

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 25-09-2020 Prot. No.: G/EX/6510/25-09-2020 A
P O F A S I NO. 34 / 2020 (Department) The Personnel Data Protection Authority Charaktira met as a Department composition at its headquarters on 19-02-2020 at the invitation of its President, in order to examine the case referred to in the present history. Charalambos Anthopoulos appeared as chairman, hindered by the President of the Authority Constantinos Menoudakis and the Deputy President Georgios Batzalexis, the substitute members Evangelos Papakonstantinou and Emmanuel Dimogerontakis, as rapporteur, in place of the regular members Konstantinos Lambrinoudakis and Eleni Martsoukos respectively, who, although were legally summoned in writing, did not attend due to disability, and the alternate member Grigorios Tsolias, also as rapporteur with the right to vote. 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/4787/05-07-2019 was submitted to the Authority, which concerns the receipt of unsolicited political communication (SMS message) by A (hereinafter "complained ») to promote her candidacy in the parliamentary elections of In the above complaint, the complainant states that he received on ..., on his mobile phone, two short text messages (SMS) with the complainant's last name "A" appearing as the sender, which were of a political nature for the purposes of promoting the complainant's candidacy in the upcoming elections , during the disputed period, parliamentary elections of ..., without having - as the complainant claims - any previous relationship with her. 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 no. prot. C/EX/4787-1/25-07-2019 a document requesting its opinions on the accused, taking into account the guidelines issued by the Authority for political communication. The complainant responded to the Authority with document No. C/EIS/6229/16-09-2019, in which she mentions, among other things, the following briefly mentioned: 1) The complainant is also a member of the Professional Chamber of Greece. 2) The complainant's contact details were collected in a legal manner and their use was not incompatible with the purpose of political communication, since their source was Chamber F, whose registers are made publicly accessible by law. In fact, before sending any message, the complainant checked the register no. 13 par. 2 of Law 2472/1997 and found that there was no entry for the complainant. 3) In addition, he had been granted the possibility to exercise his right of objection in an easy and clear way since in every sms he received there was the option to delete him from the list of recipients, an action he never took. Then the Authority called with no. prot. C/EX/4787-3/06-11-2019

document A in a hearing at the meeting of the Department of the Authority on 04-12-2019, in order to discuss the above-mentioned complaint as well as the general practice followed for communication of a political nature by electronic means. At this meeting, Eleni Markou with ... was present as attorney-at-law of the complainant, who presented her views orally. 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 defined 2 "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, 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 positions¹ See definition in article 1 par. 2 of Directive 1/2010 of the Authority³ in local government or candidates in parliamentary elections, European Parliament elections and local government elections housing. 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 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. Rather, it is not considered to recommend similar contact and it is not legal to use electronic contact details for the purpose of political communication when such data was obtained in the context of a business relationship, such as the use of the customer file by a parliamentary candidate.

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

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

⁴

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 short text messages (SMS). The legality of the shipment is ensured if the above has been observed 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 recipient of the messages SMS, or that there had been a previous similar contact/communication. Also, the data communication of the recipient of the complaint messages had not been included in possession of it in the context of previous similar contact with them. On the contrary, the his personal information was obtained from Chamber F, namely the communications in question were carried out without meeting any of the conditions of legality which are described in the above Thoughts 4 and 5. With reference to the claim of the person in charge processing that before sending any message it was checked registry no. 13 par. 2 of Law 2472/1997, it is emphasized that the register in question concerns the sending printed advertising material, rather than electronic media.

8. The controller did not specify the exact number of messages to the Authority which were sent.

9. The controller provided, in the contested SMS messages of the complaint, at data subject the possibility to exercise the right to object in a way easy and clear.

10. The controller cooperated with the Authority by responding to the document on clarifications, providing the information requested also during its meeting

Principle.

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

5

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 two thousand euros (2,000.00) euros, for the violations identified above

of article 11 of Law 3471/2006.

The member of the Authority

The Secretary

Charalambos Anthopoulos

Irini Papageorgopoulou

6