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Autoritat Catalana de Protecció de Dades

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File identification

Resolution of sanctioning procedure no. PS 9/2019, referring to the Department of Labour, Social Affairs and Families (Ripoll Labor Office)

Background

1. On 12/06/2018, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Department of Work, Social Affairs and Families (hereinafter, the Department of TSF) , due to an alleged breach of the regulations on the protection of personal data.

Specifically, the person making the complaint stated that on 26/09/2017, he presented to the Labor Office of the Generalitat de Ripoll (hereinafter, OTG), from the Department of TSF, a request for the provision of the guaranteed citizenship income (hereafter, RGC), and that at the end of February 2018, and therefore after five months had passed since he had submitted the application without receiving any response from the Department, he called the OTG and from this office informed him that the Department had issued a decision denying the request, but he had not been properly notified due to a computer problem. The complainant added that the Department informed him by telephone that the notification of the resolution *was sent to the wrong address, where I previously resided"* and that *"During that period of time, in no case did I receive it at the current address listed to the request"*. Likewise, the complainant stated that this error would have caused him serious damage since for months he was unable to make allegations relating to his situation of social vulnerability in order to reverse the Department's decision, with the consequent lack of perception of the aid, and that such a situation would have caused him to accumulate economic debts.

The reporting person provided various documentation about the events reported:

- Copy of the request for the RGC benefit submitted on (...) before the TSF Department, where it is stated as the address of the person here reporting and there requesting (...)

- Copy of the instance presented by the person making the complaint before the TSF Department, on 03/01/2018, by which he requested a copy of the resolution denying the provision of RGC.
- Copy of the TSF Department's response letter to the request submitted by the person making the complaint on 01/03/2019, through which they inform you that on date (...) the general director of Social Economy of the Department had issued a resolution denying the RGC, and a copy of this is attached, which he is invited to pick up but not no address shown.

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2. The Authority opened a preliminary information phase (no. IP 148/2018), 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 October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they 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 involved.

3. In this information phase, on 06/13/2018 the reported entity was required to report on whether the resolution denying the provision of the RGC was sent to the person reporting here to an address erroneous, and in such case, that it reports on the wrong address to which it would have been sent; about the origin or provenance of this address; the reason for which this address would have been used if another had been stated in the application; and if the address had already been corrected in the file corresponding to the Department.

4. On 06/22/2018, the TSF Department responded to the aforementioned request through in writing in which he stated the following:

- That *"Despite entering all the data into the application manually, the computer system produced an error whereby, instead of recording his current Camprodon address, it kept the old address of this person of Campdevànol";*

- That the computer error had occurred *"in our internal application, the "Cúram". When Cúram detected that the person, with their respective NIF, already had a previous address - because it was already in our database -, the program was unable to change it for the new one or to enter a second one address in the applicant's profile, listing the new address as "preferred". It is for this reason that the computer program discarded the new address and kept the old one (..)"*

- That on (...)8 the resolution was issued denying the RGC to the person making the complaint, that *"in January 2018 the denial of this request was notified at its old address in Carrer (...) de Campdevànol"*

- That the conclusions of the letter were as follows: "1. *That this computer error, which has been mentioned and which produced this misunderstanding in the processing of personal data has already been corrected; 2. That at the moment, the correct address they have of the complainant is the current one where he lives (..) in Camprodon; 3. That in relation to the new application submitted on 3/06/2018, if there is no subsequent change by the applicant, notifications will be made to Camprodon's current address".*

5. On 06/28/2018, the TSF Department presented various documentation for the purposes of complement the letter dated 22/06/2018, and more specifically, the following:

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-Copy of the notice of the disputed resolution, dated (...), where the address of the person making the complaint is that of the incorrect address located in Campdevànol.
- Copy of *the Test and Incident Monitoring Report,* issued on 03/08/2018 by the RGC's Project Management Office.

6.- On 03/14/2019, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings regarding the TSF Department, for an alleged violation provided for in article 44.3.c in relation to the article 4.1 of the LOPD. Likewise, he appointed the official of the Catalan Data Protection Authority, Mrs (...) as the person instructing the file. This initiation agreement was notified to the imputed entity on 03/15/2019.

7.- On 03/29/2019, the TSF Department made objections to the initiation agreement.

8.-On 07/08/2019, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority declare that the TSF Department had committed a infringement related to the violation of the principle of data quality, provided for in article 44.3.c) in relation to article 4.1, all of them of the LOPD.

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.

The TSF Department had an information system for the management of applications for Guaranteed Citizenship Income (RGC), in which the applicant's data (name and surname, address, etc.) were entered manually. This data was automatically transferred to the system called "Cúram", and if this system detected that the applicant had a previous address, it discarded the most recent manually entered address, and kept the historical address. This situation, which the TSF Department itself qualified as a *"computer error",* led to the fact that, in the case of the person making the complaint here, through the office of (...) notification of the resolution was sent to him at his sole discretion. RGC request made on 09/26/2017, to a previous historical address and different from the one the interested person had stated in his request.

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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.

In the allegations made before the initiation agreement, the TSF Department referred to its letter dated 06/22/2018, through which it responded to the request made by this Authority in the prior information phase . The Department invoked the existence of a *"computer error in the Cúram internal application"* as the cause of the events reported here, an error which meant that when adding a new address to the personal data space of the holder an RGC request which already had a previous address, the program gave an error that did not allow the data relating to the new address to be updated. In the last one, the accused entity stated that this computer incident had already been resolved, and consequently, the data relating to the addresses of the persons applying for the RGC would have been updated *"responding to the current situation of the affected".*

Thus, the TSF Department did not deny the facts alleged there - and which are declared proven here - nor did it question the legal qualification made in the initiation agreement, but limited itself to acknowledging the existence of a computer error that it had already been resolved.

2.1.- About the computer error or the lack of intention.

As has been advanced, the Department invoked the existence of a *computer error,* and therefore, the eventual concurrence of an unintentional error in the commission of the imputed facts, an allegation that it must be traced back to the principle of culpability. On this, as this Authority has pronounced in several resolutions (for all, the resolution of sanctioning procedure no. PS 52/2012 – available on the website http://apdcat.gencat.cat)- it is necessary to go to the jurisprudential doctrine on the principle of guilt, both from the Supreme Court and from the Constitutional Court. According to this doctrine, the sanctioning power of the Administration, as a manifestation of the "ius puniendi" of the State, is governed by the principles of criminal law, and one of its principles is that of guilt, incompatible with a regime of objective responsibility without fault, in accordance with what was determined by article 130.1 of the already repealed Law 30/1992, and what is currently provided for by article 28.1 of Law 40/2015, of October 1, of the legal regime of the public sector (hereinafter the LRJSP).

In this sense, the Supreme Court in several rulings, all of 16 and 22/04/1991, considers that from this element of guilt it follows that the action or omission qualified as

an administratively punishable offence, must in any case be attributable to its author, due to negligence or imprudence, negligence or inexcusable ignorance. Also the National Court, in the Judgment of 06/29/2001, precisely in matters of personal data protection, has declared that to appreciate this element of culpability *"simple negligence or non-compliance with the duties imposed by the Law is sufficient to the persons responsible for files or data processing to exercise extreme diligence.".* In this regard, it is clear that the TSF Department did not act with the necessary diligence in the treatment of the disputed data, since if it had done so, the computer error that prevented the updating of the data would have been detected personal data of the complainant here, specifically the reference to the address that was included in the request of the RGC. Consequently, the culpability element required by article 28.1 of the LRJSP also applies here. At this point it is also worth highlighting that the duty of care is maximum when activities are carried out that affect fundamental rights, such as the right to the protection of personal data. This was declared by the SAN of 5/2/2014 (RC 366/2012) issued in matters of data protection, when it maintained that the status of person responsible for the processing of personal data *"imposes a special duty of diligence when it comes to the use or treatment of personal data or its transfer to third parties, in what concerns the fulfillment of the duties that the legislation on the protection of physical persons, and especially their honor and personal and family privacy, whose intensity is enhanced by the relevance of the legal assets protected by those rules".*

The SAN of 08/10/2003 is also of interest, which explains the following:

"Therefore, contrary to what is ordered in art. 11.1 of Law 15/1999, of December 13 on Protection of Personal Data, the appellant entity communicated personal data to a third party without the consent of the affected person, without meeting the causes established in section 2 of that article for that consent is not required, and without his conduct being covered by art. 12 of the same Law.

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For what affects culpability, it must be said that generally this type of behavior does not have a malicious component, and most of them occur without malice or intentionality.
It is enough to simply neglect or fail to comply with the duties that the Law imposes on the persons responsible for files or data processing to exercise extreme diligence to avoid, as in the case at hand, a processing of personal data without the consent of the person concerned , which denotes an obvious lack of compliance with those duties that clearly violate the principles and guarantees established in Organic Law 15/1999, of December 13, on the Protection of Personal Data, specifically that of the consent of the affected person.

Likewise, the judgment of the Supreme Court of 25/01/2006, also issued in the area of data protection, is based on the required diligence and establishes that intentionality is not a necessary requirement for a conduct to be considered guilty .

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Regarding the degree of diligence required, the SAN of 12/14/2006 declares: *"the Supreme Court considers that imprudence exists whenever a legal duty of care is neglected, that is, when the offending subject does not behave with diligence required And the degree of diligence required must be determined in each case in attention to the concurrent circumstances, such as the special value of the protected legal property, the professionalism required of the infringer, etc.""*

In short, it is necessary that in the conduct that is imputed there must be an element of culpability, but in order for culpability to exist it is not necessary that the facts have occurred with intent, but it is sufficient that negligence or simple non-observance And the latter is what would have happened in the present case, according to this instructor, as indicated in the resolution proposal.

Indeed, the facts presented here show that the TSF Department did not implement the necessary control measures on the *"Cúram"* application aimed at reducing the risks in the processing of personal data collected in RGC requests, and this lack of diligence caused, in the case at hand, that the resolution of the request was erroneously sent to an old address where the recipient no longer resided. In addition, it should also be borne in mind that from the documentation provided by the accused entity, and specifically from the *"Test and incident follow-up report",* it did not appear that the erroneous treatment of personal data had affected, solely , to a single natural person, that is to say, that it was a one-time error, but on the contrary, that it was an error that persisted over time and that could have affected a plurality of individuals alone RGC bidders.

All these circumstances led us to consider that, if the TSF Department had acted with the required diligence, this inclusion of erroneous data in the *"Cúram" computer program,* which is the subject of imputation here, would not have occurred.

2.2.- On the measures taken to correct the IT incident

Also in the statement of objections to the initiation agreement, the TSF Department referred to the *"Test and incident follow-up report",* provided together with its statement of response to the request made by this Authority in the framework of the previous information, as evidence to substantiate that when *the "computer error"* became known, a series of appropriate measures were adopted in order to correct the situation caused by the aforementioned incident and, also, to avoid repetition in the future. From the documentation provided, it was established that the aforementioned report was dated prior (03/08/2018) to the date on which the complainant filed the complaint with this Authority (06/12/2018) in which he set out the reported events that had happened months before, and therefore prior to the request made by this Authority to the accused entity. That is to say, that this IT incident would have been resolved even before the facts alleged here were brought to the attention of this Authority.

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In any case, in the resolution proposal it was pointed out that the measures implemented by the TSF Department after the incident that is the subject of this sanctioning procedure, could not distort the imputed facts nor their legal qualification, without prejudice of the impact that the resolution of the problem could have on the corrective measures to be ordered.

Based on what has been set out in this legal basis, in the resolution proposal it was concluded that the allegations made by the TSF Department could not succeed, a consideration against which no allegations were made in the procedure hearing, and which is maintained in this resolution.

3.- In relation to the facts described in the proven facts section, relating to the principle of data quality, it is necessary to refer to article 4.1 of the LOPD, which provided for the following:

"The personal data must be accurate and updated so that they accurately reflect the current situation of the affected person"

Well, as indicated by the instructing person, during the processing of this procedure, and as has been argued in the previous legal basis, the fact described in the section on proven facts has been duly proven, which considered constitutive of the serious infringement provided for in article 44.3.c of the LOPD, which typified as such:

"Processing personal data or using it later in violation of the principles and guarantees established in article 4 of this Law and the provisions that deploy it, except when it constitutes a very serious infringement".

On the other hand, article 26 of Law 40/2015, of October 1, on the legal regime of the public sector provides for the application of the sanctioning provisions in force at the time the events occurred, except that the subsequent modification of these provisions favor the alleged infringer. That is why, in this act, the eventual application to the present case of the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons regarding the processing of personal data and the free movement thereof (RGPD). And as a result of this analysis, it is concluded that the eventual application of this rule would not alter the legal classification that is made here, and specifically would not favor the person responsible for the infringement.

4.- In the event of the infringements provided for in article 44 of the LOPD, for the case of files or treatments of Public Administrations, article 21.2 of Law 32/2010, in line with article 46.1 of the LOPD empowers the director of the Authority so that, in the resolution declaring the infringement, she can establish the measures to be adopted so that the effects of the infringement cease or are corrected. In the present case, it becomes unnecessary to require corrective measures for the effects of the infringement since the infringing conduct refers to a

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fait accompli, and that the IT incidents that caused the violation of the principle of quality in the treatment of data, specifically in its aspect of the principle of accuracy of the data relating to the addresses of the persons holding the sole requests from the RGC have already been resolved.

resolution

For all this, I resolve:

1. Declare that the Department of Labour, Social Affairs and Families (Labor Office of Ripoll) has committed the offense related to the violation of the principle of data quality provided for in article 44.3.c) in relation to article 4.1 , all of them from the LOPD.

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 Department of Work, Social Affairs and Families (Ripoll Labor Office).

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 the 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.

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The director,