

NATIONAL COMMISSION

DATA PROTECTION

RESOLUTION/2019/207

I - Report

The National Data Protection Commission (hereinafter CNPD) prepared on December 18, 2018, the draft deliberation, in which the defendant was charged with

, the commission of an offense foreseen and punished under the combined provisions of paragraphs 1 and 2 of article 13, with subparagraph b) of paragraph 5 of article 83 of the General Regulation on Data Protection (Regulation 679/2016, of 27 April (hereinafter RGPD), punishable by a fine up to a maximum of € 20,000,000.00 or up to 4% of annual turnover, whichever is higher.

The defendant was notified of the content of said project under the terms of article 50 of the General Regime of Administrative Offenses and Fines to present her defense, and claimed (cf. pages 65 to 80), in short, that:

1. On "June 18, 2018, two PSP agents carried out an "information action"

in relation to the regulation In the absence of the

responsible, the employee answered what she knew as she had been at the store for a few days, having made a phone call to the person in charge, in order to obtain some answers. From this call, it was agreed that the agents would stop by on June 20th to check the recording system, among other situations related to security systems. After their action, and due to the fact that a few days before they had paid a visit to our other store, where it was found that the signage did not meet all the requirements, the company acquired two signs."

2. Afterwards, the defendant claims that the information sign has always existed in the establishment

commercial, at the time of the infringement, although it was not visible, since a piece of furniture of the brand was obstructing the visualization of the referred sign.

3. It further alleged that it is in a difficult economic situation, in which there are several debts to suppliers, which are being

renegotiated, in order to allow the defendant to function and fulfill her tax obligations.

4. Finally, the defendant requests her acquittal, with the filing of the administrative offence procedure.

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The defendant gathered four documentary evidence and did not burp any witnesses.

II - Appreciation

The CNPD is competent under the terms of subparagraph i) of paragraph 2 of article 58 of the RGD, in conjunction with paragraph 1 of article 21 and with paragraph 1 of article 22, both of Law no. 67/98, of October 26, amended by Law No. 103/2015, of August 24 (hereinafter LPDP). In view of the written Defense presented by the defendant, it is necessary to assess the arguments of fact and the respective legal grounds presented.

The defendant carried out a processing of personal data, through video surveillance, with the purpose of protecting people and property, in the light of paragraphs 1 and 2 of article 4 of the RGD.

And having done so in the factual circumstances that will be listed below, it is certain that it proceeded to collect personal data from the holders, as is evident.

As such, it should have complied with the obligation to inform the holders, observing the dictates resulting from paragraphs 1 and 2 of article 13 of the RGD.

By not complying with the information obligation, it drastically limited one of the most relevant rights in terms of protection of personal data, which is the right to information of the holders and which is instrumental in other rights such as access. In fact, the defendant did not even challenge the report, nor does she deny its factual nature.

Furthermore, the documentary evidence presented by the defendant does not show that, at the date and time included in the survey of the news report, the commercial establishment was equipped with the information notice of the existence of the video surveillance system.

Finally, the defendant also invokes the fact that she is in an alleged precarious economic situation; however, he did not add any evidence to support such a situation.

Thus, the defense's allegations do not call into question the framing of the facts made in the draft deliberation, nor is any fact invoked that integrates a cause of exclusion of guilt or illegality, so we believe to maintain the position already assumed there.

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With the elements contained in the case file, of interest for the decision, we consider the following to be proven:

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facts

1. The defendant is the holder of the NIPC and has

its headquarters in

2. The defendant operates a commercial establishment with the designation

commercial, located at the address:

3. On June 18, 2018, at 9.30 pm, following an inspection by the Public Security Police of the aforementioned commercial establishment, the existence of a video surveillance system was found to be in operation.

4. In the aforementioned inspection, it was found that no notice was posted in a conspicuous place, or anywhere else, of the existence of a video surveillance system.

5. The defendant, by not posting an informative notice of the existence of cameras allowing the viewing of images, did not act with the care to which she is obliged and capable, representing as possible that she was acting against the Law.

III - Reasoning of the decision in fact

The facts given as proven resulted:

- The news report and the photographic report carried out by the police authority, contained on pgs. 1 to 8 of the records.

It is verified, in the light of the factual evidence, that it appears to be sufficiently indicted

the practice by the defendant of a foreseen infraction

and punished under the combined provisions of • paragraphs 1 and 2 of article 13 - violation of the right to information, when carrying out a data processing, not ensuring information about it to the holders; and Article 83(5) al. b) - violation of the rights

of holders under the GDPR), punishable by a fine of up to € 20,000,000.00 or up to 4% of annual turnover, whichever is higher.

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IV - Determination of the sanction

Pursuant to Article 83(1) s. a) to k) of the GDPR, when deciding on

the imposition of a fine or other sanction and on the determination of the measure of the

the following criteria will be taken into account:

- The nature, gravity and duration of the infringement, taking into account the nature, scope or purpose of the data processing in question, as well as the number of data subjects affected and the level of damage suffered by them - we are facing a offense punishable with the most serious frame provided for by the RGD, given that the data are normal, or not special, as they do not integrate the categories of special data provided for in article 9 of the RGD. The illegality is average, considering the circumstances of time, mode and place in which the defendant committed the infraction.
- The intentional or negligent nature of the infraction - it is considered to be with conscious negligence, since the defendant did not act with the care to which she is obliged and capable, representing as possible that she was acting against the Law.
- The initiative taken by the person responsible for the treatment or by the processor to mitigate the damages suffered by the data subjects - the conduct of the defendant who adopted, after the inspection action, the appropriate measure to rectify the verified infringement, affixing the information notices is valued.
- The degree of responsibility of the controller or processor, taking into account the technical or organizational measures implemented by them under the terms of articles 25 and 32 - the defendant's responsibility for the offense committed is considered to be medium, in insofar as he had the cameras installed and failed to observe the legal requirements regarding the use of a video surveillance system.
- Any relevant infringements previously committed by the controller or processor - which do not occur, being the primary defendant.
- The degree of cooperation with the supervisory authority, in order to remedy the infringement and mitigate its possible negative effects - which is considered to be high, giving voluntary and spontaneous compliance, having posted the information

notices, without the CNPD having exercised any corrective power in that regard.

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- The specific categories of personal data affected by the infringement - categories of non-special personal data, in accordance with Article 9(1) of the GDPR, read a contrario sensu.

- The way in which the supervisory authority became aware of the infringement, in particular whether the controller or processor notified it, and if so, to what extent they did so - the infringement was known through the referral, the notice issued following the inspection action carried out by the Public Security Police, so the defendant did not notify the CNPD of the occurrence of such a fact.

- Compliance with the measures referred to in Article 58(2) if they have been previously imposed on the controller or processor concerned in relation to the same matter - this criterion not being applied, as there were no any predetermined corrective measures.

- Compliance with codes of conduct approved under the terms of article 40 or certification procedure approved under the terms of article 42 - criterion that also does not apply, as there is no code of conduct or certification procedure, under the terms mentioned ;

and

- Any other aggravating or mitigating factor applicable to the circumstances of the case, in light of Article 83(2)(k) of the GDPR, such as the financial benefits obtained or the losses avoided, directly or indirectly, through the infringement -relevant here, as a factor

the mitigating factor, the absence of any economic benefit from committing the offense in question.

- Concrete fine frame

As expressed in the draft resolution, the fine frame abstractly applicable to the defendant for the offense foreseen and punishable under the combined provisions of paragraphs 1 and 2 of article 13 and subparagraphs b) of paragraph 5 of article 83, punishable by a fine of up to €20,000,000.00 or up to 4% of annual turnover, whichever is higher.

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Although the defendant's economic situation has not been ascertained and the facts determined in the light of the above mentioned criteria, the CNPD,

- pursuant to Article 58(2) al. i) of the RGPD, it considers appropriate, the imposition of a fine on the defendant in the amount of € 2,000.00 (two thousand euros) for violation of paragraphs 1 and 2 of article 13 of the aforementioned Regulation.

V - Conclusion

In view of the above, the CNPD resolves:

1. To impose a fine on the defendant in the amount of

€ 2,000.00 (two thousand euros).

2. Pursuant to paragraphs 2 and 3 of article 58 of the General Regime for Administrative Offenses and Fines, inform the defendant that:

a) The conviction becomes final and enforceable if it is not judicially challenged under the terms of article 59;

b) In the event of a judicial challenge, the Court may decide by means of a hearing or, if the defendant and the Public Prosecutor do not object, by means of a simple order.

c) The defendant must pay the fine within a maximum period of 10 days after its final nature, sending the respective payment slip to the CNPD. In case of impossibility of the respective timely payment, the defendant must communicate this fact, in writing, to the CNPD.

Luís Barroso

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Maria Candida Guedes de Oliveira

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Filipa Calvão (President)

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