Athens, 07-25-2022 Prot. No.: 1905 DECISION 20/2022 (Department) The Personal Data Protection Authority met as a Department by video conference on 03-23-2022 at 09.30 a.m. at the invitation of its President, in order to examine the case referred to in the present history. Konstantinos Menudakos, President of the Authority, and alternate members Maria Psalla and Demosthenes Vougioukas attended, as rapporteur, in place of regular members Konstantinos Lambrinoudakis and Grigorio Tsolias, respectively, who, despite being legally summoned in writing, did not attend due to disability. The meeting was attended by order of the President, Haris Symeonidou and Spyridon Papastergiou, specialist scientists - auditors as assistant rapporteurs and Irini Papageorgopoulou, an employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: With no. prot. C/EIS/4316/30-06-2021 document by the company with the name "MZN HELLAS ANONYMI ATHLITIKI EMPORIKI ETEIRIA" with distinctive title "MZN HELLAS A.E." (hereinafter referred to as the applicant) submitted a treatment application against her with no. 13/2021 of the Authority's Decision, which was issued following the no. prot. C/EIS/4863/10-07-2019 and C/EIS/7689/07-11-2019 of complaints submitted against her by A (hereinafter referred to as the complainant). With the above complaints, the complainant complained about the sending of unsolicited SMS messages to his mobile phone number for 1 purposes of commercial promotion of the applicant's products, even though he had explicitly expressed his objection. After examining the above complaints, the Authority, with the challenged decision 13/2021, accepted the complaints and imposed on the applicant a fine of twenty thousand (20,000.00) euros for the established violation of article 17 in combination with article 21 par. 3 and article 12 paragraph 3 of the GDPR and article 25 paragraph 1 of the GDPR. For its judgment, the Authority specifically took into account the following (paragraphs 10 and 11): "10. In his first memorandum, the controller assured the Authority that he has deleted the complainant's mobile phone and email address and that they have taken all necessary steps to prevent it from happening again in the future for any other customer. It turns out that the above statement was not accurate. Even if the company's argument about a single error by employees is accepted, which is not based on electronic or other evidence that cannot be disputed, but only on written statements of the employees involved, it follows that the data controller did not take actions to that a similar incident does not happen again in the future to another customer. Therefore, with the sending of the second message on 6/11/2019, it is established that the company did not have in practice the necessary procedures to ensure the deletion of the data, to meet the requirements of the GDPR and to protect the rights of the data subjects . Therefore, there is a violation of article 25 paragraph 1 of the GDPR. It is pointed out that based on the principle of accountability (Article 5 para. 2 GDPR) the data controller bears

the responsibility and is able to prove his compliance with the basic principles of legal processing. It should be noted that the argument of not using the delete function built into the SMS and using it after 6/11/2019, specifically on 11/12/2019, is not accepted. The complainant, as explained, was not obliged to exercise his right in this specific way, while it is not proven that he was the one who activated the erasure process, as during this period the details of the complaint were also known to other persons (e.g. e. to the Authority). 11. The Authority takes into account aggravatingly, that the data controller did not submit documentation of the deletion procedures, that the violation is related to 2 exercising the rights of the data subject, that the company declared to the Authority that it took the appropriate measures and indeed for all of the of its customers, while in practice this had not happened with regard to the complainant, that the data controller has an online store and uses electronic communication techniques, therefore it should have taken care of the correct response to requests to exercise rights. Furthermore, according to the public GEMI [https://www.businessregistry.gr/publicity/show/9178201000], the company in the year 2019 had a turnover of €1,343,513.99 and profits after taxes of €50,151.92. As mitigating factors, it takes into account that while there was a nuisance, there was no financial loss to the data subject due to the non-satisfaction of the right, that it is the first violation for the specific company and finally, the unfavorable financial situation due to the Covid-19 pandemic". available data in the With the present request for treatment, the applicant requests the revocation of the contested decision in its entirety and the deletion of the imposed fine for the following reasons: A) Submission of new and crucial evidence regarding the procedures for deleting the complainant from the contact list of the applicant and its actions/procedures to this end. Specifically, the applicant maintains that she did everything required to the extent possible for her compliance with the requirements of the Regulation, having arranged all the required procedures for this purpose, and having given the necessary instructions and orders to her competent employee, B , who in turn always assured her that he had done everything necessary to satisfy the complainant's right to be deleted from the applicant's customer list, so that the sending of advertising messages to his phone would stop. In order to confirm the above, the applicant submits and invokes the following new evidence, which concern the alleged facts and came to her knowledge after the contested decision was issued: 3 i. ii. iii. the under no. ..../2021 affidavit of the applicant's employee, Mr. B before the Athens Magistrate's Court (Ref. 1), in which the facts of the case are described in detail as well as the critical omissions on the part of the employee, which led on the one hand in the non-completion of the deletion of the complainant's information, on the other hand, in the mistaken belief of the applicant's management that the necessary legal procedures have been fully followed, on which its argumentation to the Authority was

based. In particular, the employee asserts his failure to confirm that the deletion of the complainant's details has been completed through the EasySMS platform in August 2019 by contacting the technical support company TERN and his failure to properly inform the management of the applicant (C) in context of the complaint, as well as his incorrect action in November 2019, to export an earlier list of recipients (and not the updated one), resulting in the 2nd SMS being sent to the complainant and the 2nd complaint being submitted. The letter dated 14-4-2021 from the applicant (Ref. 2) through her attorney to the company TERN INFORMATION SYSTEMS – administrator of the EasySMS platform and processor, with whom the applicant - data controller cooperated during the critical period to send promotional messages to its customers. With the letter in question, the assistance of the TERN company to the applicant was requested, through the provision of information and electronic data (full information history) to prove the procedures followed and the process of deleting the data of the complainant. The reply letter dated 4-27-2021 (Ref. 3) from the company TERN INFORMATION SYSTEMS, which includes electronic traces – the history of all deletions of telephone numbers on behalf of the 4 applicant on the EasySMS platform, and which proves the constant compliance of the applicant with the requests to delete the subjects that she accepts and her claim is reinforced that the non-completion of the complainant in August 2019 is due to a detour by the above employee. of the process of deleting the number B) Violation of the principle of proportionality and the criteria for the imposition and measurement of administrative fines for the violation of the GDPR, due to the amount of the fine imposed (€20,000.00). The Authority, after examining the elements of the file, after hearing the rapporteur and the assistant rapporteurs, and after a thorough discussion, DECIDED IN ACCORDANCE WITH THE LAW 1. Article 24 par. 1 of the Law. 2690/1999 (KDDiad) stipulates that "If the relevant provisions do not provide for the possibility of exercising, according to the next article, a special administrative or interlocutory appeal, the interested party, for the restoration of material or moral damage to his legal interests caused by an individual administrative act may, for any reason, by application, request, either from the administrative authority which issued the act, its revocation or amendment (remedial request), or, from the authority whichis headed by the one that issued the deed, its annulment (hierarchical

recourse)". In the true sense of the provision, the application for a remedy is intended

in the revocation or modification of the challenged individual administrative act for

legal or factual defects thereof which go back to the regime under which

was issued.

2. As can be seen from the content of the present application, the applicant in the first place

reiterates her claim of a single procedural error

deletion of the number of the complainant, due to the omission of the person in charge

of its employee, who had been submitted to the Authority before its issuance

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decision, with the applicant's memorandum. But the said claim now

is substantiated with the above-mentioned news presented and cited

evidence from the applicant. In particular, from his affidavit

employee Mr. B (Ref. 1) and the letter from the TERN company (Ref. 3), it appears that

the sending of the 2nd message to the complainant is indeed due to

individual error of the employee and not in incomplete procedures of the applicant.

It should be noted that the employee is not a "processor" as such

incorrectly stated on p.25 of the treatment application, but acting under

supervision and at the behest of the applicant (Article 29 GDPR) and therefore for the actions

his or his omissions, according to the GDPR, his employer is responsible, as

controller. In any case, after the aforementioned oath

certification, it is recognized that the applicant had tried to satisfy the

objection request of the complainant and the violation is clearly not due to

fraud, but in negligence.

3. In view of the above new data submitted, the Authority assesses as

mitigating circumstances according to article 83 par. 2 GDPR the fact that a) h

violation is due to negligence and not malice on the part of the applicant, and b) the applicant

appears to generally follow the appropriate procedures that ensure

the satisfaction of the rights of objection and deletion of the subjects of

data, therefore no violation of article 25 par. 1 GDPR is found.

There is, therefore, a case of partial revocation of the Authority's decision 13/2021,

and specifically in the part that was judged to be involved with this decision

violation of this article, which was taken into account for its measurement

fine.

FOR THOSE REASONS

The beginning

1. Partially accepts the request for treatment, in view of the presentation and

invoking new facts on behalf of the applicant.

2. Revokes Decision 13/2021 to the extent that it was deemed applicable

violation of article 25 par. 1 GDPR.

3. It imposes on the company "MZN HELLAS ANONYMI ATHLITIKI EMPORIKI

COMPANY" the efficient, proportionate and dissuasive administrative money

fine that is appropriate in the specific case according to the special ones

circumstances thereof, in the amount of five thousand (5,000.00) euros, for those established

violations of article 17 in combination with article 21 par. 3 and article 12

par. 3 of the GDPR, for the reasons stated in Decision 13/2021, in

combined with the rationale of this decision.

The president

Konstantinos Menudakos

The Secretary

Irini Papageorgopoulou