

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 08-10-2020 Prot. No.: G/EX/6871/08-10-2020 A
P O F A S I NO. 43 / 2020 (Department) The Personnel Data Protection Authority Character met as a Department composition at its headquarters on 15-04-2020 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 Evangelos Papakonstantinou, as rapporteur, Grigorios Tsolias and Emmanuel Dimogerontakis in place of the regular members Konstantinos Lambrinoudakis, Haralambos Anthopoulos and Eleni Martsoukos respectively, who, if and were legally summoned in writing 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 Authority's administrative affairs department, as secretary. The Authority took into account the following: Complaints No. C/EIS/3725/24-05-2019 and C/EIS/5244/29-07-2019 were submitted to the Authority (hereinafter, a' and b' complaint respectively), which concern the receipt of unsolicited political communication (EMAIL and SMS messages, respectively) from A to promote his candidacy in the regional elections of May 2019. In particular, according to the aforementioned first complaint, the complainant received on ... to the e-mail address (EMAIL) 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr from the complainant (the message had sent by the company ... on behalf of the complainant ...), which was of a political nature for the purpose of promoting his aforementioned candidacy in the upcoming regional elections of 26 May 2019, during the disputed period, without having - as the complainant claims - any previous relationship with him. Accordingly, according to the above-mentioned second complaint, the complainant received on ..., on his telephone number, a short text message (SMS) of a promotional nature in view of the aforementioned candidacy of the complainant (as the sender of the message, the last name of the complainant "A" appeared), without having – as the complainant claims – any previous relationship with him. The Authority, in the context of examining the complaints in question, sent the complainant the documents No. C/EX/3725-1/16-07-2019 and C/EX/5244-1/03-09-2019 which asked for his opinions on the accused, taking into account the guidelines issued by the Authority for political communication. The complainant responded to the Authority with the memorandum No. G/EIS/8366/02-12-2019, in which he mentions, among other things, the following briefly mentioned: 1) In his pre-election effort, he relied exclusively on the staff , his family, friendly, professional social circle. The information about his candidacy was given to all those who in his many years of professional, social presence and activity came into contact. 2) From his student years he was involved in trade unionism. As ... has been elected ... to ...

several times and has been a member of ... as The ... and the ... was nominated In this journey and all his activity he met and got to know many people, collecting their contact information. The information he used in his election campaign came from his personal agenda and from the business cards that have been given to him at many different events. 3) Regarding the first complaint (sending SPAM EMAIL), he does not remember exactly where he met the complainant. He is a resident of F who is not included in ... where he was a candidate. Therefore it is certain that this is an address given to him in the context of some event or acquaintance in the past, as he would have no reason to send to a stranger outside 2 of his constituency. 4) Regarding the second complaint (Sending SPAM SMS), there was an error when transferring numerical digits for a phone number from his phone book, as it does not have his name registered. Subsequently, the Authority invited A to a hearing at the meeting of the Authority's Department on 02-19-2020, with document No. C/EX/1027/07-02-2020, in order to discuss the above related complaints as well as the general practice followed by the candidate for communication of a political nature by electronic means. A was present at the said meeting, who presented his views orally. The complainant reported that during his election campaign he sent 500 short SMS text messages via a package purchased from a provider, and an unknown number of EMAILs. For these shipments he stated that he made use of his personal file, and for this reason he did not consider it appropriate to provide the recipients with the possibility to exercise the right to object. The complainant was given a deadline, but did not file a statement. The Authority, after examining the elements of the file, the hearing process and after hearing the rapporteur and the assistant rapporteur, who withdrew after the discussion of the case and before the conference and decision-making, after a thorough discussion, THOUGHT IN ACCORDANCE WITH THE LAW 1. According to article 4 par. 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 3 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 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 article 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 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 the collection and using 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, according to paragraphs 1 and 4 of article 13 of the same Law 3471/2006, in terms of compliance with this law, the Personal Data Protection Authority has the powers of Law 2472/1997, as applicable from time to time, and imposes the sanctions provided by this last law in case of violation of the provisions of the above Law 3471/2006. 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: The policy 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 1 See definition in article 1 par. 2 of Directive 1/2010 of Authority 4 4, item 7) as long as they define the purpose and method 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 and based on the principle of accountability² they must be able to demonstrate compliance with their obligations and processing rules. 4. When political communication is carried out using electronic media 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 Law 3471/2006, as applicable, the previous consent of the data subject, subject to paragraph 3 thereof of the same article, as applicable. It is also noted that short text messages (SMS) are also emails under its definitions

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 legal to send messages when email details

collected as part of a previous invitation to participate in an event

or action, regardless of its political character. Rather, it is not considered to recommend similar contact and it is not legal to use electronic contact information

for the purpose of political communication when such data was obtained in the context business relationship, such as the use of the customer file by parliamentary candidate.

(b) The data controller must provide the data subject with

2 As defined in article 5 par. 2 of the GDPR

5

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

the 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 such short text messages

(SMS) as well as email messages (EMAIL). Therefore, the

legality of the shipment is ensured only if the conditions 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

political communication or that there had been a previous similar contact/communication.

On the contrary, the data controller declares that the personal data of one

of the complainant were acquired in the context of an event or acquaintance at

past, but without specifying whether it is related to his political activity

controller or if he received the relevant consent. As for the second one

complaint, no evidence of the alleged human was adduced

errors when transferring the number of the complainant (such as

details of another person with a similar phone number). It is also noted that,

beyond the specific complaints, the controller did not provide

relevant information nor about other persons to whom you have sent policy messages

communication.

8. The data controller did not provide the Authority with information regarding the exact

number of messages sent, except for a report of a packet of 500

short text messages (SMS).

9. The data controller did not provide, in the disputed messages, political communication

of complaints, the data subjects the possibility to exercise the

right to object in an easy and clear way.

6

10. 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.

11. The controller cooperated with the Authority by responding to the documents for clarifications, providing the information requested also during its meeting

Principle.

12. No administrative sanction has been imposed by the Authority on the person in charge in the past processing,

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, with

based on the one hand, article 13 of Law 3471/2006, in combination 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 sub.

i' of the Regulation and article 15 par. 6 of Law 4624/2019, on the administrative sanction, which

referred to in the operative part of the present, which is judged to be proportional to its gravity

violation.

FOR THOSE REASONS

The Personal Data Protection Authority:

It imposes on A the effective, proportionate and dissuasive administrative money

fine appropriate to the specific case according to the special circumstances

of this amount, in the amount of three thousand euros (3,000.00) euros, for the violations identified above

of article 11 of Law 3471/2006.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou