

Athens, 14-05-2021 Prot. No.: 1231 DECISION 18 / 2021 (Department) The Personal Data Protection Authority met in a composition of the Department via teleconference on 17-02-2021 at the invitation of its President, in order to examine the case referred to in the history of the present. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Constantinos Menoudakos, and the alternate members Evangelos Papakonstantinou, as rapporteur, and Grigorios Tsolias, in place of the regular members Konstantinos Lambrinoudakis and Charalambos Anthopoulos, respectively, who, although legally summoned in writing, were present. attended due to disability. Regular member Spyridon Vlachopoulos, although legally summoned in writing, did not attend due to disability. The meeting was attended by order of the President, Efrosyne Siougle, special 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: Complaint No.

C/EIS/2769/22-04-2020 was submitted to the Authority by A, which related to the sending of unsolicited communication by B (hereinafter complained of). The complainant complains that he received a message (SMS) on his mobile phone, on 15/04/2020 at 13:10, from the complainant, without having given his consent and without being able to state his objection because the message states the phrase "The sender does not support replies" Kifisias Avenue 1-3, 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 (translation of the phrase "The sender does not support replies", which is written in English at the end of the message). The content of the message attached to the complaint was as follows: "... Happy resurrection! A. ... Member of Parliament ...", the Authority, in the context of examining the complaint in question, sent the complainant the letter No. of the complainants, taking into account the guidelines 1/20191 issued by the Authority for political communication. The complainant replied regarding the case number C/EIS/3334/15-05-

2020 document in which she mentions, among other things, the following briefly mentioned: 1. The complainant has been actively involved with the public since her student years and her interest in political life pushed her into the field of Politics. In this context, she was a parliamentary candidate more than once and in the last parliamentary elections she emerged... . In view of the politics of her activity, this electoral result constitutes her property and a determining element of her field of occupation corresponding to the mention of any profession that accompanies her name and which are expressed in a context of communication between several interlocutors. 2. Her contact with the complainant took place in the context of events and other political actions of the party ..., of which he is an active member, as well as, as far as he knows, in addition to his participation in activities of a political nature due to his party activity, twice has performed his electoral duty, i.e. he has voted in

internal party elections having given, based on the observed internal party procedures, his consent to the processing of his personal data. Through the party ..., to which they both belong, the complainant received the information of the complainant, for which he had even given consent for its processing. 1 Available on the website of the Authority at the link <https://www.dpa.gr/el/enimerwtiko/prakseisArxis/kateythyntiries-grammes-gia-tin-epexergasia-prosopikon-dedomenon-me-sko-po-2> 3. Getting to know each other and further contact her relationship with the complainant consisted of their common political direction. In the last elections, in which she took part as a candidate for Member of Parliament... and in a related meeting she had with her relatives, as part of an event, they further expressed their support for her. 4. Her telephone message to the complainant had a congratulatory character in view of the days, and even more so, given the general situation that was experienced in the context of the Easter holidays in the year 2020, and was in no way a political communication, except that it was intended to transmit a message for on holidays, which was sent automatically to several party members whose personal numbers he had. This, since they themselves had consented to it - including the complainant - when registering their personal details in the party's Register of Members. 5. The purpose of her communication was not political and it becomes clear from the content of the specific message that the wording of the definition of the concept of "political communication" based on the Authority's guidelines 1/2019 is not met, but it was a common congratulatory message . 6. On the basis of the above definition, the complainant states, it is understood that the communication being carried out, regardless of the way in which it is carried out, can be characterized as political under the relevant provisions on the protection of personal data for the purpose of communication of a political nature , must as it aims to promote political ideas, action programs or other related activities with the further aim of supporting them and shaping political behavior. And these characteristics are a constituent element of the concept of political communication, without the fulfillment of which, not cumulatively but one of the purposes listed in the provision, the communication cannot be characterized as political, not bearing those necessary characteristics that give it a political dimension. 7. Focusing on the facts of the case in question and in particular on the message from 15.4.2020 sent by the complainant, among others registered in the Register of Members..., to the complainant, she did not convey political ideas to him nor did she invite him or inform him about action programs or other activities seeking its support or its manipulation in order to shape political behavior. On the contrary, no political reference was included in this particular message, which was no different from a common concise greeting message sent to relatives or friends on holidays. The addition of her 3 political status, as an accompaniment to her name, is justified by her political activity without the aim of promoting political messages or

political support, but it was an element determining her political identity and already known identity to a member of the same party, who had in the past consented to the relevant processing of his personal data and in particular his personal telephone number by other members of the party, without, however, in the present case, the communication carrying elements of a political nature, within the meaning of the guidelines . 8. The complainant did not aim to promote political ideas, action programs or related activities of a political nature with the aim of shaping political behavior, nor did she ever want to disturb the complainant, who since, the message in question was sent by name showing her identity (case 3.1 of guidelines 1/2019), he could have contacted either her or the Register of registered members ..., where he consented to the processing of his personal data, expressing his objection hereafter in reference to the use of his personal data for a or for more specific purposes based on article 6 of the General Data Protection Regulation, to which he has consented with his express statement, in which case the present issue would not be raised. 9. The complainant has never in the past expressed his objection to relevant processing, to which he himself had consented with a clear positive action, consisting of a free, specific, explicit and fully informed indication of his agreement in favor of the processing of the data concerning him (case 5 of guidelines 1/2019), which is in full agreement with what is included in the party's statutes and those listed in case 5.1 of guidelines 1/2019<sup>2</sup> of the Authority. 10. The complainant, although she regrets being in this position, insists on the one hand on the absence of political communication by virtue of the specific message and on the other hand, 2 In case 5.1 of the Authority's guidelines 1/2019 under the title Special Case: Political party-communication- transmission to members and in particular it is provided that "For the communication of the political party with its members or with the "friends" who have membership rights in accordance with the provisions of the relevant statute, the consent results from the general consent of the member to participate in the political party . The political party is allowed to transmit to members the information of other members or "friends" for the purpose of political communication only if this transmission is provided for by the party's statutes. In case of silence in the statutes, the specific consent of the members or "friends" is required for this purpose » and this because a member cannot reasonably expect that his participation in a party, and the this way of revealing his political views, must be made known to other members, without maintaining contact with them." 4 in any case, provision of express consent on the part of the complainant in reference to the processing of his personal data in the sense of receiving messages from members of the political party to which he belongs, in accordance with the provisions of the party's statutes. 11. Even if it were to be accepted that her message to the complainant had the character of political communication and in particular political communication of means without

human intervention, including short text messages (SMS), his personal data is not violated, since the relevant processing is in all respects legal and the message sent by it falls under the protective content of the relevant provisions, which define the exact conditions of the legal character of the processing of personal data when the purpose of political communication is pursued. 12. This issue could have already been resolved immediately, as long as the complainant contacted the political party for this purpose or the complainant personally, which for him, in view of their common status, would be very easy to approach, in which case he could exercise his right to object, if the political nature of the communication and the illegality on the part of the political party and the alleged processing of his data are accepted, in an easy and clear way (case 3 (b) p. 4 of guidelines 1/2011), without following the procedure followed following the protocol number C/EIS/2769/22.4.2020 of his complaint for an event, which, in fact, was aimed at nothing more than a congratulatory message of joy to a difficult and unprecedented period that we are experiencing in view of Covid-19, with everyone having a strong, in the complainant's opinion, need to communicate. Subsequently, the Authority called, with the summons No. C/EX/2769-2/02-12-2020, the complainant to a hearing, via video conference, at the meeting of 09-

12-2020 in order to discuss the above complaint as well as the general practice that followed for communication of a political nature by electronic means. At the meeting of 09-12-2020, the complainant and her attorney, Ioannis Samelis, attended via video conference, and presented their views orally. Subsequently, the complainant received a deadline and submitted the memorandum No. G/EIS/8523/11-12-2020 within the deadline. In said memorandum 5, in addition to the previous relevant document of the complainant, the following is stated: a list (excel) of the year 2008 is attached in which the personal details of the members of the register ..., including the complainant, as entered after consent and contribution them by the persons themselves in knowledge and according to their express declaration in favor of their processing. The Authority, after examining the elements of the file, the hearing procedure and after hearing the rapporteur and the assistant rapporteur, who was present without the right to vote and left after the discussion of the case and before the conference and decision-making, after a thorough debate, CONSIDERED ACCORDING TO 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 commercial promotion of products or services and for any kind of advertising purposes, is regulated by 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, in accordance with 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 6 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 collection and use of 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 communication<sup>3</sup> 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 4, item 7) if 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 accountability<sup>4</sup> they must be able to demonstrate compliance with their obligations and processing rules. 4. When political communication is carried out using electronic means of communication, without human intervention, through public communication networks, as is the case of short text messages (SMS) on a mobile phone, the communication requires, according to article 11 par. 1 n. 3471/2006, as applicable, the prior consent of the data subject, subject to paragraph 3 of the same article, as applicable. 5. The consent of the data subject for political communication must be provided by a clear positive

action which constitutes a free, specific, explicit and fully informed indication of the agreement of the data subject in favor of the processing of the data concerning him. The declaration of consent, to be legal, can be provided as follows: (a) The written declaration of consent can be made by filling in a special form, e.g. during events or in the context of the operation of the political offices of the parliamentary candidates during the pre-election period, the data subject fills in the form and delivers it on site or sends the relevant form by post or fax. (b) The electronic declaration of consent can be carried out e.g. through the registration of the data subjects on a website maintained by the data controller, or by filling in a special electronic form and sending it by e-mail. 6. The consent for the communication of the political party with its members or with the "friends" who have membership rights in accordance with the provisions of the relevant statute, results from the general consent of the member to participate in 4 As defined in article 5 par. 2 GDPR 8 political party. The political party is allowed to transmit to members information of other members or "friends" for the purpose of political communication only if such transmission is provided for by the party's statutes. In case of silence in the statute, the special consent of the members or "friends" is required for this purpose, and this is because a member cannot reasonably expect that his participation in a party, and in this way the disclosure of his political views, must become known to other members, without maintaining contact with them. 7. Political communication using electronic media is allowed without human intervention and without the consent of the data subject only if the following conditions are met cumulatively:

(a) Contact Information has been lawfully obtained in the context of previous, similar contact with the data subjects, and the subject during the collection of the data informed about their use with for the purpose of political communication, he was given the opportunity to object for this use but did not express it. The previous contact is not necessary to have a purely political character, e.g. is the shipment legal messages when the email details were collected in the context 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 the electronic data communication for the purpose of political communication when these elements

acquired in the context of a professional relationship, such as the use of  
of the customer file by a candidate for parliament.

(b) The controller must provide the subject of

given the possibility to exercise the right to object in an easy and

clear, and this in every political communication message. In every communication

the sender's identity is required to be clearly and clearly stated

person for whose benefit the message is sent, as well as a

valid address to which the recipient of the message can request it

termination of communication. Consent must be given in an unequivocal affirmative

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action which constitutes free, specific, express and full knowledge

indication of the agreement of the data subject in favor of the processing of

data concerning it.

8. In this case, the complainant, as controller

claims that sending a message with congratulatory content does not constitute

political communication, even if the recipient's information was obtained from

kept Register of Members of the political party to which he belongs.

9. Following this, pursuant to the provision of article 5a par. 1 of

Regulation of Operation of the Authority, the case must be referred to

Plenary due to importance in order to decide whether communication with

e-mail content, relevant to the dispute it does not concern

at least directly and directly political communication, falls under the relevant

legislation on the processing of personal data for policy purposes

communication.

FOR THOSE REASONS

The Personal Data Protection Authority refers the defendant

case as a whole in the Plenary, which will decide on the issues that

refer to the rationale.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou