

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 08-10-2020 Prot. No.: G/EX/6868/08-10-2020 A
P O F A S I NO. 44 / 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, were present, 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: Complaint No. C/EIS/4468/24-06-2019 was submitted to the Authority, which concerned the receipt of an unsolicited political communication (SMS message) by A (hereinafter "complainant") to promote his candidacy in the European elections. In the above complaint, the complainant states that she received a short text message (SMS) from the complainant, of a political nature, with the aim of promoting his candidacy without having any previous relationship with him. 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr The Authority, in the context of examining the complaint in question, sent the complainant the no. prot. C/EX/4468-1/25-07-2019 a document in which he requested his opinions on the accused in the complaint, taking into account the guidelines issued by the Authority for political communication. The complainant did not respond to this document. Subsequently, the Authority invited the complainant to a hearing with document No. prot C/EX/1126/11-02-2020 in order to discuss the above complaint as well as the general practice followed by the candidate for political communication character by electronic means. A attended the meeting on 02-26-2020, who presented his views orally. The complainant stated that the list he used to send bulk SMS messages was provided to him by ... (hereafter "..."), and he had been told that the list in question was "controlled". Regarding the sending of SMS messages, the complainant stated that he did not know that it falls under the GDPR. 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 commercial promotion of products or services and for any kind of advertising 2 purposes, is regulated by 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 4, item 7) if they define the purpose and method of processing. For example, 1 See definition in article 1 par. 2 of Directive 1/2010 of Authority 3 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 means of communication, without human intervention, through public communication networks, as is the case of electronic messages (e-mail), the communication requires, according to article 11 par. 1 law 3471 /2006, as applicable, the prior consent of the data subject, subject to paragraph 3 of the same article, as applicable. It is also pointed out that short text messages (SMS) are also e-mails according to the definitions of Law 3471/2006 and Directive 2002/58/EC. 5. Political communication using electronic means is permitted without human intervention and without the consent of the data subject only if the following conditions are cumulatively met: (a) The contact information has been legally obtained in the context of previous, similar contact with the data subjects; and the subject during the collection of the data was informed about its use for the purpose of political communication, he was given the opportunity to object to this use but did not express it. The previous contact need not be purely political in nature, e.g. it is legal to send messages when the email data was collected in the context of a previous invitation to participate in an event or action, regardless of its political nature. On the contrary, it is not considered to constitute a similar contact and it is not legal to use electronic contact information for the purpose of political communication when such information was obtained in the context of a professional relationship, such as for example the use of the client file by a candidate for parliament. (b) The controller must provide the data subject with the possibility to exercise the right to object in an easy and clear way, and this in every 2 As defined in article 5 par. 2 of the GDPR 4 political communication message. Each communication is required to clearly and clearly state 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 can request the termination of the communication. 6. In this particular case, the complainant, as controller carried out political communication by sending short text messages (SMS). The legality of the sending is ensured if the mentioned

in the above Thoughts 4, 5. From the responses of the data controller they arise

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. Besides, for her specific complaint, the complained controller, even though claimed that the complainant's details were provided to him by ..., no provided relevant evidence to prove his claim. It is noted

also that, beyond the specific complaint, the data controller does not
nor did he provide relevant information about other persons to whom he sent messages
political communication.

8. The data controller did not provide the Authority with information regarding the exact
number of recipients of these messages.

9. The controller did not provide the complainant as a subject of
given the possibility to exercise the right to object in an easy and clear way,
in the policy communication SMS message sent. Also, there was no easy way
search data of the data controller in order to be able to
relevant rights are exercised against him (including the right
opposition), since the Authority also had difficulty finding the data in order to address
related documents.

10. The controller did not cooperate satisfactorily with the Authority, since he did not
replied to the document for clarification.

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11. 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, in the amount of three thousand euros (3,000.00) euros, for the above established
violations of Article 11 of Law 3471/2006.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou