

File identification

Resolution of sanctioning procedure no. PS 7/2019, referring to the Catalan Traffic Service

Background

1. On 5/15/2018, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Catalan Traffic Service (hereinafter, SCT) of the Department of the Interior the Generalitat de Catalunya, due to an alleged breach of the regulations on the protection of personal data.

The complainant explained that the edicts published in the official newspapers by the SCT did not conform to the provisions of the regulations for the protection of personal data *"since there is no adequate dissociation of the data"* and provided a copy of an edict of the SCT published in the Official State Gazette (BOE), dated 02/19/2018.

2. The Authority opened a preliminary information phase (no. IP 130/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of 1 October, on the common administrative procedure of public administrations (now hereinafter, LPAC), to determine if the facts were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances that were involved.
3. In this preliminary information phase, on 17 and 18/5/2018, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, it was found that the SCT had published on the Single Edictal Desk of the BOE (hereinafter, TUE) announcements of notifications relating to sanctioning procedures in which the interested persons are identified by first name, surname and complete NIF/NIE, publishing - also the data relating to the file number, city, date, vehicle registration, amount, precept allegedly infringed and points.
4. On 5/22/2018, also within this information phase, the entity was required denounced to inform about the events denounced.
5. On 4/6/2018, the SCT responded to the aforementioned request in writing in which it set out the following:

- That: *"From the creation of the Traffic Sanctions Edictal Board (TESTRA), regulated by Order INT/3022/2010, of November 23, the edictal notifications of the Catalan Traffic Service that were sent to this Taulell incorporated the following notified data: FILE/NAME AND PERSONS SURNAMES/ IDENTIFICATION/LOCATION/DATE/REGISTRATION/AMOUNT/PRECEPTION/ CLE/POINTS/REQ in accordance with the third final provision of the aforementioned Order."*

- That: *"On June 1, 2015, the provisions of Law 15/2014, of September 16, on the rationalization of the Public Sector and other administrative reform measures, came into force, which established the mandatory publication in the BOE (TEU) and the optional one that until then was carried out at TESTRA. As of that date, the SCT stopped sending edicts to TESTRA and started sending them to the DOGC/BOE, in accordance with the applicable regulations."*
- That: *"The edicts of the Catalan Traffic Service that appear published in the BOE (TEU) are sent directly from the DOGC through telematic channels that allow us to ensure that the initial day of publication is the same in the two official bulletins."*
- That: *"The data published in the TEU regarding traffic ticket files processed by the Catalan Traffic Service are exactly the same as those published in TESTRA between 2010 and 2015 and coincide with those published by the Central Traffic Directorate in his edicts."*

The reported entity attached to the letter a copy of an edict dated 29/12/2011 of the SCT published on the edictal board of traffic penalties (TESTRA) and a copy of another edict dated 4/5/2018 of the Central Traffic Prefecture published in the Official State Gazette (BOE).

6. On 2/18/2019 and 2/26/2019, the Authority's Inspection Area carried out a series of checks via the Internet on the facts reported. Thus, it was established that the SCT had published in the Official Journal of the Generalitat of Catalonia (hereafter, DOGC) no. 7770 of 18/12/2018, announcements of notifications relating to sanctioning procedures in which the interested persons are identified by first name, surname and complete NIF/NIE, also publishing the data relating to the file number, date, city, vehicle registration number, amount, precept allegedly infringed and points.

It is also noted that in the DOGC no. 7809 of 13/2/2019 the SCT has published a notice of notification in procedures for the ex officio initiation of sanctioning proceedings in which the interested persons are identified by means of complete NIF/NIE, also being published the data relating to the file number, date, vehicle registration, amount, precept allegedly infringed and points.

7. On 06/03/2019, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the SCT for an alleged infringement provided for in article 83.5.a) of the RGPD in relation to article 5.1.c) of the RGPD, conduct that in article 72.1.a) of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, the LOPDGDD) has been considered very serious. Likewise, he appointed Mrs. (...), an employee of the Catalan Data Protection Authority, as the person instructing the file.
8. This initiation agreement was notified to the imputed entity on 03/12/2019.

In the initiation agreement, the accused entity was granted a period of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of evidence that it considered appropriate to defend its interests.

10. On 27/03/2019, the SCT made objections to the initiation agreement.

11. On 06/05/2019, the Authority's Inspection Area carried out new checks via the Internet on the facts subject to the complaint. Thus, it was found that the SCT had published in DOGC no. 7866 of 03/05/2019 and in DOGC no. 7868 of 06/05/2019, announcements of notifications relating to sanctioning procedures in which the interested persons are identified through DNI/NIE complete, and together with this data, the file number corresponding to the sanctioning procedure and the date on which the offense was committed.

12. On 08/07/2019, the director of the Catalan Data Protection Authority decided to appoint Ms (...) as the instructor of the file, replacing Mrs (...). On the same date, the SCT was notified of said resolution.

13. On 08/07/2019, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the SCT as responsible for an infringement provided for in article 83.5.a) in relation to section 1, letter c) of article 5, both of the RGPD.

This resolution proposal was notified on 07/08/2019 and a period of 10 days was granted to formulate allegations. The deadline has passed and no objections have been submitted to the proposed resolution.

proven facts

Of all the actions taken in this procedure, the facts detailed below are considered accredited.

In the publication in official newspapers of the announcements of notifications relating to sanctioning procedures, the Catalan Traffic Service has maintained the practice of identifying the persons interested by name, surnames and full NIF/NIE, and in said announcements the data relating to the file number, city, date, vehicle registration, amount, precept allegedly infringed and points. The aforementioned publications have been produced in several SCT announcements published during 2018, and in this regard, the publication in the TUE of the BOE dated 2/19/2018, and the publication in the Official Journal of the Generalitat are included in the actions of Catalonia (hereinafter, DOGC) no. 7770 of 18/12/2018.

In 2019, the SCT modified this system, and in this sense there is a notice in the DOGC dated 2/13/2019 regarding the SCT's sanctioning procedures, in which

the interested person is identified with the complete NIF/NIE, and the data relating to the penalty file number, date of the infringement, vehicle registration, amount, precept allegedly infringed and points are also included.

As a result of the notification of the agreement to initiate this procedure, the SCT has reduced the set of personal data contained in the announcements of notifications relating to sanctioning procedures, and in this sense, it is stated in the DOGC dated 06/05/ 2019 a notification announcement relating to a sanctioning file, in the annex of which the number of the sanctioning file, the interested person with the DNI / NIE, and the date of infringement are identified.

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of DT 2a of Law 32/2010, of October 1, of the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. The accused entity has not made allegations in the resolution proposal, but it did so in the initiation agreement. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

2.1 On the existence of a legal rule that would enable the communication of personal data.

In the first section of the allegations, the accused entity referred to the letter dated 06/04/2018, presented as a response to the request for information carried out in the investigative actions that preceded this sanctioning procedure, in which the SCT cited Order INT/3022/2010, of November 23, which regulates the Edictal Table of Traffic Penalties (hereinafter, Order 3022/2010), and more specifically, its third final provision, as a regulatory background from which the system of publication of edictal notifications was established in the Edictal Table of Traffic Sanctions (henceforth, TESTRA) of the acts of sanctioning procedures in traffic matters, in which 'identified the interested persons by means of name, surname and full ID, city, vehicle registration, as well as the date, type of offender applied, amount of the penalty and number of points. And, that with the entry into force of Law 15/2014, of September 16, on the rationalization of the public sector and other administrative reform measures, with which the system of the Single Edictal Desk (TUE) of the BOE was implemented for making administrative notifications, it was no longer published in TESTRA and it was published in the DOGC and the BOE, but *"the data that is published in the TUE regarding traffic penalty files by the SCT are exactly the same which were published in TESTRA between 2010 and 2015 and coincide with those published by the Central Traffic Directorate in its edicts"*.

In relation to what has been presented here, it is inferred that the accused entity defended the practice of edict notifications denounced, as a continuation of the same system that would have been practiced with edict notifications during the period from from 2010 to 2015, and with the entry into force of Law 15/2014, only the medium in which the advertisements were published would have changed, passing from TESTRA to the TUE of the BOE and the DOGC.

Regarding this, the first thing to say is that the proposed resolution did not proceed to analyze whether the publication of personal data carried out in TESTRA until the year 2015 had sufficient legal protection or not, and this because such conduct was not part of the which is the subject of this procedure and which is determined by the facts attributed to the initiation agreement, the system maintained in the publication of the notification announcements of the acts relating to the sanctioning procedures during the year 2018 and during the first months of the year 2019.

2.2. On the mechanics followed in the identification of those interested in notifications by means of announcements to the DOGC (and the TUE of the BOE).

The SCT stated that the notifications by means of announcements to the DOGC - and later also published in the TUE of the BOE - had been adjusted to articles 40.2 and 44 of the LPAC. He added that, since the entry into force of the LOPDGDD, *"the name of the interested person was removed from the SCT announcements, identifying him with the complete NIE/NIE when it was available"*, although it was stated in the actions that initially also added other information that could be excessive, such as the vehicle's registration number, amount, infringed rule and points. In this regard, the SCT informed that following the notification of the agreement to initiate this procedure (12/03/2019) there had been a change of opinion and *"the next announcements that will be published both in the DOGC and the BOE will only include the following data: FILE and DNI/NIE essential in order to identify the ongoing procedure and the interested person, as well as the DATE, which can help the interested party identify the vehicle and the circumstances of the infringement"*.

Indeed, as stated in DOGC no. 7868 of 06/05/2019, the SCT has changed the system in the publication of the announcements that it currently publishes in the DOGC, which are now identified by the file number, the DNI/NIE of the person concerned and the date of the infringement. In this sense, the proposed resolution positively assessed this change in criteria in order to conform as much as possible to the principle of minimization of the RGPD and to the provisions of the seventh additional provision of the LOPDGDD, insofar as the data published had been reduced in order to adapt the publication to the purpose pursued, which is none other than to allow the interested person to be aware of the existence of an administrative act that had been attempted to notify him, which in turn, it will allow him to appear before the SCT and access the full content of the administrative act that affects him. Likewise, it should be indicated that the object of the sanctioning procedure that deals with us here, and which, as has been said, is delimited in the section on proven facts, covers treatments carried out prior to this change in criteria, and specifically, to the publications of announcements of notifications to the DOGC relating to sanctioning procedures published during 2018 and the first months of 2019.

The processing of data that is the object of imputation here had to be subject to the principles and guarantees of the RGPD, and in this sense, it is necessary to take into consideration, first of all, the principle of legality (article 5.1.a) , according to which personal data must be treated lawfully, loyally and transparently. In relation to this, article 6 of the RGPD establishes the list of conditions that determine the lawfulness of the processing of personal data, among them, in section c) provides for *"the treatment necessary for the fulfillment of an obligation law applicable to the person responsible for the treatment"*. In the case at hand, the legality of the treatment is given by the provisions of the LPAC, and specifically by article 45, which establishes the cases in which administrative acts must be published. In accordance with article 44 of the LPAC, publication also proceeds in the cases where personal notification has been attempted and has not been possible or when the interested parties are unknown or the place of the notification, which would be the case we are dealing with.

"Article 44. Unsuccessful notification

When the interested parties in a proceeding are unknown, the place of notification is ignored, or, once this has been attempted, it has not been possible to practice, the notification must be made by means of an announcement published in "Official Bulletin of the State".

Likewise, previously and on an optional basis, the administrations can publish an announcement in the official bulletin of the autonomous community or province, on the notice board of the City Council of the last address of the person concerned or of the consulate or section consular of the corresponding embassy.

The public administrations can establish other complementary forms of notification through the rest of the media, which do not exclude the obligation to publish the corresponding announcement in the "Official Gazette of the State"

However, the existence of a legal basis that legitimizes the processing of personal data from the point of view of the principle of legality, does not exempt from the obligation of the rest of the principles and guarantees of the RGPD, and in particular of principle of minimization provided for in article 5.1.c) of the RGPD, according to which:

"The personal data will be:

(...)

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data")"

In line with this principle, it is also necessary to take into account article 46 of the LPAC, which provides the following:

"If the competent body considers that the notification through announcements or the publication of an act infringes rights or legitimate interests, it must limit itself to publishing in the corresponding official newspaper a succinct indication of the content of the act and of the place where the interested parties can appear, within the period established, to learn the full content of the aforementioned act and to record this knowledge.

Additionally, and on an optional basis, the administrations can establish other complementary forms of notification through the rest of the media, which do not exclude the obligation to publish in the corresponding official newspaper"

This forecast coincides with the collection in article 58.5 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (LRJPCat), relating to the limitation of the information to be published if this may harm legitimate rights or interests.

Pursuant to these legal provisions, and from the perspective of the principle of data minimization, it was considered in the resolution proposal that the inclusion in the edict notifications of all the personal data indicated in the proven facts section would be an excessive processing of personal data, since it was considered that the purpose pursued did not require its inclusion.

On the other hand, with regard to the recent change in criteria of the SCT, it was considered that the new system of publishing only the file number, the DNI/NIE of the interested party and the date of the infringement, is an improvement over of the systematics followed until this last change of criteria, based on what was established in the seventh additional provision of the LOPDGDD relating to the identification of those interested in notifications by means of advertisements. In these cases, in which the purpose pursued is not to inform the general public, but rather the purpose is to notify the interested person - who could not be notified personally - of the administrative act, the mechanism of identification of the interested parties must contain the minimum data necessary to allow them to know the existence of the notification, and the identification of the interested person with their DNI/ NIE conforms to the provisions in paragraph two of the first paragraph of the seventh additional provision of the LOPDGDD, which provides the following:

"When it comes to notification by means of announcements, particularly in the cases referred to in article 44 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, the affected person will be identified exclusively by means of the full number of your national identity document, alien identity number, passport or equivalent document.

When the affected person lacks the documents mentioned in the two previous paragraphs, the affected person will be identified only by means of their number and surname"

In the resolution proposal it was therefore concluded that an improvement had been introduced in the system used by the SCT, in its most recent version, which conforms to the provisions of art. 5.1.c) of the RGPD and the seventh additional provision of the LOPDGDD. But the same could not be said with respect to the system followed up to this last caveat of criteria and which is part of the imputed facts, to be considered contrary to the principle of data minimization, given that all the information already mentioned about the circumstances was disclosed of the infringement and the penalty imposed, a consideration against which no allegations were made in the hearing procedure, and which is maintained in this resolution.

3. In relation to the facts described in the proved facts section, it is necessary to refer to article 5.1.c) of the RGPD, which provides for the following:

"The personal data will be:

(...)

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data")"

As indicated by the instructing person, during the processing of this procedure the fact described in the proven facts section, which is considered constitutive of an infraction provided for in article 83.5.a) of the RGPD, conduct which in article 72.1.a) of the LOPDGDD has been considered very serious. Indeed, article 83.5.a) of the RGPD typifies as an infringement the violation of *"the basic principles for the treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9"*.

In relation to what has been indicated above about the fact that the RGPD would not be more unfavorable if compared to the system provided for in the repealed LOPD, it should be noted that in application of the latter, the facts here considered proven would be constitutive of the offense also classified as very serious, specifically in article 44.4.b), relating to the processing of data that had the designation of specially protected, as was the case of those relating to administrative offenses (art. 7.5 of the LOPD).

4. Article 83.7 of the RGPD provides that each Member State may establish rules on whether administrative fines can be imposed on authorities and public bodies, without prejudice to the corrective powers of the control authority under art. 58.2 of the GDPR. And adds article 84.1 of the RGPD that the member states must establish the rules regarding other sanctions applicable to the violations of this Regulation, in particular those that are not sanctioned with administrative fines in accordance with article 83. In this sense, art. 77.2 of the LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.

The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010, determines the following:

"2. In the case of infringements committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the infringement and establishing the measures to be adopted for

correct its effects. In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

In the present case, as already pointed out in the resolution proposal, it is not considered necessary to require measures to correct the effects of the infringement, since on 06/05/2019 this Authority verified that the SCT had modified the systematic publication in the official newspapers of notification announcements relating to sanctioning procedures, and in said announcements the interested persons are identified by means of full DNI/NIE.

In short, with this action accredited by the SCT, the main purpose pursued with the exercise of the inspection and sanctioning powers entrusted to this Authority would have been achieved, which is to ensure that the regulations on the protection of personal data are complied with and prevent him from violating this fundamental right again.

resolution

For all this, I resolve:

1. Admonish the Catalan Traffic Service as responsible for an infringement provided for in article 835.5.a) in relation to paragraph 1, letter c) of article 5, both of the RGPD. It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the legal basis 4rt.
2. Notify this resolution to the Catalan Traffic Service.
3. Communicate this resolution to the Ombudsman and transfer it to him literally, as specified in the third agreement of the Collaboration Agreement between the Ombudsman of Catalonia and the Catalan Data Protection Agency, dated June 23, 2006.
4. Order that this resolution be published on the Authority's website (www.apd.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal before the administrative contentious courts, within two months from the day after its

notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director,

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