

NATIONAL COMMISSION

DATA PROTECTION

Case No. 10770/2018

RESOLUTION/2019/222

I - Report

The National Data Protection Commission (CNPD) prepared, on January 7, 2019, a draft deliberation, in which the defendant was charged with

the commission of an offense foreseen and punishable under the combined provisions of paragraphs 1 and 2 of article 13, with subparagraph b) of paragraph 5 of article 83 of Regulation (EU) 216/679, of 27 April 2016 (General Data Protection Regulation - RGPD), punishable by a fine of up to 20 million euros or 4% of annual turnover, whichever is higher.

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Pursuant to the provisions of article 50 of the General Regime for Administrative Offenses and Fines, the defendant was notified of the content of the bill in order to, if she wished, present her defence, having alleged, in short, the following:

1. That the draft deliberation is null, since the defendant was not notified of the copy of the administrative offense notice, nor of all the elements that accompany it to exercise her right of defense.
2. Afterwards, the defendant also invoked that the information notices of the existence, in operation, of the video surveillance system were displayed, with two photographs, without identifying the day and time they were taken, although she acknowledged that no notice was placed information on the existence of such a system on the outside door of the building.
3. In this way, the defendant fought for acquittal, with the consequent shelving of the case, or if not understood, that the sanction of admonition be applied.

The defendant gathered eleven documents and listed three witnesses.

II - Appreciation

The CNPD is competent under the terms of subparagraph i) of paragraph 2 of article 58 of the RGPD, in conjunction with paragraph 1 of article 21 and 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.

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Regarding the preliminary question raised by the defendant, it can only be dismissed.

And this is because there is no legal rule that requires the administrative entity to notify the defendant of the report and the other elements that make up the case.

In fact, if the defendant intended to have access to them, he could have requested consultation and examination of the records, which he never did.

Furthermore, if the defendant, after the notification of the draft deliberation, had not been aware of all the elements necessary for her to know all the relevant aspects in the context of that, either in fact or in law, neither could she have alleged the facts contained therein. of articles 12 to 41 of the Written Defense, reasons for which the nullity raised by the defendant is dismissed.

Afterwards, the defendant did not challenge the report drawn up by the police authority, which substantiates the facts contained therein, considering that they are proven, as is clear from article 169 of the Code of Criminal Procedure, ex vi n. 1 of article 41 of the General Regime of Administrative Offenses and Fines ex uvert 35 of the LPDP.

Not forgetting, the defendant also added two photographs that do not even show the date/time they were taken.

Furthermore, it is the defendant herself who, in her written defense, confesses that the outside door of the building she owns did not contain any information about the existence of the video surveillance system.

Therefore, the defense's allegations do not call into question the framing of the facts made in the draft deliberation, nor is any fact that integrates a cause invoked.

exclusion of guilt or illegality, so we intend to maintain the position already assumed there.

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The witnesses listed were not questioned since as to the disputed facts they were not disclosed, they do not need further clarification or contradictory, hence result in the eventual testimonies being irrelevant to the discovery of material truth.

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

III - Facts

1. The defendant

and has its headquarters in

is the holder of the NIPC

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2. The defendant exploits a

, with the designation

site

at the aforementioned address

3. On November 5, 2018, at 10:40 am, following an inspection by the

operation of a video surveillance system.

4. The system consists of 9 cameras and 1 recorder.

5. 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.

6. The defendant acted freely, voluntarily and consciously, by not posting an informative notice of the existence of cameras allowing the viewing of images, not having acted with the care to which she is obliged and capable, representing as possible that she was act against the law.

IV - Reasoning for decisions on the matter of fact The facts given as established resulted:

- From the news report and the photographic report drawn up by the police authority, attached to fls. 2 to 12 of the case

records; and

- Written defense of the defendant.

It is verified, in the light of the established facts, that the practice by the defendant of an infraction is sufficiently indicted.

provided for and punishable under the combined terms of paragraphs 1 and 2 of article 13, with subparagraph b) of paragraph

5 of article 83, both of the RGPD, punishable by a fine of up to 20 million euros or 4 % of annual turnover, whichever is higher.

Pursuant to Article 83(1) s. a) to k) of the GDPR, the determination of the amount of the fine is carried out according to the following criteria:

- 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 - this is a offense punishable by the most serious frame provided for by the GDPR. The facts in question reveal a

Public Security Police to

referred to above, the existence, in

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average gravity. The exact number of holders affected by the defendant's conduct is unknown;

The intentional or negligent nature of the offense - it is considered to have conscious negligence, since the defendant did not comply with the obligation to inform the holders, in the context of the processing of personal data, resulting from video surveillance, with the purpose of protecting people and property , not even taking care to investigate the applicable legal framework, having therefore not acted with the care to which it was obliged and capable, representing as possible that it was acting against the Law. This is an essential right for the holders, since the other subjective rights within the scope of the treatment operation carried out end up being harmed, with the omission of the right to information - eg. the right of access;

The initiative taken by the controller to mitigate the damages suffered by the data subjects - it should be noted that the defendant sought to implement the General Data Protection Regulation, as a result of a statement issued by a third party, attached to the file by the defendant;

The degree of responsibility of the controller or processor taking into account the technical or organizational measures implemented by them in accordance with Articles 25 and 32 - matter that is not the subject of the present case;

Any relevant infringements previously committed by the controller or processor - which do not occur;

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, given the Defendant's conduct towards the CNPD, which had no need to prepare and enact the application of corrective measure;

The specific categories of personal data affected by the infringement - the personal data being processed do not form part of the categories of special data set out in Article 9(1) of the GDPR;

The way in which the supervisory authority became aware of the infringement, in particular whether the controller or the processor notified it, and if so, to what extent they did so - the infringement committed came to the knowledge of the CNPD via the report drawn up by the police authority;

Compliance with the measures referred to in Article 58(2) if they were previously imposed on the controller or processor in
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case in relation to the same matter - this criterion not being applied, since there were no previously determined corrective measures;

- Compliance with codes of conduct approved under the terms of article 40 or the certification procedure approved under the terms of article 42 - a 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 - highlights here, as a mitigating factor, the fact that the economic benefit extracted by the defendant is not determinable or measurable; and,

- Application of the fine

As stated in the draft determination, the offense foreseen under the combined provisions of paragraphs 1 and 2 of article 13, with subparagraph b) of paragraph 5 of article 83, both of the RGPD , is punishable by an abstractly applicable fine of up to EUR 20 million or 4% of annual turnover, whichever is higher.

In the present case, as there are no elements that allow inferring the defendant's turnover, the maximum limit of the specifically applicable fine is set at € 20,000,000.00 (twenty million euros).

Assessing the facts found in the light of the criteria mentioned above and considering the fact that the economic benefit extracted by the defendant as a result of the infringement cannot be measured, then the CNPD, under the terms of article 58, no. 2, al. i) of the RGPD, considers the application to the defendant of a fine in the amount of € 2,000.00 (two thousand euros) for the practice of the foreseen and punishable offence, in accordance with the combined provisions of paragraphs 1 and 2 of article 13. , with point b) of paragraph 5 of article 83, both from the GDPR.

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) due to the violation of the right of information to the holders about the processing of personal data.

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2. Under the terms of the General Regime of Administrative Offenses and Fines, inform the defendant that:

The. The conviction becomes final and enforceable if it is not judicially challenged, under the terms of article 59 of the same diploma;

B. In the event of a judicial challenge, the Court may decide at a hearing or,

if the defendant and the Public Prosecutor's Office do not object, by means of a simple order.

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The defendant must pay the fine within a maximum period of 10 days after its final nature, sending the respective payment

slips to the CNPD. In case of impossibility of the respective timely payment, the defendant must communicate this fact, in writing, to the CNPD.