

Procedure No.: PS/00305/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and in
based on the following

BACKGROUND

FIRST: On January 25, 2019, a declaration of gap of
security of CORPORACION DE RADIO Y TELEVISION ESPAÑOLA SA and
WORKERS COMMISSIONS.

As a consequence of this, the Spanish Agency for Data Protection opens the
file E/02875/2019, and initiates ex officio preliminary inspection actions that
allow the clarification of these facts.

From such actions it can be deduced that this security breach has been caused by the
loss of 6 pen drives with personal data at the headquarters of COMISIONES OBRERAS
inside the CORPORACION DE RADIO Y TELEVISION ESPAÑOLA SA building with
data from both entities.

SECOND: A.A.A., belonging to the Unión Sindical Obrera de RTVE, that is, USO -
CORPORACIÓN RADIO TELEVISIÓN ESPAÑOLA, (hereinafter, the claimant) dated
March 14, 2019 filed a claim with the Spanish Agency for the Protection of
Data against CORPORACION DE RADIO Y TELEVISION ESPAÑOLA SA with NIF
A84818558 (hereinafter, the claimed).

The reasons on which the claim is based are that there has been a security breach
following the disappearance of unencrypted removable devices from the Customer Service Office
Participate in the Pension Plan (hereinafter OPP) in the RTVE Corporation Building (in
later RTVE) in Prado del Rey, which contained personal data.

The start date of the breach (estimated, since it cannot be specified exactly) is the

November 12, 2018.

THIRD: On September 12, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 32 of the RGPD, typified in article 83.4 of the RGPD.

FOURTH: On September 13, 2019, the defendant is notified of the initiation agreement of this sanctioning procedure, granting a hearing term of ten working days to formulate the allegations and present the evidence that it deems appropriate, it is say, until September 27, 2019.

On September 26, 2019, the respondent files a brief with allegations and requests the file of the sanctioning procedure alleging that the security breach due to the The disappearance of the pendrives occurs in the Office of Attention to the Participant of the Plan of pensions (RTVE work center in Prado del Rey), not at the headquarters of Commissions Obreras and that the flash drives are the property of a delegate from the CCOO union section, who was part, as a member, of the Control Commission of the Pension Plan and

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that, as such, he had access to said office, for this he provides a series of documents, regarding which it is requested that they be received as evidence.

It goes on to say in its pleadings brief that union representatives form part of the company and, as RTVE workers, are subject to the same obligations of the rest of the workers in terms of compliance with the Regulations and the collective agreement and in addition to the duty of secrecy contained in article 65 of the Workers' Statute of said representatives, that is, they have a plus in their

secrecy and confidentiality obligations as workers' representatives.

Consequently, it affirms that the security breach is not the consequence of an attitude negligent on the part of RTVE, since the communication of the data to the unions is legitimized in the cases established by article 6 of the RGPD and the security measures necessary and implemented in the referral.

For this reason, it emphasizes that RTVE does not decide, therefore, the purpose of the data that has been transferred nor does it give instructions to the unions about how to deal with them when they are not subjects the communication of data in a contract of the person in charge of the treatment through the which the union accesses personal data of RTVE employees to provide a service.

FIFTH: On September 27, 2019, the claimant requests a copy of the file. Is referral is sent by certified mail, since the copy of the file requested has a size that exceeds the maximum allowed in the notification system, used by the organs of the Administration for the electronic practice of their notifications, which means that the documentation is not received until October 10.

SIXTH: On October 15, 2019, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, E/02875/2019, as well as the documents provided by the claimed party, together with the written arguments provided.

SIXTH: On October 17, 2019, the claimed proposal for resolution, proposing that the Director of the Spanish Agency for the Protection of Data is sanctioned to the claimed, for an infringement of article 32 of the RGPD, typified in article 83.4 of the RGPD, with a fine of €60,000.00 (SIXTY THOUSAND euros).

In view of everything that has been done, by the Spanish Agency for the Protection of Data in this procedure are considered proven facts the following,

FACTS

FIRST: On November 22, 2018, the respondent informs the Directorate of Security through a complaint form, the disappearance of five pen drives that were they were in a purse in the Office of attention to the Participate of the Plan of Pensions. Said devices were last seen on November 12, 2018.

The Directorate of Security in the process of investigating said disappearance has knowledge that it is about six devices and obtains a list of the content of these.

The Directorate of Security files a complaint with the General Directorate of Police on the 11th December and in compliance with Internal Regulation 3/2014 Regulating the actions to follow in the case of disappearance of material belonging to RTVE, its employees or www.aepd.es

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to its collaborators, it notifies the Human Resources Department on December 12 (hereinafter DRRHH), Legal Advice Directorate (DAJ) and Litigation Area Directorate and Labor (DLL) together with a written summary of the facts and the content of the devices deduces that the number of affected is approximately eleven thousand people and the data affected are of the following type:

1. Identification data: name and surnames, DNI, RTVE license plate, telephone number, address (postal and electronic)
2. Personal circumstances: date of birth, gender, marital status
3. Employment details: job title, category, salary level, work location, retirement dates
4. Special categories of data:

Social on disabilities),

☐ Affiliation to CCOO, health (medical resolutions, Security resolutions

☐

Criminal offenses or convictions (complete sentences with personal data and possibly some embargo notice)

☐ Regarding the number of people affected, it is very high since the data on participants of the pension plan go back to the start date of this in 1995, and the data of the Census of RTVE are of all the employees of this, being many of them also participate in the Pension Plan.

SECOND: The respondent once again reiterates the allegations made on March 26, September 2019 and requests the full nullity of this procedure sanctioning party, alleging that the proposed resolution of this procedure has been carried out totally and absolutely disregarding the legally established procedure, because until October 10, 2019 (the reasons are set out in the fifth point of the page 2), he did not have a copy of the file in his possession and therefore has not been able to present their arguments before the proposed resolution, violating what is established in article 76.1 of Law 39/2015 on administrative procedure.

In this sense, it should be noted that article 89.2 of said legal text establishes that, in the sanctioning procedure, "once the investigation of the procedure has concluded, the investigating body will formulate a resolution proposal that must be notified to the interested. The proposed resolution must indicate the disclosure of the procedure and the term to formulate allegations and present the documents and information that is deemed pertinent", for this reason it is considered that the the regulations and the right to legitimate defense of the claimed party has not been violated, nor its right to present arguments.

FOUNDATIONS OF LAW

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

of control, and according to what is established in arts. 47 and 48.1 of the LOPDGDD, the Director of the

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Spanish Agency for Data Protection is competent to resolve this

process.

II

The defendant is charged with the commission of an infraction for violation of article

32 of the RGPD, which states that

"1. Taking into account the state of the art, the application costs, and the

nature, scope, context and purposes of the treatment, as well as risks of

variable probability and severity for the rights and freedoms of natural persons, the

responsible and the person in charge of the treatment will apply technical and organizational measures

appropriate to guarantee a level of security appropriate to the risk, which in its case

include, among others:

a) pseudonymization and encryption of personal data;

b) the ability to ensure the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

c) the ability to restore the availability and access to the personal data of

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of the effectiveness of

the technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of take into account the risks presented by the processing of data, in particular as a consequence of the accidental or unlawful destruction, loss or alteration of transmitted personal data, stored or otherwise processed, or unauthorized communication or access to such data.

3. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element for demonstrate compliance with the requirements established in section 1 of this Article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the person in charge or the person in charge and has access to personal data can only process said data following instructions of the person in charge, unless it is obliged to do so by virtue of Union Law or the Member states."

III

The infringement is typified in article 83.4 a) of the RGPD, which considers that the infraction of "the obligations of the person in charge and of the person in charge in accordance with articles 8, 11, 25 to 39, 42 and 43" is punishable, in accordance with section 4 of the aforementioned Article 83 of the aforementioned Regulation, "with administrative fines of EUR 10,000,000 as maximum or, in the case of a company, an amount equivalent to 2% maximum of the total global annual turnover of the previous financial year, opting for the of greater amount"

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The regulation of infractions in the LOPDGDD is more precise in terms of the situations giving rise to an infringement and their consideration, so that it is much easier to know the limitation period of that infraction (that is, if it is considered mild, serious or very serious) and in view of the administrative sanction to be imposed for their breach.

The LOPDGDD in its article 71,

“They constitute

infractions the acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this law organic”.

Violations, states that:

And in its article 73, for the purposes of prescription, it qualifies as "Infringements considered serious”:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679, considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

d) The lack of adoption of those technical and organizational measures that result appropriate to effectively apply the principles of data protection from the design, as well as the non-integration of the necessary guarantees in the treatment, in the terms required by article 25 of Regulation (EU) 2016/679.

e) The lack of adoption of the appropriate technical and organizational measures to guarantee that, by default, only the personal data necessary for each one of the specific purposes of the treatment, as required by article 25.2 of the

Regulation (EU) 2016/679.

f) The lack of adoption of those technical and organizational measures that result appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of Regulation (EU) 2016/679.

g) The breach, as a consequence of the lack of due diligence, of the technical and organizational measures that have been implemented as required by article 32.1 of Regulation (EU) 2016/679”.

IV

In accordance with the provisions of the RGPD in its art. 83.2, when deciding to impose a administrative fine and its amount in each individual case will take into account the factors aggravating and mitigating circumstances that are listed in the aforementioned article, as well as any other that may be applicable to the circumstances of the case.

Consequently, the following have been taken into account as aggravating factors:

☐ In the present case we are dealing with negligent action on significant data that allow the identification of a person (article 83.2 b) as:

- Employment details: job title, category, salary level, location of job, retirement dates

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- Special categories of data such as:

CCOO affiliation, health (medical resolutions, resolutions of

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Social Security on disabilities),

Criminal offenses or convictions (complete sentences with data

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and possibly some lien notice)

☐ Basic personal identifiers are affected, according to article 83.2

g) as:

1. Name and surnames, DNI, telephone, address (postal and electronic)

2. Personal circumstances: date of birth, gender, marital status

As extenuating the following:

☐

Measures have been adopted by the controller or processor

to alleviate the damages suffered by the interested parties according to art. 83.2 c)

What:

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exactly identify:

or the treatment of personal data that they carry out, and types of data,

o location of automated databases.

carry out training and awareness measures.

place posters in all offices on data protection culture

(such as clean tables, crashing the computer every time the game is left)

workstation, removable device protection, etc.)

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On the other hand, article 83.7 of the RGPD provides that, without prejudice to the

corrective powers of the control authorities under art. 58, paragraph 2, each

Member State may lay down rules on whether, and to what extent, it may be imposed

administrative fines to authorities and public bodies established in said State

member.

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 CORPORACION DE RADIO Y TELEVISION ESPAÑOLA SA with

NIF A84818558, for an infringement of article 32 of the RGPD, typified in article 83.4

of the RGPD, a fine of €60,000 (sixty thousand euros).

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SECOND: NOTIFY this resolution to CORPORACIÓN DE RADIO Y

TELEVISION ESPAÑOLA SA with NIF A84818558

THIRD: Warn the sanctioned person that he must make the imposed sanction effective once

that this resolution is enforceable, in accordance with the provisions of art. 98.1.b)

of Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations (hereinafter LPACAP), within the voluntary payment period

established in art. 68 of the General Collection Regulations, approved by Real

Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of 17

December, through its entry, indicating the NIF of the sanctioned and the number of

procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Spanish Agency

of Data Protection at Banco CAIXABANK, S.A. Otherwise, it will

its collection in executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the payment term will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 one month from the

day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

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 two months from the day following the notification of this act,

according to the provisions of 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 decision may be provisionally suspended in administrative proceedings if the interested party

states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to

the Spanish Agency for Data Protection, presenting it through the Registry

Electronic 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 1

october. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within two

months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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