

936-031219

□ Procedure No.: PS/00433/2019

RESOLUTION R/00115/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00433/2019, instructed by the Agency

Spanish Data Protection Agency to CHENMING YE (BAZAR REAL), given the complaint

presented by D. G. OF THE CIVIL GUARD - ***POSITION.1, and based on the

following,

BACKGROUND

FIRST: On January 7, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against CHENMING YE

(BAZAR REAL) (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00433/2019

935-240719

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of

Data and based on the following

FACTS

FIRST: D. G. OF THE CIVIL GUARD - *** POSITION 1 (hereinafter, the claimant)

On October 24, 2019, he filed a claim with the Spanish Agency for

Data Protection. The claim is directed against CHENMING YE (ROYAL BAZAR)

with NIF X6922692Z (hereinafter, the claimed).

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The reasons on which the claim is based are "it does not have the mandatory poster informative placed in a visible area, informing of the data controller" (folio No. 1).

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the Subdirector General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, 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 to solve this procedure.

II

In the present case, we proceed to examine the claim dated 10/24/19 by by means of which the following is transferred to this Agency:

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"does not have the mandatory information poster placed in a visible area, informing the person responsible for the treatment" (folio nº 1).

The facts are specified therefore, that the denounced establishment, despite to have a video-surveillance camera installed, it does not have an information poster informing of the end of the treatment and the person responsible for it.

The behavior described is subsumable in the infraction described in art. 12 RGD, since the person in charge has not adopted the necessary measures to inform to the clients of the establishment of the processing of their personal data and of the way in your case to exercise the legally recognized rights.

Article 22 section 4 of LO 3/2018, December 5, provides the following:

"The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information.

In any case, the data controller must keep available to those affected the information referred to in the aforementioned regulation".

The facts are the object of transfer by the Forces and Bodies of State Security (General Civil Guard Directorate-*** POSITION.1) that carry out a

inspection at the Bazar Real establishment, located at Avenida de Extremadura nº 87

(Talavera La Real).

The art. 77 section 5 of Law 39/2015 provides the following: “The documents

formalized by officials who are recognized as authorities and in

which, observing the corresponding legal requirements, collect the facts

verified by those will prove them unless proven otherwise”.

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III

In accordance with the evidence available in this

moment of agreement to initiate the sanctioning procedure, and without prejudice to what

result of the investigation, it is considered that the person claimed has a system of

video-surveillance, which does not comply with current legislation.

The known facts could constitute an infraction, attributable to the

claimed, for violation of the content of art. 12 RGPD, as there is no sign

informative in a visible area in the establishment.

The art. 83.5 RGPD provides the following: “Infringements of the provisions

following will be sanctioned, in accordance with section 2, with administrative fines

EUR 20,000,000 maximum or, in the case of a company, an amount

equivalent to a maximum of 4% of the total global annual turnover of the

previous financial year, opting for the highest amount:

b) the rights of the interested parties pursuant to articles 12 to 22 (...). ”.

When motivating the sanction, it is taken into account that it is a small

establishment, without experience in the field of data protection, as well as the level

low income of the same, being a small commercial bazaar.

-Negligence in the conduct described is taken into account, given the time

elapsed since the entry into force of the new regulations, as well as the extensive

diffusion that it has had (art. 83.2 b) RGPD).

-The fact of having knowledge through a complaint made by the

State Security Forces and Bodies (art. 83.2 h) RGPD).

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For all these reasons, it is proposed, taking into account the above, an initial sanction

encrypted in the amount of €900, a sanction located on the lowest scale for this type of
infractions.

The defendant must prove by means of a photograph that he has placed a poster

approved in a visible area (eg establishment entrance) indicating the purposes of the

treatment (vgr. Video-surveillance) and the person in charge (by way of example, You can

exercise their rights in Bazar Real), having a form available

of clients (vgr you can download it from the website of this Agency [www.](http://www.aepd.es)

Aepd.es Video-surveillance Section).

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: INITIATE PUNISHMENT PROCEDURE against CHENMING YE (BAZAR

REAL), with NIF X6922692Z, for the alleged infringement of article 12 RGPD, by not

have an informative poster, infraction typified in art. 83.5 b) RGPD, being punishable in accordance with art. 58.2 GDPR.

SECOND: APPOINT R.R.R. as instructor. and, as secretary, to S.S.S. , indicating that any of them may be challenged, as the case may be, in accordance with established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and his documentation, the documents obtained and generated by the General Subdirector for Data Inspection during the investigation phase, all of them part of the administrative file.

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FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be €900 (Nine hundred Euros) without prejudice to whatever results from the instruction.

FOURTH: NOTIFY this agreement to CHENMING YE (BAZAR REAL), with NIF X6922692Z, granting a hearing period of ten business days for formulate the allegations and present the evidence that it deems appropriate. In its Allegation brief must provide your NIF and the procedure number that appears at the top of this document.

If within the stipulated period it does not make allegations to this initial agreement, the

The same may be considered a resolution proposal, as established in the

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event of that the sanction to be imposed was a fine, it may recognize its responsibility within of the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in the present procedure. With the application of this reduction, the sanction would be established at €720, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of the present procedure, carry out the voluntary payment of the proposed sanction, which which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at €720 and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one It is appropriate to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The pay volunteer of the amount referred to in the preceding paragraph may be made at any time prior to resolution. In this case, if it were appropriate to apply both

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reductions, the amount of the penalty would be established at €540 (€900-€180

+180€).

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the indicated amounts €720 or €540, you must make it effective by entering the account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency of Data Protection at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which it is accepted.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the the date of the start-up agreement or, where applicable, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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: On January 28, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 540 euros making use of the two reductions provided for in

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the Start Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGD of 2018 recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations.

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According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00433/2019, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to CHENMING YE (BAZAR REAL).

In accordance with the provisions of article 50 of the LOPDGDD, 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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

National Court, 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 a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

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