text message via mobile phone (SMS) for political communication purposes, without obtaining the prior consent of the recipient of the message, in this case the complainant. The complainant did not provide evidence that the complainant had provided prior consent, or that the contact information (mobile phone number) was lawfully collected in the context of prior contact with the subject.

Furthermore, the complainant did not provide the subject of the political communication at issue with the opportunity to exercise the right to object. Furthermore, he did not prove the source of the complainant's data, as he states that these either came from the party with which he was a candidate or were collected from associates of his political office directly from the complainant himself.

He should have, when he was forwarded, as he states, the data, to have checked or to have ensure that they were originally collected legally. Due to the fact that he did not know me certainty the source of the data, his due satisfaction was not possible right of access of the subject, as regards the origin of the data of.

Also, the contention of the complainant that there were no complaints in past about the way he carried out political communication is unfounded, as complaints had been submitted to the Authority for unsolicited sending of electronic communication by e-mail, of which he had been informed with a document from the Authority, in which reference was also made to the content of the no. 1/2010 Directive.

The case of the record kept by the complained controller for the purpose of political communication does not fall under the case of article 7A par. 1 item 3 of Law 2472/1997 and for this reason he should have notified it to the Authority.

It is noted that the complainant stated that the file no longer exists and he has it delete.

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As the specific case under consideration does not fall under the exception of par. 3 of article 11 of Law 3471/2006, the processing carried out constitutes unsolicited electronic communication without the recipient's consent (spam) and violates par. 1 of the article 11 of the same law and justifies it, pursuant to the provision of article 21 par. 1 subsection a of Law 2472/1997, imposition of administrative sanctions, taking into account the

seriousness of the offense but also the fact that the accused is no longer in business

actively with politics.

FOR THOSE REASONS

The Authority, taking into account the above, imposes a warning on B, as

controller, for:

a) unlawful processing of personal data for the purpose of the policy

communication by sending unsolicited electronic communication (violation of

Article 11 of Law 3471/2006), and

b) improper satisfaction of the provisions of Article 12 of Law 2472/1997

right of access of the subjects of the personal data which

is processed.

Also, the Authority addresses under no. 19 para. c. Law 2472/1997 recommendation for the non

submission of disclosure of the record kept for the purpose of the policy

communication.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou