

Athens, 14-10-2021

Prot. No.: 2323

The Personal Data Protection Authority met in composition

Department via teleconference on Wednesday 10.02.2021 following his invitation

of its President, in order to examine the case mentioned in the history

of the present. The President of the Authority, Konstantinos Menudakos, and

regular members Konstantinos Lambrinoudakis, as rapporteur, Spyros Vlachopoulos

and Charalambos Anthopoulos. Present without the right to vote, she was the auditor

Georgia Panagopoulou, specialist IT scientist, as assistant lecturer and

Irini Papageorgopoulou, employee of the administrative affairs department, as

secretary.

The Authority took into account the following:

It was submitted to the Authority under no. prot. G/EIS/2764/22-04-2020 complaint, n

which invokes a violation of article 11 of Law 3471/2006 due to reception

communication with an SMS message with wishes for Easter¹ by A, without the complainant

to have given consent to be contacted in relation to political position

of A as The message also did not provide a way to be removed from the list

recipients of the messages.

The Authority, in the context of examining the complaint, sent to the complainant

the one with no. prot. C/EX/2764-1/28-04-2020 document with which he requested the opinions

1 The content of the message was as follows: "..."

Sender details: (as shown in the message): ...

Date and time of receiving the message: 18-4-2020 19:05

of the accused, taking into account the guidelines it has

issued by the Authority for Political Communication.

The complainant replied regarding the no. prot. G/EIS/3695/29-05-2020

memorandum in which he mentions that there was a personal acquaintance with him complainant and that the messages sent through company, because of it a large number of them had no content that fell into her category political communication.

Then the Authority called with no. prot. G/EX/2764/27-10-2020 document the accused in a hearing via teleconference before her Department Beginning at the meeting of 4-11-2020, in order to discuss the above complaint.

At the meeting

of 4-11-2020 attended through

teleconference o

complainant and the lawyers Grigorios Kanellopoulos with AMDSA ... and Chara

Zerva with AMDSA ..., who presented their views orally. Then the

the complainant submitted the no. prot. G/EIS/7905/17-11-2020 memorandum. In Art

due to the memorandum the following are briefly mentioned: The SMS in question contained

festive wishes and had the ultimate goal of enlivening friends and

personal contacts of the complainant, in the midst of the coronavirus pandemic

and the curfew that had caused insecurity and

sadness to all. It did not contain any political message and was not intended to

promoting a political candidacy or political position or action. The message has been sent

through company due to increased obligations. This communication does not

falls under political communication. The telephone number of the complainant

came from the personal phone book maintained by the complainant

on his personal mobile phone, as the complainant was in the wider

his friend/social circle.

The Authority, after examining the elements of the file, after hearing him
rapporteur and the clarifications from the assistant rapporteur, who left after
the discussion of the case and before the conference and decision-making,
after thorough discussion,

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THOUGHT ACCORDING TO THE LAW

1. According to art. 4 pc. 7 of the General Regulation (EU) 2016/679 on
protection of natural persons against data processing
of a personal nature and for the free movement of such data
(hereinafter, Regulation), which has been in force since May 25, 2018, as
controller is defined as "the natural or legal person, the public
authority, agency or other body which, alone or jointly with others, determine
the purposes and manner of personal data processing
character".

2. The issue of making unsolicited communications with anyone
means of electronic communication, without human intervention, for purposes
direct commercial promotion of products or services and for any kind
advertising purposes, is regulated in article 11 of Law 3471/2006 on
personal data protection in the field of electronic communications,
which incorporated Directive 2002/58/EC into the national legal order.

According to this article, such communication is allowed only if o
subscriber expressly consents in advance. Exceptionally, according to
the no. 11 par. 3 of Law 3471/2006, the electronic contact details
mail obtained legally, in the context of the sale of products or
services or other transaction, may be used for the
direct promotion of similar products or services of the supplier or for

serving similar purposes, even when its recipient message has not given his consent in advance, under provided that he is provided with the opportunity in a clear and distinct manner to object, in an easy way and free of charge, to the collection and use of his electronic details and this during the collection of the details contact, as well as in each message, in case the user initially did not have one disagree with this usage.

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3. Political communication² is of interest from the point of view of the protection of of personal data, takes place at any time, pre-election or not, by political parties, MPs, MEPs, factions and holders of elected positions in local government or candidates in the parliamentary elections, the European elections Parliament and local government elections. These faces become data controllers, in accordance with Regulation (EU) 2016/679, article 4, para. 7) as long as they define its purpose and method processing. For example, when MPs or candidate MPs they receive data from political parties and process it for their personal political communication, they also become responsible processing. In this capacity they must be able to demonstrate compliance with their obligations and processing rules.

4. The conditions for political communication through electronic means without human intervention are specified in Guidelines 1/2019³ issued by the Authority regarding the processing of personal data with purpose of communication of a political nature, taking into account both the article 11 of Law 3471/2006, as well as Directive 1/2010 of the Authority for the Policy

communication but also the General Regulation (EU) 2016/679.

5. In this particular case, the complainant sent an SMS message with content wishes for Easter in the midst of the difficult period of the pandemic to telephone numbers of people with whom he had personal contact, including the complainant. This communication does not appear that carried out in order to promote political ideas, programs action or other activities in support of the policy activity policy formulation behavior, so that it falls under the concept of political communication. of the complainant and

2 See definition in article 1 par. 2 of Directive 1/2010 of the Authority

3 <https://www.dpa.gr/el/enimerwtiko/prakseisArxis/kateythyntiries-grammes-gia-tin-epexergasia-prosopikon-dedomenon-me-skopo>

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Therefore, the communication in question does not fall within the scope of the article 11 of Law 3471/2006 (see Considerations 2, 3 and 4).

Based on the above, the Authority unanimously considers that the complaint is disposable.

FOR THOSE REASONS

The Personal Data Protection Authority rejects as unfounded the with no. prot. G/EIS/2764/22-04-2020 complaint against A.

The president

Konstantinos Menudakos

The Secretary

Irini Papageorgopoulou

