

Athens, 18-05-2021 Prot. No.: 1257 DECISION 19/2021 (Department) The Personal Data Protection Authority met in a composition of the Department via teleconference on 17-02-2021 at the invitation of its President, in order to examine the case referred to in the history of the present. Georgios Batzalexis, Deputy President, in the absence of the President of the Authority, Constantinos Menoudakos, and the alternate members Evangelos Papakonstantinou, as rapporteur, and Grigorios Tsolias, in place of the regular members Konstantinos Lambrinoudakis and Charalambos Anthopoulos respectively, who, although legally summoned in writing, attended they 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: The Authority was submitted to the Authority No. C/EIS/4505/26-06-2019 and C/EIS/383/17-01-2020 (as it was supplemented by No. .prot. C/EIS/7587/05-11-2020 document) complaints, which concern the receipt of unsolicited political communication (SPAM SMS and e-mail respectively) by A to promote his candidacy in the parliamentary elections of More specifically, according to the above first related complaint, 1-3 Kifissias Ave., 11523 Athens T: 210 6475 600 E: contact@dpa.gr www.dpa.gr 1 complainant received on ... a promotional short text message (SMS) character by the complainant in view of his above candidacy (as the sender of the message the last name of the complainant "A" appeared), without having - as the complainant claims - any previous relationship with him. In the same complaint it is also stated that the complainant contacted the political office of the complainant and asked about the source of her personal data, but did not get any response. According to the above mentioned second related complaint, the complainant, responding on ... to a promotional e-mail message he received for the complainant's candidacy in the upcoming elections, requested to be removed from the list of recipients of said messages. He did the same 7 more times, without however receiving any response from the complainant, and to no avail, as on ... he received a similar e-mail message from the complainant at the address ..., inviting him to an event he was organizing. In the same complaint it is also stated that the complainant had no previous relationship with the complainant and does not know what the source of his data on the complainant might be. The Authority, in the context of examining the complaints in question, initially sent the first complaint to the complainant with the number C/EX/4505-1/25-07-2019 document requesting his views on the complainants, taking into account the guidelines issued by the Authority for political communication. The complainant replied to the Authority with the memorandum No. C/EIS/7257/23-10-2019, in which he states, among other things, the following: 1) A check was carried out in his files and the name of the complainant was not

found , for this reason the right of access she exercised for the source of her data had not been satisfied. 2) Finally it was found that there was a wrong phone number of a person who is legally in his file when filing the contact information, i.e. by mistake the number 1 which is an intermediate 2 mobile number was entered instead of the correct number of the person who consented. 3) The error was found in the files and fixed. Then the Authority, with the document No. G/EX/4505-4/06-11-2019, requested further clarifications from the complainant, such as the full details of the owner of the telephone number that should have been registered in the file of, the source of this data, the date it was entered into the file, as well as information about the consent it had collected from this person to send political communication messages (eg how consent was obtained, proof of consent was given). The complainant responded with document No. G/EIS/5997/04-09-2020, in which he mentions, among other things, the details of the holder of the number requested by the Authority. These data, it is stated, had been collected for the purpose of political communication based on consent given orally by the subject before the parliamentary elections of The complainant provided a relevant written statement of the subject in question dated His phone number is ..., instead of ... which is the number that belonged to the complainant, i.e. there were 2 different digits between them. As part of the examination of the second complaint, the Authority sent the complainant the document No. C/EX/383-1/31-01-2020 requesting his opinions on the complaints. The complainant replied to the Authority with the memorandum No. C/EIS/6082/08-09-2020, in which he states, among other things, the following: 1. The complainant had two email addresses (... and ...) . The deletion requests that the complainant attaches to his complaint concern only one address, and there is no need to submit a corresponding request for the other address. 2. To manage its file with e-mail addresses, it uses the system (platform) ... which ensures the immediate registration of the subjects' requests and the automatic deletion of their e-mail address. In this case, the request for the 3 deletion of the address ... was registered from the beginning in the relevant file (unsubscribe list) of the platform and henceforth no e-mail was sent to the complainant through this address. 3. Since a deletion request was not sent for the other address as well (...), apparently he continued to receive messages to it, either through domain email accounts forwarding or through the shared email account folder, a process which, however, concerns the hosting account and email settings mail to the control panel of the website (...) and cannot be attributed to the action or responsibility of the complainant. 4. For the first time through the complaint, the complainant was informed that the complainant also has a 2nd address, and he immediately proceeded to delete it from his file. 5. He complies with the legislation for the protection of personal data, so in every communication he mentions his identity as well as a valid email address (...) so that the recipients can request the

termination of the communication. The Authority notified the complainant by e-mail of the complainant's response and the complainant responded with document No. C/EIS/7587/05-11-2020, in which, among other things, he states the following: 1. It is not true that the messages he continued to receive at the address ... concerned automatic forwarding of the messages he received at the address ..., as no forwarding of messages to the address ... had been set, nor is it today. 2. The complainant still has not clarified to which addresses the messages in question were sent, nor the source of the specific e-mail addresses of the complainant. Subsequently, the Authority invited A with document No. C/EX/8297/02-12-2020 to a hearing via video conference before the Department of the Authority 4 at the meeting of 09-12-2020, in order to discuss the above related complaints as well as the general practice followed by the candidate for political communication by electronic means. At the meeting of 09-12-2020, the complainant and the lawyer Grigorios Lazarakos with ... attended via video conference, who presented their views orally . Subsequently, the complainant submitted the memorandum No. C/EIS/8733/18-12-2020. In this memorandum, in addition to the previous documents, the following are briefly mentioned: 1. The citizen who wishes to communicate with him fills in a relevant form in order to provide his written consent for the processing of his personal data for the purpose of political communication, and then the information is entered by officials of his political office in the special database. 2. It uses the platform ... to manage the file of e-mail addresses, which allows the direct registration of requests of the subjects and the automatic deletion of their e-mail address, if requested by the recipient. 3. In every electronic communication it mentions the identity of the sender, the contact details of his political office, as well as a valid electronic communication address, while every message is provided with the possibility of terminating any similar future communication. 4. Regarding the first complaint, the short text message was sent by mistake, and after receiving the complainant's request, he made the relevant correction in his file. 5.Regarding the second complaint, the complainant had two email addresses, and only submitted a deletion request for one of them. of the two, a request which was granted. The second email address, for which no deletion request was submitted, is corporate and does not reveal personal data. The complainant continued to receive messages on the first either through domain email accounts 5 forwarding from the second address to the first, or through the shared email account folder. The Authority, after examining the elements of the file, the hearing procedure and after hearing the rapporteur and the assistant rapporteur, who was present without the right to vote and left after the discussion of the case and before the conference and decision-making, after a thorough debate, **CONSIDERED ACCORDING TO THE LAW 1.**

According to article 4 par. 7 of the General Regulation (EU) 2016/679 on the protection of natural persons against the

processing of personal data and on the free movement of such data (hereinafter, GDPR), which has been 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. Pursuant to Article 5 para. 2 of the GDPR, the controller bears the responsibility and is able to demonstrate compliance with paragraph 1, i.e. with the principles set out to govern the processing of personal data. 3. 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, in accordance with 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 collection and use of 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. 4. 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 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) 1 See definition in article 1 par. 2 of directive 1/2010 of Authority 7 2016/679, article 4, item 7) as long as 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. 5. When political communication is carried out using electronic means of communication, without human intervention, through public communication networks, as is the case with short text messages (SMS) and electronic messages (e-mail), the communication requires, according to the article 11 par. 1 of Law 3471/2006, as applicable, the prior consent of the data subject, subject to paragraph 3 of the same article, as applicable. 6. 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 mail 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 the electronic contact information for the purpose of political communication, the electronic information 2 As defined in Article 5 para. 2 of the GDPR 8 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. Consent must be provided by a clear positive action which constitutes a free, specific, explicit and fully informed indication of the data subject's agreement in favor of the processing of the data concerning him. 7. In this particular case, the complainant, as a data controller, carried out political communication by sending short text messages (SMS) and electronic messages (email). The legality of the sending is ensured if the above-mentioned considerations 4, 5 have been observed. From the responses of the data controller the following emerges: 8. The data controller did not provide evidence that the required prior consent had been secured, neither of the recipient of the message SMS nor the recipient of the email message. Also, the contact details of the recipients of the disputed messages of the relevant complaints had not come into his possession in the context of previous similar contact with them. In particular, with regard to the complaint

regarding the sending of an SMS message, it is not proven that the alleged sending was due to the wrong transfer of a telephone number of a third party who had given his consent to receive political communication messages from the complainant. Even if it is held that a mistake was made, the written statement of that third person produced by the complainant cannot be accepted as a valid consent. In any case, the complained controller should have taken appropriate organizational and technical measures to obtain the consent of each interested subject in a demonstrable manner, as well as to verify that the telephone numbers of these individuals are correctly registered in his file. Regarding the other complaint about the sending of the email messages, the complainant did not identify the source of origin of the complainant's contact information and did not prove that he had valid prior consent to the sending of these messages. Regarding the complainant's claim that the complainant's second e-mail address, for which he states that no deletion request was submitted, is corporate and does not reveal personal data, it must be pointed out that the provisions of Law 3471 also apply to legal entities, assuming that said address belongs to a legal and not a natural person.

9. The controller did not provide the data subject

recipient of the SMS the possibility to exercise the right to object in a way easy and clear, within SMS. Regarding the complaint about the sending of email messages, the complainant states that the complainant had two email addresses, and submitted a deletion request only for one of the two, the ..., a request which was granted, and not for her address However, as can be seen from the complaint, the complainant received a new promotional message on ... at the address for which the Complainant declares that he was registered in the unsubscribe list file earlier than that date. The claim of the accused that the complainant was still receiving messages despite being deleted because he made use of Google's 'G-suite' application in promoting them messages from one account to another, is not accepted as no it is based on evidence but on assumptions.

10. The controller did not specify to the Authority the exact number of

messages that were sent.

11. The controller cooperated with the Authority by responding to the documents for clarifications, providing the information requested and at meeting of the Authority and in the memorandum he filed.

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12. No administrative sanction has been imposed by the Authority in the past on controller.

Based on the above, the Authority unanimously judges that according to Article 11 of Law 3471/2006 the conditions for enforcement against the person in charge are met processing, based on Article 13 of Law 3471/2006, of Article 58 paragraph 2 i) of the GDPR administrative sanction, as well as of Article 21 par. 1 item b' of n. 2472/1997 of administrative sanction, referred to in the operative part of the present, h which is deemed, pursuant to Article 83 of the GDPR, to be effective and proportionate and deterrent, taking into account the aggravating factors mentioned in paragraphs 8 and 9 hereof and the mitigating factors referred to in paragraphs 11 and 12 hereof.

FOR THOSE REASONS

The Personal Data Protection Authority:

It imposes on A the effective, proportionate and dissuasive administrative fine that is appropriate in the specific case according to more special circumstances thereof, amounting to two thousand euros (2,000.00) euros, for the as above found violations of article 11 of law 3471/2006.

The Deputy President

George Batzalexis

The Secretary

Irini Papageorgopoulou

