

Procedure No.: PS/00429/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before
TALLERES AUTOPINTURA JIMENEZ, S.L., by virtue of a claim filed by
MINISTRY OF HEALTH-PROVINCIAL DIRECTION OF ALBACETE and based on
the following:

BACKGROUND

FIRST: MINISTRY OF HEALTH- PROVINCIAL ADDRESS OF ALBACETE

(hereinafter, the claimant) on 09/19/2018 filed a claim with the
Spanish Data Protection Agency. The claim is directed against TALLERES
AUTOPAINTING JIMENEZ, S.L. (hereinafter, TALLERES JIMENEZ), for the following
facts: the possible infringement of data protection given that the
claimed, in the data collection information, does not give the option to oppose the
treatment for advertising purposes of its services.

SECOND: In view of the facts denounced and the actions of

The investigation carried out revealed the following:

TALLERES JIMENEZ responded on 11/26/2018 providing the answer transferred to
the Ministry, with the measures adopted to correct the deficiencies
detected and a copy of the data collection models, invoices and deposit receipt
of vehicles, collecting the measures applied.

THIRD: On 01/29/2019, the Director of the Spanish Protection Agency
of Data agreed to initiate a sanctioning procedure against TALLERES JIMENEZ, for the
alleged infringement of article 12 of the RGPD, in accordance with the provisions of the
article 58 section 2 of the same rule, considering that the sanction that could
to correspond would be a WARNING, without prejudice to what resulted from the

instruction.

FOURTH: Once the start agreement was notified, TALLERES JIMENEZ at the time of the

This resolution has not submitted a brief of arguments.

Of the actions carried out in this proceeding, there have been

accredited the following:

PROVEN FACTS

FIRST: On 08/19/2018 the claimant submitted a written document to the Spanish Agency for

Data Protection, against TALLERES JIMENEZ, for the following facts: that in

The information offered on the processing of personal data of its clients is not

indicates the possibility of refusal to send commercial communications.

SECOND: The respondent has not provided documentation proving compliance

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of the rights recognized in the new GDPR, as set out in article 12

of the aforementioned regulation.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and as established in art. 47 of the Organic Law 3/2018, of

December 5, Protection of Personal Data and guarantee of rights

(hereinafter LOPDGDD), the Director of the Spanish Agency for

Data Protection is competent to resolve this procedure.

The third transitory provision of the LOPDGDD establishes: "Regime

transitory procedures:

II

1. The procedures already initiated at the entry into force of this organic law shall be governed by the above regulations, unless this organic law contains provisions more favorable for the interested party.

Article 63.2 of the LOPDGDD indicates: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

TALLERES JIMENEZ is accused of violating article 12 of the RGPD, Transparency of information, communication and modalities of exercise of rights rights of the interested party, which provides the following:

III

"1. The person responsible for the treatment will take the appropriate measures to facilitate to the interested party all the information indicated in articles 13 and 14, as well as any communication under articles 15 to 22 and 34 relating to processing, in the form concise, transparent, intelligible and easily accessible, with clear and simple language, in particular any information directed specifically at a child. Information shall be provided in writing or by other means, including, if applicable, by electronics. When requested by the interested party, the information may be provided verbally provided that the identity of the interested party is proven by other means.

2. The data controller will facilitate the interested party in the exercise of their rights under articles 15 to 22. In the cases referred to in article 11, section 2, the person in charge will not refuse to act at the request of the interested party in order to to exercise your rights under articles 15 to 22, unless you can demonstrate

that it is not in a position to identify the interested party.

3. The data controller shall provide the interested party with information regarding

its actions on the basis of a request under Articles 15 to 22, and,

in any case, within one month from receipt of the request. Saying

The term may be extended for another two months if necessary, taking into account the

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complexity and number of requests. The person in charge will inform the interested party of

any such extension within one month of receipt of the

request, indicating the reasons for the delay. When the interested party submits the

request by electronic means, the information will be provided by electronic means

when possible, unless the interested party requests that it be provided in another way.

4. If the person in charge of the treatment does not process the request of the interested party,

will inform without delay, and no later than one month after receiving the

request, the reasons for its non-action and the possibility of presenting a

claim before a control authority and exercise legal actions.

5. The information provided under articles 13 and 14 as well as any

communication and any action carried out under articles 15 to 22 and 34

they will be free of charge. When the requests are manifestly unfounded or

excessive, especially due to their repetitive nature, the person responsible for the

treatment may:

a) charge a reasonable fee based on administrative costs

faced to facilitate the information or communication or carry out the action

requested, or

b) refuse to act on the request.

The data controller shall bear the burden of proving the character manifestly unfounded or excessive of the request.

6. Without prejudice to the provisions of article 11, when the person responsible for the treatment has reasonable doubts in relation to the identity of the natural person that makes the request referred to in articles 15 to 21, may request that provide the additional information necessary to confirm the identity of the interested party.

7. The information that must be provided to the interested parties by virtue of the articles 13 and 14 may be transmitted in combination with standardized icons that allow to provide in an easily visible, intelligible and clearly legible form a adequate overview of the planned treatment. The icons that appear in electronic format shall be machine readable.

8. The Commission shall be empowered to adopt delegated acts in accordance with article 92 in order to specify the information to be submitted through icons and procedures for providing standardized icons”.

The reported facts were specified in the possible infringement of the RGPD in regarding the information requested by the company in the data collection, refraining from facilitating to the interested parties the exercise of rights recognized in the Articles 15 to 22 of the aforementioned Regulation, especially the right to oppose the Treatment for the purpose of advertising the services.

According to the documentation provided by the representative of the responsible for the denounced establishment and its manifestations prior to the agreement to initiate this sanctioning procedure that the correction of the deficiencies detected in the requested information, it is true that has added a clause in the invoices and receipts of vehicle deposits giving

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option to oppose the transfer of your data; however, it is no less so than the aforementioned information does not comply with the provisions of article 12 of the RGPD, also appearing the reference to the LOPD, a law that has been repealed by the aforementioned RGPD.

IV

Article 83.5 b) of the RGPD considers that the infringement of “the rights of those interested in accordance with articles 12 to 22”, is punishable, in accordance with the section 5 of the aforementioned article 83 of the aforementioned Regulation, "with fines administrative fees of €20,000,000 maximum or, in the case of a company, a amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount.

The LOPDGDD in its article 72 indicates: “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

particularly the following:

(...)

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law.

(...)"

However, article 58.2 of the REPD provides the following: "Each authority

of control will have all the following corrective powers indicated below:

continuation:

(...)

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 of Regulation 2016/679, which 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

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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 after the request made to the accused party, no

it has been proven to have adopted the appropriate measures and the adaptation of the clause

information to what is established in the new RGPD, correcting the deficiencies

observed.

v

At the same time, notification of the start agreement and after the term granted

to formulate allegations, I do not present any writing.

At this point, it is necessary to point out that if the facts are not corrected

revealed in the claim and that is the cause of this procedure and

then inform this AEPD of the measures adopted, it could proceed to the

exercise of possible actions before the person in charge of the treatment in order to

effectively apply the appropriate measures to guarantee and not

compromise the confidentiality of personal data and the right to

people's privacy.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE TALLERES AUTOPINTURA JIMENEZ, S.L., with NIF

B02348191, for an infringement of article 12 of the RGPD, sanctioned in accordance with the

provided in article 83.5.b) of the aforementioned RGPD and, qualified as very serious in the

article 72.1. h) of the LOPDGDD, a sanction of WARNING in accordance

with the provisions of article 58.2.b) of the RGPD.

SECOND: NOTIFY this resolution to AUTOPAINTING WORKSHOPS

JIMENEZ, S.L and, in accordance with art. 77.2 of the RGPD, INFORM the claimant,

MINISTRY OF HEALTH - PROVINCIAL ADDRESS OF ALBACETE, on the

result of the claim.

In accordance with the provisions of article 50 of the LOPDGDD, 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.

114.1 c) of the LPACAP, 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

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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-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal-contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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