

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 08-10-2020 Prot. No.: G/EX/6872/08-10-2020 A
P O F A S I NO. 41 / 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, 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/3784/27-05-2019 was submitted to the Authority, which concerned the receipt of unsolicited political communication (SMS message) by A (hereinafter "complainant") to promote her candidacy in the parliamentary elections of 07-07-2019. In the above complaint, the complainant states that she received a short text message 1-3 Kifisias St., 11523 Athens, Tel: 210 6475600, Fax: 210 6475628, contact@dpa.gr / www.dpa.gr (SMS) on ... from complainant, with the complainant's last name "A" appearing as the sender, which was of a political nature for the purposes of promoting her candidacy in the upcoming parliamentary elections of 07-07-2019, without having - as the complainant claims - any previous relationship with her . The Authority, in the context of examining the complaint in question, sent the complainant the document no. prot. C/EX/3784-1/18-07-2019 with which it requested its opinions on the complainants in the complaint, taking into account the guidelines issued by the Authority for political communication. The complainant responded with the memorandum No. G/EIS/8094/22-11-2019, in which, among other things, the following are briefly mentioned: 1) She took actions in order to meet the requirements of the General Regulation (EU) 2016/679 and Law 2471/2006 (written statement available both electronically and in printed form at its pre-election offices informing subjects about the processing of their data, mention of personal data in its political brochure for its pre-election campaign and in the invitation to a political event, the possibility to exercise the right to object through the e-mails and short text messages he sent, the appointment of a data protection officer). 2) The complainant proceeded directly to the complaint before the Authority, instead of first addressing the person complained of in order to exercise some of her rights. 3) He does not know the complainant and has never had any personal, professional or political contact with her. 4) He does not know how the said short text message was sent to the complainant and speculates that one of

her volunteers, friends and associates must have had some kind of personal communication with her from her office call center. 5) The message in question was sent in error and is an isolated and unfortunate incident. Then the Authority called with no. prot C/EX/1028/07-02-2020 document the complainant in a hearing at the meeting of the Department of the Authority on 19-02-2020 2 in order to discuss the above complaint as well as the general practice followed by the candidate for communication of a political nature by electronic means. The said meeting was attended by A, the lawyer Theodoros Tzamaloukas with ... and the lawyer Athanasios Zervas with ..., who presented their opinions orally. 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 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 use of his electronic data and this during the 3 collection of contact data, as well as in each 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, 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 previous 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 4 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 collection of the data informed about its use for the purpose of political communication, of was given the opportunity to object to this use but did not.

The previous contact need not be purely political in nature, e.g. is legal to send messages when email details collected as part of a 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 electronic contact details for the purpose of political communication when such data was obtained in the context

business relationship, such as the use of the customer file by
parliamentary candidate.

(b) The data controller must provide the data subject with
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. Regarding the controller's claim that the subject of
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data must first appeal to the controller and only if not
satisfied to appeal to the Authority, it is pointed out that the violation has already been completed
by sending the message (be it e-mail or SMS), regardless
of the exercise or not of the subject's rights retrospectively before him
controller. In any case, it is not a condition for the complaint
to the Authority, the previous exercise of right before the data controller.

8. The controller did not provide evidence that it had
ensure the required prior consent of its recipient
SMS message, or that there had been a previous similar contact/communication. after all,
especially for the above related complaint, it expressly states that the sending of the message
was incorrect, therefore he accepts that he had not received her relevant consent

recipient. It is also noted that, in addition to the specific complaint, Mr data controller did not provide relevant data for other persons either which sent political communication messages. Also, in relation to the above complaint, was unable to provide accurate information on the origin of data.

9. The controller did not provide the Authority with information regarding the exact number of recipients of these messages. However, from the sample SMS messages and e-mail provided, the controller appears to have provided to others data subjects the possibility to exercise the right to object in a way easy and clear.

10. The data controller did not provide, in the contested SMS message of the complaint, the data subject the possibility to exercise the right to object in a way easy and clear.

11. The controller was aware of the applicable legal framework for the policy communication of a political nature and the guidelines of the Authority they had published and sent to political parties already at the beginning of April 2019.

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

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Principle.

13. 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 amount, in the amount of two thousand euros (2,000.00) euros, for the violations identified above of article 11 of Law 3471/2006.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou