



Procedure No.: PS/00365/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: CIVIL GUARD - ALSASUA POST (hereinafter, the claimant) with date 06/12/2020 transfers complaint for events that took place on 03/31/2020.

It is indicated that "by the Citizen Security patrol of the Alsasua post, in the kilometer point 27,150, of road NA 1300, municipality of Aritx, Navarra, is observes that on a road located on the banks of the Araxes river, paraje , there is a deposit of waste in the area of easement of the river, directly on the slope of the riverbed. I know notes that the materials that make up the same come from the reform and cleaning of a premises or home when found, among others, remains of construction material as well as large amount of remains of accounting files belonging to the company BOUTIQUE OF THE GAIKI AUTOMOBILE, made up of collection slips, supplier invoices, all this in the name of the owner of the company, A.A.A.. After the inspection of the waste deposited by the agents, the existence of delivery notes issued by the suppliers and bills of payment of the holders, as well as a checkbook made up of 594 invoices corresponding to the years 93 to 96 where data can be clearly seen personal data corresponding to name and surname, DNI and address of 341 clients. The Documentation is deposited at the Civil Guard post in Alsasua".

Along with the claim, it provides

-Various black and white photographs, in which the place where the

They found the documents.

-Photographs with detail of the delivery notes with the tax data of the claimed, as well as various invoices where the date appears, for example 11/20/93 or 07/9/1996, with the data Personal ID, name and surname, customer address and product description.

Each invoice appears with a number and it can be seen that at the top are the data of the claimed next to the company logo.

SECOND: In view of the facts denounced in the claim and the documents provided, the General Subdirectorate of Data Inspection transferred on 06/12/2020, from in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of 5/12, on the Protection of Personal Data and guarantee of rights digital (hereinafter LOPDGDD) the claim to the claimed.

With a certified letter dated 09/14/2020, entry record, 10/5/2020, stated the claimed:

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-On 01/01/1992, "I opened with my husband... a retail business of accessories parts and spare parts for land vehicles called BOUTIQUE DEL AUTOMÓVIL GAIKI, which carried out its activity in a shop at 35 Rondilla Street in the town of Tolosa, Guipúzcoa. The business ceased in 1999." Historical contribution of economic activities of the Provincial Council of Guipúzcoa with termination date 11/20/1999 and registration certificate from the IAE of the respondent and her husband.

"Since then the place has been empty without any type of activity or commercial or private.

"On 11/15/2019, we leased the premises of our property to constructions

HUGAR SL". They provide as document 4 a copy of the rental contract.

"The lease was made with the mediation of a real estate"

that he identifies, adding, that he informed him of some people who were dedicated to

cleanliness of the premises-identifies the people-of which he only has as signs, of

your mobile phone number, "hiring the cleaning of the premises by word of mouth"

"Ignoring the working method, nor the use or destination of the documentation, nor the

objects that were evicted from the premises."

-Provides writings that he states he has sent to his clients communicating the

discovery of their data explaining the incidence of what happened and provide a copy,

indicating: "Notification of security breaches" reporting the finding in the area

public invoices with the person's data, as well as explaining the reason for the

fault and a contact telephone number.

THIRD: On 10/6/2020, the admission agreement was signed for the processing of the claim.

FOURTH: On 01/14/2021, the Director of the Spanish Agency for the Protection of

Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infraction

of article 32.1 of the RGPD, as indicated in article 83.4. b) of the RGPD, indicating that "a

the effects provided for in art. 64.2 b) of Law 39/2015, of 1/10, of the Procedure

Common Administrative of Public Administrations, (hereinafter, LPACAP), the

sanction that could correspond would be a warning.", and that "If within the term

stipulated does not make allegations to this initial agreement, it may be

considered resolution proposal, according to what is established in article 64.2.f) of the

LPACAP."

FIFTH: The respondent filed a written statement indicating that she recognized the

infringement and was in agreement with the initiation agreement and would not raise any objections.

PROVEN FACTS

CIVIL GUARD - ALSASUA POST, claimant, on 03/31/2020 found on track

one)

rural a deposit of waste related to the reform and cleaning of a premises or home,

finding accounting files belonging to the company BOUTIQUE DEL

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AUTOMÓVIL GAIKI, receipts of payment, supplier invoices, with the name of the owner of the company, the claimed one.

2) The claimant verified the existence of delivery notes issued by suppliers and letters of payment of the holders, as well as a checkbook made up of 594 invoices corresponding to the years 93 to 96 where you can see personal data corresponding to name and surnames, DNI and address of 341 clients. The claimant submitted to the AEPD photographs with detail of the delivery notes with the tax data of the claim, as well as various invoices where the date appears, for example 11/20/93 or 07/9/1996, with personal data, DNI, name and surname, customer address and product description. Each invoice appears with a numbering and it can be seen that the data of the claimed party appears at the top next to the company logo.

3) The respondent stated that she had a business called BOUTIQUE DEL AUTOMÓVIL GAIKI, in the town of Tolosa, Guipúzcoa from 1992 to 1999, date from that it was empty without any type of activity and that in November 2019, when leasing the place and carry out its cleaning "verbally hired some people who were dedicated to the cleaning of premises "ignoring the method of work, or use or destination of the documentation, nor the objects that were evicted from the premises."

4) The respondent stated that “she has sent letters to her clients communicating what happened, and provides a copy, indicating: "Notification of security breaches" reporting the finding in public area of the documents with your personal data, explaining the reason for the failure and providing a contact phone number.

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this process.

II

The facts are constitutive of an infraction, attributable to the claimed one, included in the article 32 of the RGPD, which indicates:

1. Taking into account the state of the art, the application costs, and the nature, the scope, context and purposes of the treatment, as well as risks of probability and severity variables for the rights and freedoms of natural persons, the person in charge and the in charge of the treatment will apply appropriate technical and organizational measures to guarantee a level of security appropriate to the risk, which, where appropriate, includes, among others:

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a) pseudonymization and encryption of personal data;
b) the ability to ensure confidentiality, integrity, availability and resilience
permanent treatment systems and services;

c) the ability to restore the availability and access to personal data in a

fast 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

The claimed party should have signed a contract in order to safely destroy

the documents that meet the requirements of article 26 of the RGPD to guarantee the

safety in handling them.

The commission of the imputed infraction originated by the lack of diligence that was not

He considered that it could have led to what happened.

Despite the fact that a considerable period of time has elapsed since the issuance of the

documents found on public roads, according to the date of the invoices, the

claimed remains responsible for them and maintains the obligation to

guard them. Considering the dates of the documents found and the cessation of business,

counting on the effects of documentary conservation for the period of possible requirement

of responsibility, it would be possible to proceed with its destruction, in which case you must

document the following: documents that are destroyed, what type of personal data

they contain and from what time period.

The respondent is empowered to withdraw the aforementioned documents held by the

Civil Guard, obtaining a diligence of the documents of ownership found and

which will be taken over for the purposes set forth in the preceding paragraph

III

Indicates article 83.4 of the RGPD: "Infringements of the following provisions are

sanctioned, in accordance with paragraph 2, with administrative fines of EUR 10,000,000

maximum or, in the case of a company, an amount equivalent to 2% as

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

opting for the highest amount:

a) the obligations of the person in charge and the person in charge in accordance with articles 8, 11, 25 at 39, 42 and 43;"

The LODGDD indicates in its article 73.1:

"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:

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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."

Article 58.2 of the RGPD indicates: "Each control authority will have all the following corrective powers indicated below:

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

Recital 148 of the RGPD indicates that in order to impose the corrective measure adequate, special attention should be paid to the nature, severity and duration of the infringement, or to any relevant prior infringement, and to any other circumstance aggravating or mitigating. For natural persons, instead of sanctioning by means of a fine, impose a warning.

Likewise, article 58.2 d) of the RGPD establishes that each control authority may "order the person responsible or in charge of the treatment that the treatment operations be carried out comply with the provisions of this Regulation, where appropriate, of a given

manner and within a specified period...”. The imposition of this measure is compatible

with the sanction consisting of a warning, as provided in art. 83.2 of the GDPR.

Therefore, in accordance with the applicable legislation and

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for an infraction of article 32 of the

RGPD, in accordance with article 83.4 a) of the RGPD, a penalty of warning.

SECOND: NOTIFY this resolution to A.A.A.

THIRD: Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6

of the LOPDGDD, 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 13/07, regulating the Contentious-administrative Jurisdiction, in the

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

provided for 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, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

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

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

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remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. Too must transfer to the Agency the documentation that accredits the effective filing of the Sponsored links. If the Agency was not aware of the filing contentious-administrative appeal within two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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