

Athens, 09-27-2022 Prot. No.: 2395 DECISION 18/2022 (Department) The Personal Data Protection Authority met as a Department, via teleconference, on Wednesday 03-23-2022, 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 Demosthenes Vougioukas, as rapporteur, and Maria Psalla, in place of the regular members Konstantinos Lambrinoudakis and Grigorios Tsolia, who, despite being legally summoned in writing, did not appear attended due to disability. The meeting was attended by Leonidas Roussos, as assistant rapporteur and by order of the President, Irini Papageorgopoulou as Secretary, an employee of the Authority's administrative affairs department. The Authority took into account the following: Complaint No. C/EIS/4112/07-06-2019 was submitted to the Authority, which concerns the receipt of unsolicited political communication by SMS message from A to promote his candidacy in last municipal elections. The message is attached to the complaint. In the complaint, complainant B states that she received an SMS without having any previous relationship with the complainant. Specifically, on 6/1/2019 at 6:10 p.m., he received a message with the sender ... and the content "...". The Authority, in the context of examining the complaint in question, sent the complainant the letter No. C/EX/4112-1/12-07-2019, requesting his opinions on 1-3 Kifisias Avenue , 11523 Athens, Tel.: 210-6475600, Fax: 210-6475628, contact@dpa.gr, www.dpa.gr -1- complainants, taking into account the guidelines issued by the Authority for political communication. The complainant responded with the memorandum with reference no. C/EIS/5100/22-07-2019. In the memorandum he states that the message was sent from his telephone device, type smartphone, and not through a service provider for sending mass messages (bulk sms) using a file. He also stated that the message was sent to the said recipient by mistake, due to an error in typing the phone number. With document No. C/EX/1142/11-02-2020, the Authority called the complainant before it as data controller, at the meeting of 19-02-2020, to provide further clarifications and to present in detail his views on the complaint and on the general practice followed for communication of a political nature by electronic means. However, at the meeting of 02-19-2020, the complainant did not attend, so the case was discussed in absentia. However, as it was established, the call of the Authority had been sent to the wrong delivery address, with the consequence that it was not received by the complainant. Therefore, the issued decision 47/2020 was revoked by the Authority's Decision 1/2021. The complainant filed the no. prot. C/EIS/1054/11-02-2021 memorandum, with which he protested the incorrect sending of the said summons, as well as the following decision, while he requested a deadline in order to present his views before the Authority. With no. prot. C/EIS/2248/01-04-2021 supplementary, the complainant informed the Authority about a message sent by the

complainant to the teachers' association X, of which the complainant is a member, in which he requests the President of the Association as his provided his consent for the communication sent by the club to him, from the year 2012 until today, notifying the club of the pending complaint of the complainant to the Authority and stated that he did not understand said notification, while asking the Authority to take her into account, as well as requested information about the "judgment" of her case in order for her lawyer to be present. With no. prot. C/EIS/8440/28-12-2021 memorandum, the complainant stated to the Authority that the complainant is socially well-known to him and correspondingly knows him well, since she has been a customer in his store, a neighbor and mainly a fellow teacher with his wife and his sister. Also, he stated that politically they communicate multiple times since the complainant as a trade unionist and member of the d.s. of the local teachers' association, of which he was during the disputed period and is also the Secretary, any issues - requests for political management of the municipality's schools, come to his immediate knowledge -2- since he is a municipal councilor and an elected member of the board of directors. of the competent ... School Committee of the municipality. In addition, as a municipal councilor, he stated that he has voted for the complainant for the position of deputy member of the political position in the Municipal Education Committee, as a representative of the Association of Teachers ... X and as Secretary of the municipal council he has ratified the excerpt of the Minutes with her designation as a member of D.E.P. Dimos X. (question about admissibility) Furthermore, he stated that the complainant sends him regular political information, as the Secretary of the teachers' trade union association, to his factional email about trade union and other political issues, purely evaluation, even though he knows that he himself does not have any educational capacity and without ever complying with the law on the sending of political messages of the email recipient, publicizing his email via mass sending to recipients unknown to him, clearing the recipient registry, etc. related violations of the current legislation). He adds that the complainant did not exercise his right to object to the processing in question, while he concludes that it is presumed from the above that the complainant knew him personally, socially, politically, institutionally, and informed him from her personal email (identical email with what she sent to the Authority and the complaint against him) with political messages and the only purpose of her non-existent complaint, as she stated, was to use the A.P.D.D. process, in order to hurt him politically, socially , financially and morally, leaking to the Mayor any negative decision for him, as he already did in the above revoked decision. Then the Authority called with no. prot. C/EXE/398/14-02-2022 and C/EXE/527/23-02-2022 documents the complainant and the complainant, respectively, in a hearing before her on 09-03-2022, during which the above complaint was discussed as well as the general practice followed for communication of a political nature by electronic

means. The complainant appeared and supported what he had stated in writing with the above memorandum. Asked about the practice he followed when sending the campaign messages, he replied that he sent to those he had on the list. The complainant stated that she was unable to attend due to an educational project. The Authority, after examining all the elements of the file and referring to the distribution of the hearing, after listening to the rapporteur and the clarifications of the assistant rapporteur and after a thorough discussion, -3- DECIDED IN ACCORDANCE WITH 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". 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 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 via electronic means 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 Directive 1 /2010 of the Authority for Political Communication but also the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data which is in effect from 25 May 2018, the following applies:

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Political communication^[1] is of interest from the point of view of personal protection data, is carried out in any period of time, pre-election or not, from political parties, MPs, MEPs, factions and holders of elected positions

in the local government or candidates in the parliamentary elections, its elections European Parliament and local government elections. These faces become data controllers, in accordance with Regulation (EU) 2016/679, article 4, 7) as long as they define the purpose and method of processing. For example, when the parliamentarians or candidate parliamentarians receive data from political parties and process for their personal political communication, they also become responsible processing. In this capacity and based on the principle of accountability[2] it must be able to demonstrate compliance with their obligations and the rules processing.

4. When political communication is carried out using electronic means of communication, without human intervention, through public communication networks, as the case may be e-mail messages (e-mail), the communication assumes, according to article 11 par. 1 of Law 3471/2006, as applicable, the subject's prior consent of the data, subject to paragraph 3 of the same article, as applicable.

It is also noted that short text messages (SMS) are also messages email according to the definitions of Law 3471/2006 and the Directive 2002/58/EC.

5. Political communication is allowed using electronic means 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 legal to send messages when the email information was collected

in the context of a previous invitation to participate in an event or action,
regardless of its political character. Rather, it is not considered to be similar

[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

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contact and it is not legal to use electronic contact details to
purpose of the communication policy when this information was obtained in the context
business relationship, such as a candidate's use of the customer file
Member of Parliament.

(b) The data controller must provide the data subject with
ability to exercise the right to object in an easy and clear way, and this to everyone
political communication message. It is required to be clearly mentioned in every communication
and clearly the identity of the sender or the person for whose benefit
message is sent, as well as a valid address to which the recipient
of the message may request the 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 provisions mentioned in
above Considerations 4, 5. From the responses of the data controller, the
following:

7. The controller did not provide evidence that it had
ensure the required prior consent of the recipients of the messages
SMS, or that there had been a previous similar contact/communication. On the contrary, according to
hearing process he admitted to sending messages to the contacts he had on
directory of his phone, indiscriminately. His claim, however, that he knows personally
the complainant and had a transactional relationship with her, does not prove a similar relationship,

within the meaning of the law, namely for the purpose of supporting the combination of at
Municipal elections.

8. The controller cooperated with the Authority by responding without delay to
document for clarification, providing the information requested in the memorandum which
testified.

9. No administrative sanction has been imposed by the Authority on the responsible person in the past
processing.

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Based on the above, the Authority unanimously judges that according to article 11 of Law 3471/2006
the conditions for enforcement against the data controller are met, based on the one hand
Article 13 of Law 3471/2006, in conjunction with Article 21 par. 1 item. b' of Law 2472/1997
and with article 84 of Law 4624/2019, and on the other hand article 58 par. 2 sec. i' of the Regulation
and article 15 par. 6 of Law 4624/2019, on the administrative sanction, referred to in
provision hereof, which is judged to be proportional to the gravity of the violation.

FOR THOSE REASONS

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

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou

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