

File identification

Resolution of sanctioning procedure no. PS 58/2022, referring to the Sant Francesc d'Assís Foundation (Les Hortènsies residential center)

Background

1. On 04/05/2021, the Catalan Data Protection Authority received a letter from the works committee of the Hortènsies d'Alella residential center for which it filed a complaint against the Sant Francesc d'Assís Foundation (in hereinafter, FSFA), due to an alleged breach of the regulations on the protection of personal data. Specifically, it stated that the FSFA installed a video surveillance system in the Hortènsies d'Alella residential center, which would have as its purpose the labor control of employees, without having previously communicated this to the works committee. He added that the video surveillance system would also capture the voice.

The reporting entity provided various documentation from which it was inferred that said video surveillance system would be used for the purposes of labor control of workers.

Later, on 05/05/2021, he received a new letter from the same entity through which it was reported that cameras had been installed inside the rooms of some users.

2. The Authority opened a preliminary information phase (no. IP 193/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to 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 were susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 18/05/2021 the reported entity was required to report, among others, how it was informed, in advance and expressly, about this labor control measure as determined by article 89.1 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD); whether the aforementioned video surveillance system also captured the voice; as well as if there were video surveillance cameras inside the rooms of some users of the center.

4. On 05/31/2021, the FSFA responded to the above-mentioned request in writing in which it stated the following:

- That the center provides care for people with profound mental disabilities who need generalized support, as well as some places with users with behavioral disorders. It is a group of vulnerable people who, due to their clinical fragility, require comprehensive attention. The technical support of the cameras gives the complementary tools for a more effective protection of the users.
- That these cameras also allow a more accurate analysis of the risk situations that can take place daily in the center and guarantee a more objective and faster point of view in the resolution of conflicts, both for users and staff.
- That from 06/10/2019, the information document on video surveillance treatment began to be distributed to all staff, both old and new. This document communicated the purpose of data processing and specified the possible use of these tools for the purposes of labor control and monitoring of workers' tasks.

- That the installation of the cameras was communicated to the Company Committee in an ordinary meeting on 03/06/2019. Subsequently, on 03/15/2019, a document was signed in which the committee certified that it had been informed of the implementation of video surveillance and its use.
- That on 06/10/2019 the committee was informed that the cameras could also have the purpose of labor control; and on 04/11/2019, the committee was informed of the desire to expand the video surveillance circuit.
- That the Labor and Social Security Inspection required the FSFA to provide the report of the legal representation of the workers, regarding the video surveillance system, which was issued on 07/29/2021.
- That the video surveillance system does not capture the voice.
- That following the COVID, some rooms that had cameras were converted into rooms, to create independent living spaces for room groups.
- That it was valued to keep the cameras that were in the rooms converted into rooms for the reasons explained below.
- That in Unit 6, the two rooms where 10 users sleep have cameras. The reason for keeping them *"has been the use of the live viewing that we have given them by the auxiliary staff of the night shift during the state of emergency and which, due to the current structure, are still necessary, since this Unit is located outside the main building and during the night, the auxiliary staff use it to ensure the night surveillance of the users apart from the established surveillance rounds. It must be taken into account that being outside the main building, the surveillance of those users during the night is reduced by not hearing them as when they were located in the night area before the state of emergency."*
- That the *"night shift can also see room nº 1 of Unit 7 live, where 3 users sleep, which was also a room before. This camera has been maintained due to the behavioral characteristics of some of the users who sleep there, which to present behavioral disorders, it improves the surveillance of the night shift."*
- That in *"Unit 5, in rooms 1, 2 and 3, where 14 users sleep, there are also cameras. It was decided not to uninstall them for two reasons. First of all because room nº1, during the state of pandemic, has been used for different services, from the users' living room, viewing room, dining room and currently a bedroom. Having to also create, at the request of the Administration, a Covid zone with assistance rooms and bathrooms that must be kept empty to assist potential users with Covid - 19, it represents for us to have a space of the Center in disuse until we can re-incorporate it as a residential use area, which could allow these rooms to function as living rooms again. The second reason was that when deciding which users would go to Unit 5, we prioritized those users whose behavioral characteristics, the cameras would help in the analysis of their behavior and subsequent treatments."*
- That the *"live viewing of the auxiliary staff during the night is limited to 3 rooms, the two in Unit 6 and nº1 in Unit 7."*

The reported entity attached various documentation to the letter.

5. On 07/06/2021, the FSFA was again requested to indicate whether, before the pandemic, there were cameras installed in any room.

6. On 10/06/2021, the FSFA responded to the previous request through a letter in which it explained that, prior to the pandemic, *"we did not have any cameras in the rooms, only in passage and common areas."*

7. On 09/22/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Sant Francesc d'Assís Foundation 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 circulation thereof (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 09/26/2022.

8. The initiation agreement explained the reasons why no charges were made with respect to other reported facts. In summary, with respect to the fact that the reported entity had not informed the works committee of the residential center about the installation of a video surveillance system for the control of workers, nor had it communicated the identity of the persons authorized by view the images captured by the cameras, it was considered appropriate to file the complaint regarding these facts given that the data protection regulations do not classify them as an infringement. Likewise, the fact related to the alleged capture of the voice, through the video surveillance system, was also filed, given that the FSFA made it clear that the video surveillance system used does not capture the voice.

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

10. On 04/10/2022 the FSFA requested the extension of the deadline granted to present allegations to the agreement to initiate the procedure.

11. On 05/10/2022, the Authority agreed to extend the term referred to in the ninth precedent, by five more days, under article 32 of the LPAC.

12. On 18/10/2022, the FSFA made objections to the initiation agreement, which are addressed in section 2 of the legal basis.

The accused entity provided various documentation with its letter.

13. On 09/01/2023, the director of the Authority, for reasons of internal order, agreed to replace the person initially appointed instructor of the procedure and proceed to appoint another instructor, a replacement that was notified to the imputed entity on 01/11/2023.

14. On 11/01/2023, the investigating person formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority impose on the FSFA the sanction consisting of a fine of 12,000.- euros (twelve thousand euros), as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1 c); of the RGPD.

This resolution proposal was notified on 11/01/2023 and a period of 10 days was granted to formulate allegations.

15. On 01/20/2023, the accused entity submitted a letter to the Authority by means of which it accepted the resolution that fell under the present sanctioning procedure, and attached the proof of the voluntary advanced payment of the pecuniary sanction that the instructing person proposed. Specifically, it certified the payment in advance of an amount of 7,200.00 euros (seven thousand two hundred euros), amount resulting from the penalty once the reductions provided for in article 85 of Law 39/2015 have been applied.

proven facts

Following COVID-19, the FSFA converted several rooms of the Les Hortènsies residential center into rooms for users. In these new rooms, the video surveillance cameras originally placed when these outbuildings were used as rooms were kept.

Specifically, the FSFA maintained video surveillance cameras in 3 rooms converted into rooms in unit 5, 2 rooms converted into rooms in unit 6, and 1 room converted into a room in unit 7.

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 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. The reported data processing falls within the competence of the Authority by virtue of article 3.f) of Law 32/2010, given that the residence of the Hortenses of the FSFA is a concerted center of the Department of Rights Social, which provides social services. Specifically, it offers residential care places for people with intellectual disabilities.

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 conditional 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 imputed entity has not formulated actual allegations in the resolution proposal, since it has presented a letter in which it stated that it had accepted to the two options to reduce the amount of the penalty, and one of these options entails the recognition of responsibility. 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. In relation to the circumstances of the alleged events

The first section of the statement of objections that the FSFA presented in the agreement to initiate the present procedure focused on exposing the particularities of the Les Hortènsies residence, where the treatment reported here took place. Thus the FSFA explained that the said centre, is a facility for residential care and specialized care, whose purpose is to care for people with profound intellectual disabilities, and needs for generalized or extensive support. In this regard, he pointed out that it is divided into two distinct areas, with the aim of grouping residents of a similar level of assistance.

For what is of interest here, people who present a greater degree of dependence and clinical fragility, with very limited adaptive skills and, in some cases, with behavioral disorders that require continuous support from auxiliary staff, are on the first floor of the residential center, which consists of five units, 1 and 3 being the specialized units for people with clinical frailty. And that, in turn, the second floor is intended for the location of residents with a greater degree of autonomy and " *with greater behavioral problems*". This second floor consists of 7

units, units 6, 7 and 8 being the ones specialized in people " *with high adaptive skills without behavioral disorders or behavioral disorders worked with cognitive-behavioral and/or pharmacological therapies and controlled*".

The FSFA argued that following the Covid-19 pandemic, residential centers had to comply with the Department of Health's sectoral Plan for the Management of SARS-Cov-2 infection in the residential sector, "which set *sectorization of spaces and location according to individual risk, a situation that in our environment attending to the profile of the users was much more complicated, and this relocation and change of spaces meant an alteration of the users' routines with an increase in alterations of the behavior and even increased aggressive behavior by some of our users*".

As stated in the proposed resolution, in order to better serve the users of the residence, the FSFA had to reorganize the spaces, taking into account the profile of each user of the center and the difficulty to comply with the measures to prevent the spread of the virus. Thus, new spaces had to be created, so that rooms were converted into rooms, and rooms into dining rooms. In this regard, the entity reported here stated the following:

"Before the sectorization of the center due to SARS-CoV-2, the video surveillance cameras were placed in the places of coexistence and activities, i.e. in the rooms, dining rooms, corridors of rooms, halls between corridors and corridors of rooms. The purpose of these cameras is to guarantee the protection of both users and staff, and at the same time it is also a tool that allows assessments, evaluations, monitoring and control of users, that is to say, it also has an important assistance purpose, such and as stated duly justified in annex 1 called "Increase of security cameras at CR Les Hortènsies" provided in the statement of allegations in the previous information phase.

An important aspect to consider when focusing on user support is their security. It should be taken into account that a part of the users/residents of the Les Hortènsies Residential Center have, in addition to intellectual disabilities, behavioral disorders (that is, heterosexual and self-injurious behavior) and mental health problems and significant communication limitations, which makes it necessary to use video surveillance cameras in order to guarantee their physical integrity and that of the people who are in their closest environment, that is to say, other users and even the staff of the center, and also to be able to verify and clarify violent incidents (aggression or mistreatment by a user to a professional) and therefore, it is an instrument that makes it possible to find out what has happened, given that many of the users have difficulties or are unable to communicate".

The FSFA reiterated the allegations presented in the preliminary information phase that preceded this procedure, relating to the need to maintain the video surveillance cameras in the reference rooms, during the health crisis situation. In essence, the imputed entity justified the following:

- Regarding the two rooms of Unit 6, located outside the main building, where ten users slept, video surveillance cameras were used in 2021, so that the auxiliary staff at night "could do a *viewing direct, for a better supervision of the users during the night (...) this viewing allows the auxiliary staff at night to verify the safety of the residents, given that if any resident during the night, has any health problems or falls, they can attend immediately, without the cameras the night staff may take time to provide the required assistance given that, due to their location, they cannot be heard*".
- Regarding room number 1 of Unit 7, the FSFA argued that the camera was kept " *for the own safety of the users who slept in this room, who had significant behavioral disorders*".

- Regarding rooms 1, 2 and 3 of Unit 5, where a total of 14 users slept, *"it was considered necessary to leave the cameras for security and constant supervision of the state of containment, given that any problem of the restraint or alteration of the resident could put the health and physical integrity of the resident at risk"*.

In this regard, this Authority is aware of the numerous difficulties that the residential centers encountered, on the dates when the events reported here occurred, coinciding with the health pandemic situation, caused by Covid-19, which oblige to implement new organizational formulas, for the prevention and detection of contagions. However, the exceptionality of these circumstances does not exempt those responsible for the treatment from continuing to guarantee the fundamental right to data protection and for this reason, the reasons why the use of video surveillance cameras in rooms of users of the residential center was not proportionate to the objectives pursued.

2.2. In relation to the proportionality of the use of the video surveillance system

At the outset, it should be emphasized that the FSFA defended that the processing of personal data reported here was necessary in order to guarantee the safety of users during the night, as well as to guarantee rapid assistance in the event of any incidence of health among its users.

In this regard, it should be borne in mind that article 5.1 c) of the RGPD states that personal data must be *"adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed"*.

In turn, this Authority's Instruction number 1/2009, of February 10, on the processing of personal data through cameras for video surveillance purposes, in its article 7.3 provides that, the use of cameras for this purpose may not be adequate to the principle of proportionality when cameras are installed in spaces such as *"bathrooms, services, changing rooms, recreation or rest rooms with restricted access or hotel rooms and the like, where, by their own nature, the capture of images is particularly intrusive with respect to the right to privacy, personal dignity or the free development of the personality. This also applies to rooms in care centers, unless it is necessary to protect a vital interest of the affected person. (...)"*

In relation to the concept of vital interest, referred to in article 7.3 of Instruction 1/2009, of February 10, it should be noted that neither the RGPD nor the LOPDGDD contemplate any definition that allows delimiting- nor its scope. However, the Article 29 Working Group, already in its opinion 06/2014, on the concept of the legitimate interest of the data controller under Article 7 of Directive 95/46/EC, add that it is necessary to make a restrictive interpretation. And, in relation to this, it should be noted that the FSFA has not alleged that the referred video surveillance cameras were necessary to preserve the vital interest of the people who were subjected to this data processing.

So, with respect to the proportionality of the use of the video surveillance system, in accordance with STC 207/1993, in order to check whether a measure is restrictive of a fundamental right, this must pass the judgment of proportionality, defined in the following terms: *"it is necessary to verify if it meets the three following requirements or conditions: "if such a measure is likely to achieve the proposed objective (suitability judgment); if, in addition, it is necessary, in the sense that there is no other more moderate measure for the achievement of such purpose with equal effectiveness (juicio de necesidad); and, finally, if it*

is weighted or balanced, more benefits or advantages can be derived from it for the general interest than harm to other goods or values in conflict (proportionality judgment in the strict sense)".

In line with the above, a measure as intrusive as the one analyzed here could only be considered legitimate if it was provided through the triple analysis (necessity, suitability and proportionality, in the strict sense).

In this regard, the truth is that the capture of the image of the room of the users of a residential center involves an interference with certain fundamental rights of the people regulated in Title I of the Constitution, such as the right to 'honour, privacy and self-image, the right to the protection of personal data and, ultimately, human dignity itself (SSTED of January 28, 2003 and March 4, 2008). In this regard, it should be borne in mind that, in the case in question, the video surveillance cameras captured images of the closed space, where the affected people developed their private lives and spent the night, and therefore, their sphere was affected more intimate

In relation to the above, it is appropriate to refer to the judgment of the Superior Court 3505/2019, of November 7, 2019, which on the installation of security cameras and the right to privacy, argues the following:

" As this room declared in a case in which the possible illegitimate intrusion into privacy as a result of the installation of security cameras was also judged (sentence 799/2010, of December 10, with reference to SSTC 209/1988, of October 27, 231/1998, of December 1, 197/1991, of October 17, 99/1994, of April 11, 143/1994, of May 9, 207/1996, of December 16 and 98/2000, of April 10, among others), the fundamental right to privacy, as a derivative of the dignity of the person recognized by art. 10 of the Constitution, attributes to its holder the power to protect a reserved area, not only personal but also family, in front of the action and knowledge of others, necessary, according to the guidelines of our culture, to maintain a minimum quality of human life thus avoiding arbitrary intrusions into private life, condemned by article 12 of the Universal Declaration of Human Rights. This has been reiterated, among others, by the judgments of this court 26/2014, of January 31, 744/2014, of December 3, 471/2016, of July 12, 685/2017, of December 19, and 476/2018, of July 20, and SSTC 241/2012, and 18/2015, of February 16. Previously, in a case of recording using the hidden camera technique, this room declared, in what is now of interest (scope of the right to privacy) that "the natural desire of the human being to live without having to endure outside interference that does not dear ones, within the scope considered as own or personal, it is recognized, not only as an essential condition for a minimum quality of life, especially, at times when technological advances make it extraordinarily easy to intrude without the owner's knowledge, but also as a guarantee of the development of the personality of each individual in his relationship with others - in terms of the judgment of June 24, 2004 of the European Court of Human Rights, case Von Hannover against Germany -. This protects the right of the person to lead his own existence as he understands it, with a minimum of outside interference, empowering him to control personal information about himself and to impose on others the duty to refrain from intrusions into that privacy space - in respect, sentences 156/2.001, of July 2, and 196/2.004, of November 15, and those cited in them - ". In addition, according to the aforementioned sentence 799/2010: "On the limits imposed by human dignity on the use of surveillance and control measures, it should be borne in mind, as regards the question that is of interest here, that article 7.1 and 5 LPDH, in relation to article 2 of the same Law, it considers illegal intrusions on the right to privacy, among others (without prejudice to the suppositions of express consent of the holder of the right and actions authorized by law) "the placement in any place of listening devices,

filming, optical devices or any other medium suitable for recording or reproducing the intimate life of people" and "the capture, reproduction or publication by photography, film or any other procedure, of the image of a person in places or moments of his private life or outside of them, except for the cases provided for in article 8.2".

For all of the above, it must be concluded that, although the video surveillance system can be an effective tool to guarantee the safety of the people using a residence, as well as rapid health care, there are other less intrusive measures, which are equally suitable, for the achievement of the purpose pursued, whenever, in accordance with the statements of the FSFA, prior to the year 2021, and from the first semester of the year 2022, the rooms of the users of the residence do not have video surveillance cameras. Therefore, a continuous and face-to-face monitoring of the rooms, by the staff of the residential center, or the implementation of warning mechanisms between the users and the staff, could have been less intrusive alternatives, and equally suitable for preserving the safety of users, and to guarantee rapid health care, without violating data protection regulations.

2.3 In relation to mitigating circumstances of a possible penalty

The accused entity requested that, in the event that the Authority did not consider it relevant to archive the facts reported, it would take into account the circumstances that, in its judgment, should justify a reduction of the sanction that, eventually, it is decided to impose. These circumstances are related below:

- The degree of cooperation with the control authority given that "*this entity at the time of receiving the notification of the agreement to initiate the sanctioning procedure from the APDCAT had already resolved the elements that motivated the initiation of the procedure*".
- Adherence to the Data Protection Type Code of La Unió Catalana d'Hospitals, from October 17, 2022.
- The fact that the foundation is a non-profit organization that provides socio-health and social care services for the dependent within the framework of the public health system and the public system of social services. In this regard, they pointed to the lack of financial benefits, as a result of the Commission's imputed facts.

Well, the eventual concurrence of the mitigating circumstances invoked by the entity was analyzed in the 4th legal basis of the proposed resolution, an analysis that will be reproduced in the fourth legal basis of this resolution.

3. In relation to the facts described in the proven facts section, relating to the use of a video surveillance system inside the rooms of the users of a residential center, it is necessary to go to article 5.1 c) of the RGPD which provides that personal data will be "*adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated ("minimization of data")*".

During the processing of this procedure, the fact described in the section on proven facts has been duly proven, which is constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies the violation of "*the basic principles for treatment, including the conditions for consent pursuant to Articles 5, 6, 7 and 9*", among which the principle of minimization (Article 5.1 c) of the RGPD is at the top. And this because there were other less invasive and equally suitable measures to achieve the objective pursued.

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 the FSFA does not fit into any of the subjects provided for in article 77.1 of the LOPDGDD, the general sanctioning regime provided for in article 83 of the GDPR applies.

Article 83.5 of the RGPD provides for the infractions provided for there, to be sanctioned with an administrative fine of 20,000,000 euros at most, or in the case of a company, an amount equivalent to 4% as a maximum of the global total annual business volume of the previous financial year, opting for the higher amount.

According to what is established in article 83.2 of the RGPD, and also in accordance with the principle of proportionality enshrined in article 29 of Law 40/2015, as indicated by the instructing person in the proposed resolution, the penalty of 12,000 euros (twelve 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 has been considered:

- Adherence to the Data Protection Code of Conduct of the Catalan Union of Hospitals (article 83.2 j) RGPD).
- Lack of benefits as a result of the commission of the offense and organizational changes due to the application of the Sectoral Plan, Management of the infection by the SARS-Cov-2 coronavirus in the residential area (83.2 k RGPD and art. 76.2 c) LOPDGDD). This Authority cannot be unaware that the entity denounced here had to implement organizational changes, in order to comply with the Reference Sectoral Plan which, although it did not impose the use of the aforementioned video surveillance camera system, conditioned the use of the spaces of the residence. All this, in a context of health crisis, which did not favor the implementation of the appropriate measures for the control and guarantee of the rights of the users of the center.

In this regard, as argued in the Resolution Proposal, the concurrence of the mitigating factor provided for in article 83.2 d) of the RGPD, relating to the degree of cooperation with the Authority, invoked by the entity, should be ruled out reported, given that, although the residence no longer uses the video surveillance system in the disputed rooms, it does so, not as a result of the start of this sanctioning procedure, to cooperate with the Authority, but because, during the first semester of 2022, the center reverted to the pre-pandemic organizational structure, so no rooms have cameras.

On the contrary, as aggravating criteria, the following elements have been taken into account :

- The nature, gravity and duration of the infringement, as well as the number of people affected (article 83.2 a) RGPD). More than 24 users of the controversial residential center were monitored, in their rooms, by means of video surveillance cameras, for an extended period of time, as a result of new organizational measures implemented.
- Recidivism in the commission of offenses of the same nature by the FSFA (art. 83.2 e) RGPD).
- Linking the activity of the infringing entity to the practice of processing personal data (art. 83.2 k RGPD and 76.2 LOPDGDD). To the extent that the accused entity is a Foundation that provides healthcare services, it must be stated that there is a close link between its

activity and the processing of a considerable amount of personal data - not only of users, but also of workers, and other people, such as family members of users, who may contact the residential center -.

- The continuing nature of the infringement (article 76.2 a) 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 makes the payment voluntary pecuniary penalty, a 20% reduction should be applied on the amount of the provisionally quantified penalty. If the two aforementioned cases occur, the reduction is applied cumulatively (40%).

As has been advanced, 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, by means of a letter dated 01/20/2023, the accused entity has acknowledged its responsibility. Likewise, on 19/01/2023 he paid in advance seven thousand two hundred euros (7,200 euros), 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, however, it becomes unnecessary to require corrective measures for the effects of the infringement given that the conduct refers to an isolated and specific event, with which the effects of the infringement would have been consummated.

For all this, I resolve:

1. To impose on the Fundació Sant Francesc d'Assís the sanction consisting of a fine of 12,000.- euros (twelve 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 the Fundació Sant Francesc d'Assís has made the advance payment of seven thousand two hundred euros (7,200 euros), which corresponds to the total amount of the penalty imposed, once the corresponding 40% deduction percentage has been applied to the reductions provided for in article 85 of the LPAC.

3. Notify this resolution to the Sant Francesc d'Assís Foundation.

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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