

## File identification

Resolution of sanctioning procedure no. PS 36/2020, referring to Geseme Asistencial, SL.

## Background

1. On 09/10/2019, the Catalan Data Protection Authority received two letters from a person for which he filed a complaint against the City Council of (...) and against Geseme Asistencial, SL (in forward, Geseme), due to an alleged breach of the regulations on the protection of personal data. The complainant explained that the City Council of (...) refused the exchange to the Local Police of (...) given that the result of the medical examination (performed by Geseme) was "unfit". He added that, after exercising his right of access before the City Council, he was provided with his history with the results of tests and analytics, among others. In the last one, the complainant stated that on 03/06/2019 he had requested from Geseme the reasons for his exclusion, but that he had not received a response in this regard.

The complainant provided various documentation, including the documentation that Geseme provided to the City Council of (...) in relation to the medical examination carried out on the complainant. As indicated in the document that Geseme drew up on the content of said submission, the "Result of the exercise 6" was sent to the City Council (report of 02/18/2019); a "Closed envelope for the attention of the qualifying court" (which according to Geseme contained the data collection sheet, the analysis, the electrocardiogram, the health questionnaire and the record of request and chain of custody); and a "Envelope sealed for the attention of the applicant".

2. The Authority opened a preliminary information phase (no. IP 272/2019), 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 21/10/2019 the City Council of (...) was required to, among others, provide a copy of the contractor contract signed with Geseme for the performance of the medical tests to which the reporting person underwent on the occasion of his exchange request; as well as in order to point out if the person in charge had been given any instruction consistent with the fact that only the qualification of these medical tests had to be communicated to the City Council (pass or not pass).

4. On 14/01/2020, the City Council of (...) responded to the above-mentioned request in a letter in which it set out, among others, the following:

- That the City Council commissioned Geseme to carry out the medical tests a to which the complainant submitted.
- That since it was a minor contract, the request was made by email.
- That in the request email that was sent to Geseme, the announcement of the bases of a police officer selection process was attached, which contained the table of medical exclusions and in the in which it was stated, in clause 7a, section B, point 7, that the exercise would be qualified as suitable or not suitable.
- That for the City Council, the communication of pass or fail of the results of the tests medical was already enough to solve the file.

The City Council attached various documents to the letter, including the email of 12/02/2019 sent by the Council to a medical professional from Geseme requesting an appointment to carry out a medical examination of the complainant and which attached the bases "of a selection process for the same category (police officer)", although these bases did not correspond to the system of provision that was being processed in the reported case (an exchange ), given that annex 3 of these bases contained the table of medical exclusions that determined the result of not being fit to join the City Council as a local police officer (...).

Among the documentation provided by the City Council was also a report issued on 02/18/2019 by a certain medical professional from Geseme addressed to the City Council's qualifying tribunal. Together with this document, the City Council provided the record of the collection of the urine sample (which contained the medication of the reporting person), a sheet containing the results of the tests carried out (vision, audiometry, etc. ) and the clinical examination, the health questionnaire, the result of the blood and urine analysis and the electrocardiogram.

5. On 01/23/2020, also during this preliminary information phase, Geseme was required to, among others, report on whether, apart from the document of 02/18/2019 signed by a medical professional, the rest of the documentation described above (urine sample, health questionnaire, electrocardiogram, etc.) was delivered in the sealed envelope addressed to the qualifying board, or in the sealed envelope addressed to the aspirant.

6. On 04/02/2020, Geseme responded to the aforementioned request in writing in which it stated, among others, the following:

- That in accordance with point 7 (first paragraph) of the regulatory bases of the selection process of the City Council of (...) applicable in this case, as indicated by the City Council itself, the medical exclusions are established in Appendix 3 "BOX

- MEDICAL EXCLUSIONS". In accordance with Annex 3, it is inferred that the qualifying court is authorized to assess, according to its criteria, the content of the medical tests (points 6.2 and 11.6 of Annex 3 of the bases). "We interpret that this is confirmed by the fact that points 10.9 and 12.5 of Annex 3 of the ABR specify the 'optional criterion' (different from the TQ criterion mentioned above)."
- That in accordance with point 8 (third paragraph) of the rules, it will be delivered to the court qualifier a report of each of the applicants.
  - That in accordance with what has been explained in relation to Annex 3 of the bases, "it is understood that the report is the completed medical report, which allows the TQ [qualifying court] to make the relevant assessments ."
  - That Geseme also participates in the selection processes of the Generalitat's Police and Fire Brigades, in which the procedure is identical. By way of example, in Resolution INT/ 676/2018, of April 4, calling for a selective process for access to the firefighter category of the basic scale, it is established that "The realization of the medical tests implies the consent of the participating people for the corresponding results to be made available to the Qualifying Court in order to serve as a basis for evaluating the test. The qualification of this test is pass or fail.
  - That from the above, it follows that the final qualification of the medical test (pass/fail) corresponds to the qualifying court.
  - That in accordance with the above, the conclusion is reached that the final resolution of "Suitable" or "Not Suited" indicated in point 7 of the bases is made by the qualifying court; regardless of the previous qualification of the medical professional.
- ÿ That the legal basis that would legitimize the communication of health data of the person reporting to the City Council of (...), is the fulfillment of a legal obligation; in accordance with the content of article 19 of Decree 233/2002, of 25 September, which approves the Regulation on access, promotion and mobility of local police (hereinafter, Decree 233/2002); drawn up on the basis of Law 16/1991, of July 10, on Local Police (hereinafter, Law 16/1991).
- ÿ That the rest of the documentation, apart from the document of 02/18/2019, was delivered to the qualifying court by certified mail and, therefore, closed.

Geseme provided various documentation.

7. On 08/07/2020, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against Geseme for an alleged infringement provided for in article 83.5.a), in relation to article 5.1 .c); all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 07/14/2020.

8. In turn, and also on 07/08/2020, an agreement was issued to initiate disciplinary proceedings against the City Council of (...) for not signing the corresponding data controller contract with Geseme .

9. On 07/28/2020, Geseme submitted objections to the agreement to initiate the present sanctioning procedure.

10. On 14/10/2020, the person instructing this procedure formulated a resolution proposal, by which it was proposed that the director of the Catalan Data Protection Authority impose on Geseme the sanction consisting of a fine of 5,000 euros (five thousand euros), as responsible for an infringement provided for in the Article 83.5.a) in relation to Article 5.1.c), both of the RGPD.

This resolution proposal was notified on 29/10/2020 and a period of 10 days was granted to formulate allegations.

11. On 11/09/2020, the accused entity acknowledged its responsibility for the alleged acts and certified the voluntary payment in advance of the pecuniary penalty proposed by the investigating person, once the corresponding reductions have been applied.

proven facts

By email dated 02/12/2019, the City Council of (...) commissioned Geseme to carry out a medical examination of the complainant (police officer), who had requested an exchange for work in the City Council. In that e-mail, the City Council attached the final criteria for a selection process for the same category (police officer) "to see what the medical exclusion table is, in order to be ineligible to join as a local police officer in the City Council of (...)."

This medical examination was carried out by Geseme on 02/14/2019.

On 18/02/2019, a certain medical professional of Geseme issued a report addressed to the qualifying tribunal (although in that exchange procedure there was no qualifying tribunal) in which it was indicated that as a result of the examination and of the complementary tests carried out, the complainant presented some reasons for exclusion, in accordance with those contemplated in the basis of the invitation sent to him by the City Council. In that report it was added as "other considerations", that "the analytical result shows a moderate alteration of the lipid profile and a copy of its analysis is attached in a sealed envelope in case the qualifying court considers the willingness to deliver to the aspirant. These values are not considered as a reason for exclusion. (...)"

In addition to the envelope addressed to the person making the complaint, along with said report of 02/18/2019, Geseme also addressed to the qualifying court a closed envelope containing the data collection sheet (with observations on malformations or injuries, the clinical examination and the results of the Ishihara test, dynamometry, vision, spirometry, audiometry and urine strip detection), the analytical (blood and urine), the electrocardiogram, the health questionnaire and the request report (the record of collection of the urine sample, which contained the medication taken by the reporting person) and the document relating to the chain of custody.

In order to comply with the order carried out, it was sufficient for Geseme to inform the City Council of the pathologies that, in accordance with the list of exclusions provided by the City Council, led to the complainant being considered unfit .

#### Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of the 2nd DT 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. In accordance with article 85.3 of the LPAC, both the recognition of responsibility and the voluntary advanced payment of the proposed monetary penalty lead to the application of reductions. The effectiveness of these reductions is conditioned on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction. For both cases, sections 1 and 2 of article 85 of the LPAC provide for the termination of the procedure.

Although it presented allegations in the initiation agreement, the accused entity has not formulated allegations in the resolution proposal, since it has accepted the mentioned two options to reduce the amount of the penalty. However, it is considered appropriate to reiterate below the most relevant of the reasoned response that the instructing person gave to the allegations before the initiation agreement.

#### 2.1. About the data controller.

In the 1st section of its statement of objections to the initiation agreement, the accused entity stated that the person responsible for the controversial treatment was the City Council of (...) (specifically, the qualifying court), since he was the one who determined the purposes and means of the treatment. So, Geseme stated that he had the status of the person in charge of the treatment.

In fact, as set out in the initiation agreement and also included in the proven facts section, it was the City Council of (...) that commissioned Geseme to carry out a medical examination on the reporting person. So, in the present case the City Council had the status of responsible for the treatment and Geseme acted as the person in charge of the treatment.

It is worth saying that, as explained in the background, a disciplinary proceeding was initiated against the City Council for not signing the corresponding data processor contract with Geseme.

Having said that, as pointed out by the instructing person in the resolution proposal, the status of data controller does not exempt Geseme from being responsible for some violations provided for in the regulations on data protection, given that article 70 of the Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereafter, LOPDGDD) provides that they are subject to the sanctioning regime established by the RGPD and the LOPDGDD itself, among others, those in charge of the treatment.

## 2.2. About consent.

Subsequently, the accused entity alleged in its statement of objections to the initiation agreement that for the performance of the exercise consisting of a medical examination, the City Council of (...) notified Geseme the basis of the competition and the conditions under which the said medical examination that had to be carried out on the candidate (the reporting person) would be carried out.

First of all, it must be made clear that the disputed medical examination took place in the framework of an extraordinary procedure for the provision of jobs (exchange of jobs), in which no qualifying court was appointed.

Proof of the above is that the Local Government Board of the City Council of (...) agreed on 03/18/2019 to deny the exchange requested by the person making the complaint, based on the legal report issued by the head of Human Resources and Organization Administrative Office of the City Council and the report issued on 12/02/2019 by the City Council's Prevention Service (Geseme). Precisely, in said Agreement it was pointed out that the report issued by Geseme showed the lack of aptitude of the person making the complaint here to carry out the job that was requested to be exchanged.

Having established the above, Geseme stated in his written statement of objections to the initiation agreement that the complainant, at the time of the medical examination, completed a health questionnaire drawn up by the City Council of (...). In turn, Geseme influenced that in said questionnaire the express authorization of the affected person was obtained, in the following terms:



"Who subscribes to this questionnaire:

- You expressly consent to the data you provide us being integrated into the processing process of the selection process with the exclusive publicity of the aptitude result if applicable.
- He declares that the above answers are true and that he has not omitted any information about his state of health.

In any case, you can exercise your rights of access, rectification, cancellation and opposition through a written communication, to which you must attach a photocopy of your ID, addressed to the President of the qualifying tribunal for this call at Plaça de the (...) 1, (...)."

Precisely, in its statement of objections to the initiation agreement, the imputed entity proposed as evidence to require the City Council of (...) in order to provide the health questionnaire completed by the reporting person, duly signed and completed at the time of the medical examination.

Well, as specified in the resolution proposal, the complainant, together with his written complaint, provided a copy of the health questionnaire prepared by the City Council of (...) that he completed on 02/14 /2019, where it was stated that he had ticked the two transcribed boxes, which is why it was unnecessary to practice the test proposed by Geseme.

Having said that, it should be emphasized that the express consent given by the reporting person through the health questionnaire referred exclusively to the data provided in the health questionnaire, but not to the rest of the data obtained as part of the medical examination

Linked to the above, Article 4.11 of the RGPD defines consent as any manifestation of free, specific, informed and unequivocal will by which the interested party accepts, through a statement or a clear affirmative action, the processing of data personal that affect it.

In the present case, as stated by the instructing person in the resolution proposal, the consent obtained by the City Council through said questionnaire was not free. And this, because there is a clear imbalance between the interested party and the person in charge of the treatment, also taking into account that the person in charge of the treatment was a public administration to which the exchange was requested (recital 43 of the RGPD ).

In this sense, it is worth saying that the European Data Protection Committee (hereafter CEPD) has considered in Directives 5/2020 on consent according to the RGPD, approved on 05/04/2020, that given that there there is often a clear imbalance of power between the public authorities and the person concerned

other legal bases that are more appropriate to the activity of public authorities. The CEPD also points out that there is a situation of power imbalance in the work context.

Also, in the aforementioned Guidelines, the CEPD states that to consider the treatment to be free, the affected person must be able to choose and have real control over their data. In the present case, however, no alternative was given to the affected person, who could not refuse or withdraw consent without suffering prejudice.

In addition, in the same guidelines, the CEPD indicates that in order to consider that consent is informed, one of the minimum requirements about which the person concerned must be informed is about the right to withdraw consent at any time, an extreme on which the 'City Council did not inform. As things stand, said consent was also not informed.

In short, in the present case consent was not the legal basis that legitimized the treatment linked to the medical examination carried out on the reporting person.

Having established the above, as indicated by the instructing person, it is necessary to emphasize that in the present case the violation of the principle of legality is not imputed, but of the principle of minimization.

### 2.3.- About the aptitude.

The accused entity stated in its statement of objections to the initiation agreement that in point 7 of the regulatory bases for the selection process of the City Council of (...), it was indicated that the medical examination test "Consists of a medical examination, carried out by registered doctors, to verify that none of the medical exclusions established in Annex 3 of this call are detected in the applicants".

Geseme added that the verification and decision regarding the aptitude of the applicants was responsibility of the qualifying court, without the medical center where the tests were carried out having more powers beyond the recognition, nor could it assess any other issue.

In advance, as specified by the instructing person in the resolution proposal, even if a treatment may be lawful, it must also respect the rest of the principles provided for in article 5 of the RGPD, among which, the principle of minimization (art. 5.1.c RGPD). These principles, against what he considered

Geseme, they must be observed by both the person in charge and the person in charge of the treatment.



Having said that, it should be noted that in the email sent by the City Council to Geseme on 02/12/2019, it was indicated that the final criteria for a selection process for the same category (police officer) were being sent, only for the purposes of "seeing what is the list of medical exclusions, in order to be ineligible to join the City Council of (...) as a local police officer."

Thus, the exchange procedure was not regulated by what was established in the bases of a police officer selection process, but rather the City Council gave instructions to Geseme so that in the medical examination that he had to carry out in the reporting person, take into account the causes of exclusion provided for in said bases.

Without prejudice to the above, it should be pointed out that the 7th point of said bases, regarding the medical examination, provided that this "exercise will be qualified as fit or not fit", and that in the event that any candidate "does not obtain medical fitness, the court will summon the next candidate."

From the above, it is concluded that it is the medical professionals who must assess whether the person undergoing the medical examination has any reason for medical exclusion (in this case, provided for in annex 3 of the bases) .

So things are, in order to comply with the order made by the City Council, it was sufficient for Geseme to inform the data controller (the City Council) about the pathologies that, in accordance with the list of exclusions provided by the City Council, led to the complainant being considered unfit.

Therefore, providing the reporting person's health data to the City Council, beyond the pathologies that, according to medical judgment, could become a cause of exclusion, was inadequate, impertinent treatment and not limited to what is necessary to achieve the purpose pretense (complying with the City Council's task of determining the medical fitness of the person making the complaint).

Having said that, as was done in the proposed resolution, it is considered appropriate to invoke here the sectoral regulations that were cited in the initiation agreement regarding the performance of the medical test for the purposes of determining whether it was appropriate to authorize the exchange requested by the reporting person.

First of all, the transitional provision 6a of Law 16/1991 provides that "The system of horizontal mobility of local police officers between the bodies of the different corporations must be determined by regulation."

In this respect, article 55.1.e) of Decree 233/2002 establishes that the authorization of the exchange remains subject to the fulfillment, among others, of the following requirement:

"e) That there are favorable reports provided for in article 57 of these Regulations."

Article 57.2 of Decree 233/2002 to which the transcribed precept is referred determines that "At a minimum, the report must refer to compliance with the requirements provided for in Article 55 of this Regulation, the suitability of the official or career civil servant to perform the functions corresponding to the category in accordance with the characteristics of the police organization where he wants to be assigned, and the balance of conditions between the civil servants who have submitted the request for joint exchange. For this purpose, the aforementioned bodies must hold the meetings and contacts that are necessary."

In turn, article 58.1 of Decree 233/2002 provides that "In order to draw up the previous report, any of the means of accreditation of merits and capacities provided for in this regulation for horizontal mobility competitions can be used."

In this sense, article 42.2.b) of Decree 233/2002, regarding the requirements to be able to participate in calls for horizontal mobility contests, establishes that it is necessary to "Certify that you possess the physical and mental conditions necessary to exercise the functions of the category subject to the call."

In this respect, article 14.a) of Decree 233/2002 provides that the selective tests for access to each of the different categories, at least, are the following:

"a) For the agent category: cultural, knowledge of the Catalan language, physical, psychotechnical and medical tests."

And, in relation to medical tests, article 19 determines that:

"19.1. The medical tests consist of a medical examination, carried out by registered doctors, to verify that none of the medical exclusions established in the call are detected in the applicants.

19.2. This medical examination can be done in two phases. In this case, the bases specify the tests that are carried out in each of them.

19.3. Regardless of the medical examination test that may be established by the call, during the course or the internship period, or at the end of this period, applicants may undergo all the medical tests that are necessary to verify their suitability for the table of medical exclusions established to enter the category. If the tests carried out show the existence of any reason for exclusion, the responsible body must propose, in accordance with the severity of the illness or physical defect,

the exclusion of the applicant from the selection process and, in this case, it is up to the competent body to make the appointments to adopt the appropriate resolution, which in no case can give the right to compensation.

19.4. The basis of the calls can establish that only those applicants who have obtained the best score in the selection process, in a number equal to the number of places to be filled, pass the medical tests and that if among them there is any leave, voluntary or due to disqualification, applicants who have the immediately lower scores are notified in order of priority.

19.5. The qualification of these tests is either pass or fail.

In accordance with what has been explained, the recognition carried out by medical professionals must aim to determine whether the person has any of the medical exclusion causes. In the case of medical exclusions, their concurrence necessarily that of observing a medical professional.

Therefore, it should be reiterated again that it was unnecessary for Geseme, once he had carried out the medical examination of the complainant, to send the data collection sheet (which contained observations on malformations or injuries, the clinical examination and the results of the Ishihara test, dynamometry, vision, spirometry, audiometry and urine strip detection), analytical (blood and urine), electrocardiogram, health questionnaire and the request report (the record of collection of the urine sample, which contained the medication taken by the reporting person) or the document relating to the chain of custody; nor was it necessary for the report drawn up by a Geseme medical professional on 02/18/2019 to state a circumstance (the moderate alteration of the lipid profile) that was not considered a cause of exclusion.

Finally, the accused entity invoked the principle of typicality in its statement of objections to the initiation agreement, to consider that the principles relating to the treatment contemplated in article 5 of the 'RGPD and that he could provide the City Council with all the health data he provided.

Apart from the fact that the circumstances that, in the opinion of the accused entity, violate the principle of typicality have already been addressed, it should be pointed out that the principle of typicality is regulated in article 27 of Law 40/2015, of 1 of October, of the legal regime of the public sector. In accordance with this principle, only violations of the legal system provided for as such violations by a Law constitute administrative infractions, without prejudice to what is provided for local administration in title XI of Law 7/1985, of 2 of April

In the present case, the offense imputed to Geseme is provided for in the RGPD and the LOPDGDD. Therefore, the principle of typicality is not violated.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5.1.c) of the RGD, which regulates the principle of data minimization determining that the personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated".

As indicated by the instructing person, during the processing of this procedure the fact described in the proven facts section, which is constitutive of the infringement provided for in article 83.5.a) of the RGD, has been duly proven, which typifies the violation of the "basic principles of treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9", among which the principle of minimization is contemplated.

The conduct addressed here has been included as a very serious infraction in article 72.1.a) of the LOPDGDD, in the following form:

"a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679."

4. As Geseme is a private law entity, the general penalty regime provided for in article 83 of the RGD applies.

Article 83.5 of the RGD provides for a maximum fine of 20,000,000 euros, or in the case of a company, an amount equivalent to a maximum of 4% of the total annual business volume total of the previous financial year, opting for the higher amount. This, without prejudice to the fact that, as an additional or substitute, the measures provided for in clauses a) ah) ij) of Article 58.2 RGD may be applied.

In the present case, as explained by the investigating person in the resolution proposal, the possibility of substituting the sanction of an administrative fine with the sanction of reprimand provided for in article 58.2.b) RGD should be ruled out, given that the infraction affects the essence of the minimization principle.

Once it has been ruled out that the penalty of an administrative fine should be replaced by a warning, it is necessary to determine the amount of the administrative fine that corresponds to impose According to what is established in articles 83.2 RGD and 76.2 LOPDGDD, and also in accordance with the principle of proportionality enshrined in article 29 of Law 40/2015, as indicated by the investigating person in the proposed resolution, the sanction should be imposed of 5,000 euros (five thousand euros). This quantification of the fine is based on the weighting between the aggravating and mitigating criteria indicated below.

As mitigating criteria, the concurrence of the following causes is observed:

- The reduced number (1) of people affected and the duration of the infringement - which was consummated at the moment that Geseme provided the City Council with all the documentation linked to the medical examination carried out on the reporting person - (art. 83.2.a RGPD and 76.2.a LOPDGDD).
- The fact that it is not recorded that Geseme has committed any offense previously (art. 83.2.e GDPR).
- The lack of benefits as a result of the commission of the offence, beyond the price paid by the City Council for the medical examination carried out on the complainant -96 euros- (art. 83.2.k RGPD and 76.2.c LOPDGDD).
- The lack of formalization of a data controller contract by the data controller in the terms established in article 28 of the RGPD where the controller's instructions were stipulated (art. 83.2.k RGPD).

On the contrary, as aggravating criteria, the following elements must be taken into account:

- The category of personal data affected by the infringement - affected a special categories of data – (art. 83.2.g RGPD).
- Linking the offender's activity with the practice of data processing personal (art. 83.2.ki 76.2.b LOPDGDD).

5. On the other hand, in accordance with article 85.3 of the LPAC and as stated in the initiation agreement, if before the resolution of the sanctioning procedure the accused entity acknowledges its responsibility or does the voluntary payment of the pecuniary penalty, a 20% reduction must be applied on the amount of the provisionally quantified penalty. If the two aforementioned cases occur, the reduction is applied cumulatively (40%).

The effectiveness of the aforementioned reductions is conditional on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction (art. 85.3 of the LPAC, in fine).

Well, as indicated in the background, on 09/11/2020 the accused entity has acknowledged its responsibility. Likewise, on the same date he paid 3,000 euros (three thousand euros) in advance, corresponding to the amount of the penalty resulting once the cumulative reduction of 40% has been applied.

6. Given the findings of the violations provided for in art. 83 of the RGPD in relation to privately owned files or treatments, article 21.3 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, empowers the director of the Authority for the resolution declaring the infringement to establish the appropriate measures so that its effects cease or are corrected. In the present case, as indicated by the instructing person in the resolution proposal, no measure is necessary to correct the effects of the infringement, given that it is a *fait accompli*.

However, the accused entity must be warned that, in those cases in which it acts as the person in charge of the treatment, providing the person in charge with information that does not comply with the principle of data minimization may infringe the regulations on Data Protection.

resolution

For all this, I resolve:

1. Impose on Geseme Asistencial, SL, the sanction consisting of a fine of 5,000.- euros (five thousand euros), as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), 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 6th legal basis.

2. Declare that Geseme, in application of article 85 of the LPAC, has made effective the advanced payment of 3,000 euros (three thousand euros), an amount that corresponds to 60% of the amount of the monetary penalty that the instructing person proposed in the resolution proposal.

3. Notify this resolution to Geseme.

4. Order that this resolution be published on the Authority's website (apdcat.gencat.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.

The director,

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