

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 08-10-2020 Prot. No.: G/EX/6869/08-10-2020 A
P O F A S I NO. 42 / 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/4806/08-07-2019 was submitted to the Authority, which concerns the receipt of unsolicited political communications (SMS messages) by A (hereinafter "the complainant ») to promote his candidacy in the National elections. In the above complaint, the complainant states that he received two short text messages (SMS) from the complainant, of a political nature, with the aim of promoting his candidacy without having any previous relationship with him. 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 the no. prot. C/EX/4806-1/25-07-2019 a document requesting his opinions on the accused in the complaint, taking into account the guidelines issued by the Authority for Political Communication. The complainant responded with the memorandum No. G/EIS/7707/08-11-2019, in which, among other things, the following are briefly mentioned: 1) Regarding his relationship with the complainant: in the context of of his activity in the field of publishing through the tourist group ..., but also due to his authorship, he has come into contact both personally with the complainant and with the publishing house (whose management and operation has been undertaken by the complainant). In fact, he has received his contact information from himself. He had also attended a presentation of the publishing house... by the complainant himself, with whom he spoke after the event and exchanged contact details. They also met at an event to mark the ... years of operation of the publications 2) The complainant did not exercise the right to object after the first message was sent and did not register in the register of Article 11 of Law 3471/2006 maintained by his provider. 3) The complainant's rights were not affected substantially and to such an extent as to justify the complaint, but instead the complainant is exercising his right abusively in order to tarnish the kick-off of his political career. Subsequently, the Authority notified the complainant by e-mail of

the complainant's response and the complainant responded with document No. C/EIS/949/05-02-2020, in which, among other things, he states the following briefly mentioned:- The complainant's answer is false and non-existent, as he has no relationship with him, nor does he know him, nor has he met him in the past. The complainant was not invited to any of the two events he mentions, nor has he been invited to any event of the publishing house in the past. Notably, his name is not in any company database, and the company's 2-year PR manager doesn't even know who he is. - His business card does not mention his mobile phone on which the two messages of the complaint were sent. - In the messages he sent him, there was no message or link to declare my right of withdrawal and the number from which the message was sent (apparently on purpose) was not displayed, only the name A. Then the Authority called with the No. prot C/EX/1006/07-02-2020 document the complainant in a hearing at the meeting of the Department of the Authority on 02-19-2020 in order to discuss the above complaint as well as the general practice followed by the candidate for the communication of a political nature by electronic means. At the meeting in question, A and the lawyer Emmanuel Trullos with ... attended, who presented their views 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 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 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) 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. 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 presupposes, in accordance with 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. It is also noted that short text messages (SMS) are also emails under its definitions

Law 3471/2006 and Directive 2002/58/EC.

5. Political communication is allowed using electronic media without a human intervention and without the consent of the data subject only if the following conditions are met cumulatively:

(a) The contact information has been lawfully obtained in the context of a previous, similar contact with 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 information
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

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

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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
data must first appeal to the controller, it is pointed out that the
breach has already been committed by sending the SMS message, regardless

exercise or not retrospectively of the subject's rights before the person in charge

processing. In any case, it is not a condition for the complaint to

Principle, the previous exercise of right before the data controller.

In this regard, it is pointed out that the entry in the register of Article 11 of Law 3471/2006 in which the

data controller declares that the complainant did not act, it concerns his refusal

each subscriber to receive telephone calls for direct marketing.

8. 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. On the contrary, Mr

controller declares that the personal data of the complainant

acquired in the context of a professional relationship not related to politics

activity of the controller, although the complainant denies that there was

such a relationship. 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.

9. The controller did not provide the Authority with information regarding the exact

number of messages sent.

10. The data controller did not provide, in the contested SMS messages of the complaint, the

data subject the possibility to exercise the right to object in a way

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easy and clear.

11. The controller cooperated with the Authority by responding to the document on

clarifications, providing the information requested also during its meeting

Principle.

12. 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 three thousand euros (3,000.00) euros, for the violations identified above of article 11 of Law 3471/2006.

The Deputy President

The Secretary

George Batzalexis

Irini Papageorgopoulou