

PERSONAL DATA PROTECTION AUTHORITY Athens, 13-08-2020 Personal Data Protection Authority (hereinafter, the Authority) convened, at the invitation of its President, in a regular meeting in the composition of a department via video conference on Wednesday 08-04-2020 in order to examine the case referred to in the history of this present. The President of the Authority, Konstantinos Menudakos, and the substitute members Grigorios Tsolias, Evangelos Papakonstantinou, as rapporteur and Emmanuel Dimogerontakis, were present, in place of the regular members Charalambos Anthopoulos, Konstantinos Lambrinoudakis and Elenis Martsoukos respectively, who, although legally summoned in writing, did not attend due to obstacle. The meeting was attended by order of the President, Efrosyne Siougle, specialist scientist - auditor as assistant rapporteur and Irini Papageorgopoulou, employee of the Department of Administrative Affairs of the Authority, as secretary. The Authority took into account the following: A complaint was submitted to the Authority with the original number C/EIS/5494/07-08-2019 by A (hereinafter, the complainant), with which the complainant complains about receiving an unsolicited message from B (hereinafter, complainant) for the purpose of communication of a political nature. Specifically, the complainant received on ... a short text message (SMS) on her mobile phone from the 1 complainant, promoting her candidacy in the upcoming parliamentary elections. On the same day, the complainant sent an SMS to the complainant's mobile phone in which she requested the immediate deletion of her personal data from the complainant's databases and to confirm the deletion by ... The Authority, in the context of examining the complaint in question, sent the complainant the document No. C/EX/5494-1/17-09-2019 in which he requested her opinions on the complainants, taking into account the guidelines lines issued by the Authority for political communication Subsequently, due to no response, the Authority re-sent to the complainant the document No. C/EX/529/22-01-2020. The complainant replied to the Authority with the document No. G/EIS/1048/07-02-2020, in which she mentions the following briefly: 1) The complainant sent the complainant an SMS on ... in the context of her pre-election campaign campaign ahead of the upcoming National Elections on 07 July 2019 as a parliamentary candidate. 2) Regarding the legality of the political communication and the origin of the data of the complainant: a. The complainant is... Her contact list consists, in addition to personal friends and acquaintances, of many colleagues with whom she has exchanged numbers in the context of their potential collaboration. b. The complainant was delivering private lessons ... in the same Regional Unit. Her contact information was obtained by the complainant herself in the same context as the other colleagues. This is confirmed by the complainant herself in her complaint. c. In all SMS sent by the complainant, she provided her personal mobile phone number so that the recipients could contact her for any issue, including objecting to the

processing of their data. After all, it was through this channel that the complainant submitted her deletion request. 2 3)

Regarding the complainant's deletion request: a. The complainant proceeded to delete the complainant's contact details on ... and has not made any communication with her since then. That he responded immediately to the deletion request is also presumed from the fact that the complainant did not again receive a corresponding (or any other) communication from her. He did not contact the complainant to confirm the processing of her request because he considered it unnecessary. 4) Regarding the technical process and bulk SMS sending: a. The complainant worked with a bulk messaging service, which, as a processor, sends SMS, for a fee, to the phones indicated to it. b. In particular, the processor has a platform where the user of the platform can upload the contact information he wants and then the company proceeds with bulk sending of SMS. In this context, the complainant uploaded the mobile phones, to which she wanted to address her message (without names or any additional details, in accordance with the principle of data minimization) and the company proceeded to send it in bulk. c. The complainant, during the period of the communication under discussion with the complainant, was a candidate for parliament. Thus, in the context of her election campaign, on ..., she proceeded to send a mass SMS exclusively to friends, acquaintances and in general people in her social and professional circle, in order to inform them of her candidacy and claim their vote and support in framework of the Democratic process of elections. Subsequently, the Authority invited the complainant to a hearing at the meeting of the Authority's department on 03-04-2020, with document No. C/EX/1509/24-02-2020, in order to discuss the above complaint as well as the general practice followed for communication of a political nature by electronic means. At the meeting in question, Stergios Constantinou with ... was present as attorney-in-fact of the complainant, who presented his 3 opinions orally. Subsequently, the complainant timely submitted the memorandum No. C/EIS/1885/11-03-2020. In the aforementioned memorandum, the following are briefly mentioned: The complainant, who teaches courses ..., gave the complainant, in the context of their professional relationship, as she states in her complaint, her contact details, which, the complainant included in her personal contact list. The complainant did not express any objection to any type of communication between them, both during the collection of the data (as she states in her complaint) and during the rest of the period up to the submission of the deletion request. The legitimizing basis for the processing of the data is also the achievement of the complainant's legitimate interest in claiming the support of the people of her friendly and professional circle, in the context of the right to "be elected". A necessary condition for the application of legitimate interest as a legal basis for processing is that the processing is "proportionate" and "necessary". The electronic communication via SMS was necessary for the complainant

to communicate with all the people who belong to her personal and professional circle and proportionate because the sending of SMS was a convenient means of communication. Appropriate guarantees were observed on the part of the complainant so that there are no effects to the detriment of the data subjects as well as their reasonable expectations. In particular, the sending of SMS was limited exclusively to its contacts, only the data necessary for the processing was communicated to the processor and deleted immediately after the communication was made. The complainant has included her personal number so that anyone wishing to object to the processing can do so immediately. Due to the overall politics of the march throughout the years, the complainant was known for her activism. Therefore, it was reasonable for a person within her friendly and professional circle that there would be political communication between them. The Authority, after examining the elements of the file, the hearing process and after hearing the rapporteur and the assistant rapporteur, who left 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 purposes, is regulated by article 11 of Law 3471/2006 on the protection of 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 Authority has the powers of law 2472/1997, as applicable from time to time, and imposes those provided by the this last law sanctions 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 on political communication as well as the Regulation, the following apply: Political communication<sup>1</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 the Regulation (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>2</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 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 pointed out 1 See definition in article 1 par. 2 of Directive 1/2010 of the Authority 2 As defined in article 5 par. 2 of the GDPR 6 also 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 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. According to article 17 of the Regulation, "(...) The data subject has the right to request from the controller the deletion of personal data concerning him without undue delay and the controller is obliged to delete personal data without undue delay delay (...)" 7 7. According to article 12 par. 3 of the Regulation "The data controller shall provide the data subject with information on the action taken upon request pursuant to articles 15 to 22 without delay and in any case within one month of the receipt of the request. This deadline may be extended by a further two months if necessary, taking into account the complexity of the request and the number of requests. The data controller shall inform the data subject of said extension within one month of receipt of the request, as well as of the reasons for the delay. If the data subject makes the request by electronic means, the information shall be provided, if possible, by electronic means, unless the data subject requests otherwise.' 8. In this case, the complainant, based on the above, carried out, as a data controller, political communication by sending short text messages (SMS). Therefore, the legality of the shipment is ensured if the above considerations 4, 5 have been observed. From the responses of the data controller the following emerges: 9. The data controller did not provide evidence to prove that he has secured the prior consent of the recipients of the SMS messages, or that there had been previous similar contact with the data subjects. In particular with regard to the second issue, the contact details of the recipients of the controller's political communication messages, who are persons in his professional circle and colleagues, with whom he exchanged numbers in the context of potential cooperation, were not obtained in the context of previous similar contact together their. On the contrary, they were acquired in the context of a professional relationship, which is not related to the specific political activity of the data controller. 10. The controller did not provide the Authority with information regarding the exact number of recipients of political communication messages. 8 11. The controller provided the data subjects with the possibility to exercise the right to object by providing the mobile phone number in the political communication messages. However, it did not provide a clear reference to the possibility of exercising the right. 12. The controller failed to inform the complainant, in violation of article 12 par. 3 of the Regulation, about an action he took following the deletion request he submitted. 13. The controller cooperated with the Authority by responding to the documents for clarifications, providing the information requested during the Authority's meeting and in the memorandum he submitted. 14. No administrative sanction has been imposed on the controller by the Authority in the past. Based on the above, the Authority unanimously judges that according to article 11 of law 3471/2006 and article 12 par. 3 of the Regulation, the conditions for enforcement against the data controller are met, based on the one hand article 13 of law 3471/ 2006, in conjunction 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 sec. i' of the Regulation and article 15 par. 6 of Law 4624/2019, of the administrative sanction, referred to in the operative part of this present, which is judged to be proportional to the gravity of the violation. FOR THESE REASONS It imposes, on B, the effective, proportionate and dissuasive administrative fine that is appropriate in this particular case according to its special circumstances, in the amount of three thousand euros (3,000.00) euros, for the 9 violations of article 11 of Law 3471/2006 and the article

12 par. 3 of the Regulation.

The president

The Secretary

Konstantinos Menudakos

Irini Papageorgopoulou