

GREEK REPUBLIC PERSONAL DATA PROTECTION AUTHORITY Athens, 29-06-2020 Prot. No.: G/EX/4516/29-06-2020 A  
P OF FA S I NO. 19/2020 (Department) The Personnel Data Protection Authority Character met as a Department composition  
at its headquarters on Wednesday 12-02-2020 at the invitation of its President, in order to examine the case referred to in the  
present history. The President of the Authority, Constantinos Menudakos, and Evangelos Papakonstantinou, Grigoris Tsolias  
and Emmanuel Dimogerontakis attended, as rapporteur, in place of regular members Konstantinos Lambrinoudakis,  
Charalambos Anthopoulos and Elenis Martsoukou, respectively, who, although legally summoned in writing, did not attend due  
to disability . 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: The following were submitted to the Authority: a) with no. prot.  
C/EIS/2532/03-04-2019, b) with no. prot. C/EIS/3112/28-04-2019, c) with no. prot. C/EIS/4280/18-06-2019 complaints, which  
concern receiving unsolicited communication via short SMS text messages from A (hereinafter "complainant"). In the  
aforementioned first related complaint, the complainant states that she received an SMS without having any previous  
relationship with the complainant, inviting her to a charity event. In the second and third related complaints, the complainants  
state that they had no previous relationship with the complainant and received an SMS to promote her candidacy in the  
municipal elections. The Authority, in the context of examining the complaints in question, sent the complainant the documents  
no. prot. C/EX/2532-1/21-05-2019, C/EX/3112-1/11-06-2019, C/EX/3525-1/11-06-2019 documents with which he requested  
the opinions of the complainants regarding the above complaints a'-c' respectively, and taking into account the guidelines  
issued by the Authority for political communication. The complainant replied to the Authority with no. prot.  
C/EIS/6558/30-09-2019 memorandum. In this document, it states that the messages were sent to the complainants by  
mistake, due to incorrect typing of phone numbers when registering them on the bulk SMS messaging platform that was used.  
Then the Authority called with no. prot. C/EX/2532-3/13-11-2019 document the complainant in a hearing in order to discuss the  
above complaints a'-c' as well as the general practice followed by the candidate for communication of a political nature by  
electronic means . At the meeting of 25-11-2020, the lawyer Petros Tsantilas with AMDSA was present, who developed both  
orally the allegations of the complainant, and as a witness, at the request of the complainant, B, who testified about the issues  
that are the subject of the complaint. The complainant, after receiving a deadline, submitted to the Authority the no. prot.  
C/EIS/8663/11-12-2019 memorandum. In the memorandum it repeats that the telephone numbers of the complainants were

inadvertently found in the recipient lists of the SMS messages and that the general practice of the complainant is to obtain special consent through forms from interested parties for communication of a political or charitable nature. The Authority, after examining the elements of the file, the hearing process and after hearing the rapporteur and the assistant rapporteurs, who left after the discussion of the case and before the conference and decision-making, after thorough discussion, 2 CONSIDERED BY 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 in article 11 of Law 3471/2006 on the protection of personal data in 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. 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 aforementioned General Regulation (EU) 2016/679 for the protection of natural persons against the 3 processing of personal data, the following apply: Political communication<sup>1</sup> is of interest from the point of view of the protection of of personal data, is 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 accountability<sup>2</sup> 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. 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 it is legal to send messages when the e-mail data 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 to constitute a similar contact and it is not legal to use electronic contact information for the purpose of political communication when such information is 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. In every communication is required to clearly and clearly state the identity of the sender or of the person for whose benefit the message is sent, as well as a valid address to which the recipient of the message can request it termination of 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 recipients of

SMS messages, or that there had been a previous similar contact/communication.

Besides, especially for the two complaints, it explicitly states that the messages were sent from

detour, therefore accepts that he had not received the relevant consent of the recipients

their. It is also noted that, in addition to the specific complaints, the person in charge

processing did not provide relevant data nor for other persons to whom

sent political communication messages.

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

number of recipients of these messages.

9. The controller did not provide the data subject with the possibility to

exercises the right to object in an easy and clear way, to every SMS message

political communication. Also, there was no easy way to search for his details

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controller in order to be able to exercise against him in this regard

rights (including the right to object), since the Authority with

difficulty finding the information in order to address the relevant documents.

10. The data controller had or, in any case, should have had knowledge of the applicable law

framework for political communication and its guidelines

Authority that had already been published since the beginning of April 2019.

11. The controller cooperated with the Authority by responding to the documents for

clarifications, providing the information requested also during its meeting

Authority and in the memorandum he filed.

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

processing,

Taking into account the above, the Authority considers that the conditions are met enforcement at the expense of the data controller, based on what is applicable herein case article 21 par. 1 item b' of Law 2472/1997, which was in force at the time of the above violation and when submitting the complaint, and article 13 of Law 3471/2006, of administrative sanction, referred to in the operative part of the present, which is judged proportional to the gravity of the violation.

The Personal Data Protection Authority:

FOR THOSE REASONS

Enforces, based on article 21 of law 2472/1997 and 13 par. 1 and 4 of law 3471/2006, in A the effective, proportionate and dissuasive administrative fine which is appropriate in the specific case according to its special circumstances, amount two thousand five hundred euros (2,500.00) euros, for the above established violations of Article 11 of Law 3471/2006.

The president

The Secretary

Konstantinos Menudakos

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Irini Papageorgopoulou