

Procedure No.: PS/00105/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In the sanctioning procedure PS/00100/2019, instructed by the Spanish Agency for

Data Protection to D.A.A.A. (hereinafter the defendant), in view of the claim of

D.B.B.B. (hereinafter, the claimant), and based on the following

BACKGROUND

FIRST: On 09/24/2018 there is a written entry in the AEPD from the claimant in which

states the reasons on which he bases his claim: that in February he took the

car to be repaired to a workshop in the town of A Picaraña, under the commercial name of

CAS AUDIO AND PNEUMATIC; that it was not the first time that he went to this workshop and,

as on other occasions, they did not issue a custody sheet; that your data always

they had been signed up by a show of hands by the owner, and there was no treatment sheet

of data to be incorporated into the file of the person in charge CAS AUDIO Y

TIRES and, logically, that he has not given consent for

are incorporated into the aforementioned file; who has been forced to file a

claim and, the irregularity that has triggered the formalization of the same, is

due to the fact that at the time of removing your vehicle from the workshop and proceeding to pay the

amount of the repair, they refused to issue the corresponding invoice signed and

paid. Once the consumption file was started, the invoice was delivered

correct; During his processing, he received a phone call from a third party.

person to solve the theme of the workshop, two people appearing in the place

previously agreed, one of them coercing me to sign some papers,

saying that they were related to the claim. Due to the above, go to the

Civil Guard to file a complaint, which has been heard by the Court of

Instruction No. 2 of Padrón, Orders for Light Judgment XX/XXXX, issued on 07/04/2018

sentence in which they condemned the third party as the author of a minor crime of constraints. As a Proven Fact, it is stated in the aforementioned judgment that "...for part of the Cas Audio workshop in Padrón, the owners of the workshop commissioned C.C.C. to contact the claimant in order to resolve those disagreements...". Not knowing this man at all, the owners of the workshop have proceeded to transfer your data without consent to third parties making use improper of them.

SECOND: Upon receipt of the claim, the Subdirector General for Data Inspection proceeded to carry out the following actions:

On 10/15/2018, the claim submitted was transferred to the respondent for analysis and communication to the complainant of the decision adopted in this regard. Likewise, it required so that within a month it would send to the Agency determined information:

- Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the claim.

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- Report on the measures adopted to prevent the occurrence of similar incidents.
- Any other that you consider relevant.

On the same date, the claimant was informed of the receipt of the claim and its

transfer to the claimed entity.

THIRD:

On 01/11/2019, the respondent expressed his surprise at the filed claim; that at no time have they transferred any personal data to third person; that it is possible that when I shout for the claim sheet someone who was in the facilities heard it and decided to put Contact the claimant for clarification. They also include a copy of the letter sent to the claimant.

FOURTH: Once the initiation agreement has been notified, the one claimed at the time of this The resolution has not submitted a brief of arguments.

FIFTH: Of the actions carried out in this proceeding, they have been accredited the following:

PROVEN FACTS

FIRST: On 09/24/2018 there is a written entry in the AEPD from the claimant in which states that in February he took the car to be repaired at a workshop in the town of A Picaraña, being forced to file a claim because at the time of remove your vehicle from the workshop and proceed to pay the amount of the repair, They refused to issue the corresponding signed and paid invoice. Once the file in Consumption, the correct invoice was delivered; during his processing of said file received a phone call from a third party person to resolve the issue of the workshop claim, being instructed to sign some papers related to the claim; that as a consequence he goes to the Civil Guard filing a complaint, which has been heard by the Court of Instruction No. 2 of Padrón, Orders for Light Judgment XX/XXXX, issued on 07/04/2018 sentence in which they condemned the third party as the author of a minor crime of constraints.

SECOND: The claimant provides a copy of his DNI nº ***DNI.1.

THIRD: There are claim forms from the Galician Institute of Consumer Affairs and

Competence, file ***FILE.1, in which the affected person details the facts

and irregularities committed by the repair shop, stated in his writing.

FOURTH: There is a complaint filed by the claimant before the Civil Guard of Padrón (A

Coruña), in which it states in detail the facts that are the subject of the claim and

furthermore, that he received a call from a 3rd party asking him to come to a certain

place; that the aforementioned person, who claims to have a share in the business of the workshop,

presented with an intimidating attitude demanding that he sign a paper to put an end to

the dispute initiated in Consumption since otherwise there would be consequences; than before

Therefore, the claimant decided to leave the place.

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FIFTH: The previous complaint gave rise to the initiation of a procedure that was

Known by the Court of Instruction No. 2 of Padrón, Cars Trial Light XX / XXXX,

dictating on 07/04/2018 sentence in which they condemned the third party as the author of a

minor crime of coercion. In the aforementioned sentence and as a proven fact it is stated that

"...on behalf of the Cas Audio de Padrón workshop, the owners of the workshop commissioned

C.C.C. to contact the claimant in order to resolve those

disagreements...", from which it can be deduced that the owners of the workshop gave up their

data without consent to third parties making improper use of the

themselves.

SIXTH: The respondent in writing dated 01/11/2019 has stated that when the

claimant shouted for the claim form it is possible that some third party

person who was in the facilities heard it and decided to contact

Contact the claimant for clarification.

SEVENTH: The respondent has not accredited the consent of the claimant for the

transfer of your data to a third party, thus justifying the legality of the treatment.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

The Director of the Spanish Data Protection Agency is competent to resolve this procedure.

Yo

The defendant in this proceeding is charged with the violation of article 6, Legality of the treatment, of the RGPD that establishes that:

II

"1. The treatment will only be lawful if at least one of the following is met conditions:

a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

(...)

Article 6, Processing based on the consent of the affected party, of the new Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), states that:

"1. In accordance with the provisions of article 4.11 of the Regulation (EU) 2016/679, consent of the affected party is understood to be any manifestation of will free, specific, informed and unequivocal by which he accepts, either through a declaration or a clear affirmative action, the treatment of personal data that concern.

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2. When the data processing is intended to be based on consent

of the affected party for a plurality of purposes, it will be necessary to state

specific and unequivocal that said consent is granted for all of them.

3. The execution of the contract may not be subject to the affected party consenting to the

processing of personal data for purposes unrelated to the

maintenance, development or control of the contractual relationship”.

In accordance with the facts proven in this proceeding, the

claimed has violated article 6.1.a) of the RGD, materialized in the illegality of the

treatment of the claimant's data when transferred for incompatible purposes to a

third party without consent or authorization of the same; third who was convicted of

a crime of coercion against the claimant through a court ruling, in which

It is recorded as proven facts that the owners of the workshop commissioned the third party to

get in touch with the claimant to solve the disagreements that arose

as a result of a claim filed by him.

III

Article 83.5 a) of the RGD, considers that the infringement of “the principles

basic for the treatment, including the conditions for the consent in accordance with

of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the

mentioned article 83 of the aforementioned GDPR, “with administrative fines of €20,000,000

maximum or, in the case of a company, an amount equivalent to 4% as

maximum of the overall annual total turnover of the previous financial year,

opting for the highest amount.

It should be noted that the regulation of infractions contained in the LOPDGDD is more precise regarding the situations that give rise to an infraction and its consideration, so that it is much easier to know the term of prescription of that infraction (that is, if it is considered minor, serious or very serious) and regarding the administrative sanction to be imposed for non-compliance.

For purposes of prescription, the LOPDGDD in its article 72 states: "Infringements considered very serious:

"1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particular the following:

(...)

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.

(...)

However, article 58.2 of the RGPD provides the following: "Each authority of control will have all the following corrective powers indicated below:

continuation:

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(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

(...)

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates

in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations. About when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD or the corrective measure of warning of article 58.2.b), the rule itself in its Recital 148 establishes the following:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

It should be noted that the respondent has not made any allegations regarding the initial agreement after the period granted for it has elapsed.

IV

On the other hand, the measures invoked are not considered acceptable and inadmissible. and proposals by the respondent to prevent future recurrence incidents similar to those that have given rise to this procedure, avoiding being commented.

At this point, it is necessary to point out that reiterating the conduct manifest in the claim and that is the cause of this procedure, as well as not then inform this AEPD of the measures adopted to avoid this type of behaviors could proceed to the exercise of possible actions before the responsible for the treatment in order to apply effectively the measures

appropriate to guarantee and not compromise the confidentiality of the data of personal character and the right to privacy of individuals.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE D. A.A.A., with NIF ***DNI.2, for infraction of article 6.1.a)

of the RGPD, typified in article 83.5.a) of the aforementioned RGPD, a sanction of

WARNING in accordance with the provisions of article 58.2.b) of the RGPD.

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SECOND: NOTIFY this resolution to D. A.A.A. and, according to art. 77.2 of the

RGPD, INFORM the complainant D. B.B.B. about the outcome of the claim.

In accordance with the provisions of article 50 of the LOPDPGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art.

48.6 of the LOPDPGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of
through the

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Director of the Spanish Data Protection Agency