

Athens, 31-12-2020 Prot. No. 8941 DECISION 56/2020 (Department) Decision regarding the sending of unsolicited political communications (Article 11 par.1 of Law 3471/2006) The Personal Data Protection Authority met as a Department in headquarters on Wednesday 08-04-2020, upon invitation of its President, in order to examine the case referred to in the history of the present. The President of the Authority, Konstantinos Menoudakos and the alternate members, Evangelos Papakonstantinou, as rapporteur, Grigorios Tsolias and Emmanuel Dimogerontakis attended in place of the regular members Konstantinos Lambrinoudakis, Charalambos Anthopoulos and Eleni Martsoukos, who, although legally summoned in writing, did not attend due to disability . The meeting was attended, by order of the President, Leonidas Roussos, expert scientist - auditor as assistant rapporteur. Irini Papageorgopoulou, an employee of the Administrative Department, attended as Secretary. The Authority took into account the following: Complaint No. C/EIS/3705/23-05-2019 was submitted to the Authority, which concerns unsolicited electronic communication of political content via a telephone call by Mayor A to promote the candidacy in the last municipal elections, while the complainant was registered in the section 11 register of his provider. In the complaint, complainant B states that he was called on a specific day and time for the purpose of promoting a pre-election speech of the acting mayor by his volunteers without having any previous relationship with the complainant. As he states in the complaint, when he asked where they found his information, they told him from a transaction with municipality X, of which he is a resident. However, as he complains, he has nowhere given consent for his number to be used for such purposes. 1 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) The Authority, in the context of examining the complaint in question, sent the complainant the letter No. C/ EX/3705-1/04-07-2019, C/EX/3705-2/19-11-2019 documents with which he requested his opinions on the accused, in view of the guidelines issued by the Authority for the policy Contact. The General Secretary of Municipality X replied with the letter number C/EIS/5568/09-08-2019 memorandum. The memorandum states, among other things, that the Municipality does not use the telephone as a means of communication and that the number mentioned in the complaint does not belong to the range of the municipality's telephone lines, as well as that any information collected by the Municipality in the context of its transactions with citizens is not are made available to any third party other than the legal recipients as shown by the compliance which is in the phase of completion and has precisely recorded the type of data collected, the legal basis, the purpose, the flow, the use thereof, etc. As it states, the personal data collected by the Municipality for communicating with citizens for the purpose of informing them are not used for any other purpose and are not given to any third party. They are handled exclusively by the communication

office of the Municipality. It concludes, finally, that the Municipality is not responsible for the personal data of citizens used by the candidates to communicate with their voters and is not in a position to know how and by whom the personal data is used outside the Municipality. Then the Authority called with no. prot. C/EX/1140/11-02-2020 document A to appear before her at the meeting of 02-19-2020, as data controller, to provide further clarifications and to thoroughly state his views on the complaint. Also, with the above document, the Authority invited the complainant to respond regarding the complaint. The complainant submitted a request to postpone the examination of the case, which was accepted, and it was called back for Wednesday, March 4, 2020. At the meeting of 03-04-2020, the attorney of the complainant, Christina Spyratou, was present, who presented her views orally. With no. first C/EIS/1197/13-02-2020 memorandum the complainant replied to the Authority that the candidates of the faction, in order to inform the interested citizens about their candidacy, as well as about actions within the framework of their election campaign, activated the acquaintances and the contacts of all the candidates with telephone numbers made by the electoral center of the municipal faction "...", 2 Kifisias Ave. 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) to which it belongs and the reported telephone number. As he stated, the candidates of the faction were 62, with hundreds of friends and acquaintances, as most of them, like himself, have been active in X-city for 15 years and more, so the phone numbers of all these contacts amount to thousands. The candidates personally, themselves or with their own people, made telephone calls informing the receivers that they were calling with information about the faction's election campaign and about the specific action (speech, meeting in places, etc.). Finally, as he concludes, he himself knows and confirms that the phones were the only ones used (friends and supporters of the faction) and the Municipality has no involvement. The Authority, after examining the evidence of the file, the hearing process and after hearing the rapporteur and the clarifications of the assistant rapporteur, who subsequently withdrew before the conference and decision, and after thorough discussion, HELD 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 with human intervention (calls), 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 the field of electronic communications. According to this article, such

communication is not permitted if the subscriber has declared to the provider of the service available to the public that he generally does not wish to receive such calls. 3. Especially for political communication with human intervention and in accordance with the Authority's guidelines regarding the processing of personal data 3 Kifisias Avenue 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) for the purpose of communication of a political nature, according to article 11 of Law 3471/2006, and according to Directive 1/2010 of the Authority for political communication and also the General Regulation (EU) 2016/679 for the protection of natural persons against the processing of personal data which has been in effect since May 25, 2018, the following apply: The personal data protection rules apply to political communication 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>1</sup> they must be able to demonstrate compliance with their obligations and processing rules. 4. Political communication carried out by human intervention (calls), through public communication networks, is not permitted, in accordance with article 11 par. 2 of Law 3471/2006, as applicable, as long as the subscriber has declared to the service provider service available to the public that they generally do not wish to receive such calls. 5. In this particular case, the complainant, as data controller, made a political communication by telephone. The legality of the processing is ensured if the provisions mentioned in the above Opinion 4 have been observed. From the data in the file and the responses of the data controller, the following emerges: 6. The data controller did not provide data to prove that he had consulted the register of the provider of the subscriber or that there had been a previous communication of political content to a number that was a contact/communication. On the contrary, it results similarly 1 As defined in article 5 par. 2 of the GDPR. Ave. Kifissias 1-3, 11523 Athens T: 210 6475 600 E: [contact@dpa.gr](mailto:contact@dpa.gr) [www.dpa.gr](http://www.dpa.gr) 4 published in the register of objections of its provider. 7. The controller cooperated with the Authority by responding without delay in the documents for clarification, providing the information requested and at meeting of the Authority and in the memorandum he filed.

8. 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 controller are met, based on on the one hand, article 13 of Law 3471/2006, in combination with article 21 par. 1 item b' of n. 2472/1997 and with article 84 of law 4624/2019, and on the other hand article 58 par. 2 sub. his 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

It imposes on A the effective, proportionate and dissuasive administrative money fine appropriate to the specific case according to the special ones circumstances thereof, in the amount of one thousand euros (1,000.00) euros, for the above established violation of article 11 of Law 3471/2006.

The president

Konstantinos Menudakos

The Secretary

Irini Papageorgopoulou

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