

PERSONAL DATA PROTECTION AUTHORITY Athens, 10-06-2020 Prot. No.: G/EX/3995/10-06-2020 A P O F A S I 14/2020

(Department) The Personal Data Protection Authority met in composition Department at its headquarters on 01-29-2020 upon 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 Grigorios Tsolias and Emmanuel Dimogerontakis, as rapporteur, in place of the regular members Charalambos Anthopoulos and Eleni Martsoukos respectively, who, although legally summoned in writing, were present attended due to disability. They did not attend due to disability, although regular member Konstantinos Lambrinoudakis and his deputy Evangelos Papakonstantinou were legally summoned in writing. Konstantinos Limniotis and Georgia Panagopoulou, expert scientists and auditors, attended the meeting as assistant rapporteurs and Irini Papageorgopoulou, an employee of the Authority's administrative affairs department, as secretary. The Authority took into account the following: Complaint No. C/EIS/3726/24-05-2019 was submitted to the Authority, which concerns the receipt of unsolicited political communication by A (hereinafter "complainant") for the promotion of candidacy of the latter in the municipal elections as a municipal councilor. In particular, according to the above complaint, the complainant received on ..., to her email address, an email message from the 1 complainant, which was of a political nature for the purposes of promoting her above mentioned candidacy for the upcoming, during the disputed period, municipal elections elections, without – as the complainant claims – having any previous relationship with her. The Authority, in the context of examining the complaint in question, sent the complainant the document No. C/EX/3726-1/12-06-2019 in which he requested her opinions on the complainants, taking into account the relevant guidelines issued by the Authority for political communication. The complainant responded to the Authority with document No. C/EIS/4214/12-06-2019, with which she forwarded to the Authority a copy of the email she sent to the complainant immediately after her reply email last for the prohibition of the processing of her data on behalf of the complainant. The message in question – which the complainant states contains her requested opinions – states the following: 1) There is no other person as the processor. 2) The legal basis of the communication is her legitimate interest (art. 6 par. 1 letter f of Regulation (EU) 2016/679), and the personal data of the complainant which were processed were simple data (name, surname, phone, address), which come from legal sources (mainly professional directories, Athens Bar Association (D.S.A.) register, etc.) 3) The purpose of the communication was to inform her colleagues who are registered in the register of .... Furthermore, the complainant informed the complainant with the above message that her data had already been deleted from the list it maintains after the above-mentioned purpose was

fulfilled. Then the Authority called with no. prot. C/EX/3726-2/12-09-2019 document the complainant in a hearing at the meeting of the Department of the Authority on 25/9/2019, 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, the complainant was present, who presented her views and then submitted, within the stipulated deadline, the no. prot. G/EIS/6816/09-10-2019 memorandum. In said memorandum, the following are mentioned: 2 1) She has never had any political activity or been a political person in her life. She was a candidate for the first time in the municipal elections of May 2019. 2) In the course of her professional career she exchanged business card details or documents containing personal data. At other times he contacted them out of court, pulling their details from Law Society directories or obtained their details through CVs. The information in question was recorded in a rough - as she mentions - spreadsheet file (Excel), with minimal differences per case. In the last two years he created another archive, in a more organized form. 3) During the pre-election period, she used the above two files in order to announce, exclusively to lawyers, her involvement in politics and her candidacy for the first time. To send the electronic messages, he used a platform "with the possibility of sending messages for free up to the limit of 2000 recipients. He estimates that the number of messages he sent was less than 1000. 4) In each message sent (the complainant attaches a relevant sample), the recipient had the possibility to request to be informed about the origin of his data and to unsubscribe from the recipient list. 5) In the case of the complainant, who expressed her objection by sending a direct message to the complainant's personal email address, she sent an edited response message that she had prepared. The message in question – the content of which has already been described above – was not personalized, but addressed to any of her colleagues who might object. For this specific case, the complainant is not sure of the origin of the complainant's information - making some relevant speculations in her memorandum, however. 6) The complainant states that she was given the opportunity to exercise the right to object, in an easy and clear way. 7) According to the allegations of the complainant, she did not make a political communication but a simple information about her candidacy, which happened once and without any organization or method. As he mentions in this regard, if every candidate - and especially a new candidate - cannot once inform either anyone or associates/friends/acquaintances about his candidacy, both the candidate will be deprived of the possibility of exercising the right to be elected and every citizen will be deprived of the right exercise of the right to vote. A strict interpretation would - as alleged - grossly violate any democratic process, especially in the case of self-governing elections. The Authority, after examining the elements of the file, the hearing and after hearing the rapporteur and the assistant rapporteurs, who withdrew

after the discussion of the case and before the conference and decision-making, after a thorough discussion, CONSIDERED

LAW 1. According to art. 4 pc. 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 in 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 art. 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 transactions, may be used for the direct promotion of similar products or services of the supplier or for servicing 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 use of his electronic data and this during the collection of the contact details, as well as in each message, in case the user had not initially objected to this use. 3. Especially for political communication through electronic means 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 and the General

Regulation (EU) 2016/679 for the protection of natural persons against

processing of personal data which is in place by

on 25 May 2018, the following applies:

Political communication<sup>1</sup> is of interest from the point of view of the protection of

of personal data, takes place at any time,

pre-election or not, by political parties,

MPs, MEPs,

factions and holders of elected positions in local government or

candidates in parliamentary elections,

the elections

of the European

Parliament and local government elections. These faces

become data controllers, in accordance with Regulation (EU)

2016/679, article 4, item 7) as long as they define the purpose and manner of

processing. For example, when MPs or candidate MPs

they receive data from political parties and process it for

their personal political communication, they also become responsible

processing. In this capacity and based on the principle of accountability<sup>2</sup>

<sup>1</sup> See definition in article 1 par. 2 of Directive 1/2010 of the Authority

<sup>2</sup> As defined in article 5 par. 2 of the GDPR

5

they must be able to demonstrate compliance with their obligations and

of the processing rules.

4. When political communication is carried out using electronic means

communication,

without human intervention, through public networks

communication, such as e-mail messages (e-

mail), communication requires, in accordance with article 11 par. 1 Law 3471/2006,

as applicable, the prior consent of the data subject, with

subject to paragraph 3 of the same article, as applicable. It is highlighted

also that short text messages (SMS) are also messages

email according to the definitions of Law 3471/2006 and

Directive 2002/58/EC.

5. Political communication using electronic media is allowed without

human intervention and without the subject's consent

data 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 express

objection to this use but did not express it. The previous contact did not

it is necessary to have a purely political character, e.g. is it legal

sending messages when email information was collected

in the context of a previous invitation to participate in an event or

action, regardless of its political character. On the contrary, it is not considered that

constitutes similar contact and is not legal to use electronics

contact details for the purpose of political communication when the

such information was obtained in the context of a professional relationship, such as for

example the use of the customer file by a candidate for parliament. (b) O

controller must provide the data subject with

ability to exercise the right to object in an easy and clear way, and

this in every political communication message. In every communication it is required to

the sender's or person's identity is clearly and distinctly stated

for whose benefit the message is sent, as well as a valid one

6

address to which the recipient of the message can request it

termination of communication

6. In this particular case, the complainant, based on the above,

carried out, as a controller, political communication by dispatch

email messages. Hence its legality

shipment is ensured if the above mentioned have been observed

Thoughts 4, 5. From the responses of the controller, the following:

7. The data controller had not obtained prior consents from of people to whom you have sent political communication messages. Also, the contact details of the recipients of the messages had not been entered into possession of it in the context of previous similar contact with them. Instead, their personal information was obtained in the context of a professional relationship h which is not related to the political activity of the person in charge processing.

8. The controller did not specify to the Authority the exact number of messages that were sent. However, he clearly stated that due to relevant limitations of the platform used, it cannot be greater than 2000, estimating that in practice he sent less from 1000.

9. The controller provided the data subject with possibility to exercise the right to object in an easy and clear way, the which he satisfied in this particular case.

10. The controller responded to the subject's request data on the characteristics of the processing and the origin of given this – although, as a matter of fact, he was unable to provide accurate information about the origin of the data (regarding what refer to Consideration 7 on how the data of of data subjects came into the possession of the person in charge

7

processing).

11. The controller cooperated with the Authority by answering no delay in documents for clarification, providing the information that were requested both during the Authority's meeting and in the memorandum it submitted.

12. No administrative sanction has been imposed on the controller in the past from beginning.

Based on the above, and also taking into account that the person in charge processing is not a political person nor has there been a candidate in the past in an election contest, the Authority considers that, taking into account article 13 of Law 3471/2006, the conditions for enforcement against him according to article 21 par. 1 item b' of Law 2472/1997 on administrative sanction, referred to in dispositive of the present, which is judged to be proportional to its gravity violation.

#### FOR THOSE REASONS

Enforces, based on articles 19 par. 1 item. f and 21 of Law 2472/1997 and 13 par. 1 and 4 of Law 3471/2006, in A the sanction of the warning, for the above established violations of article 11 of Law 3471/2006.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou