



Administrative offenses imposed by the Portuguese Supervisory Authority on Data Protection (*Comissão Nacional de Proteção de Dados*) in 2019

In 2019, the **application of 3 (three) fines** of **EUR 20.000,00** (twenty thousand euros), **EUR 2.000,00** (two thousand euros) and **EUR 2.000,00** (two thousand euros) was object of Resolution by the Portuguese Supervisory Authority (CNPD), on the basis of failure to comply with access and information rights laid down in General Data Protection Regulation.

I – Resolution 21/2019 of the Portuguese Supervisory Authority on Data Protection

The Resolution 21/2019 of 5 February 2019 imposed a fine of **EUR 20.000,00** (twenty thousand euros) to the Defendant based on a failure to comply with the **Data Subject right of access**.

As a brief factual framework of this process, the Data Subject requested that the Defendant granted him the access to a copy of the **phone calls records** with the Defendant call center – an entity subcontracted by the Defendant manage its calls center.

However, the Defendant did not made available the requested information, specifying that a copy of those records could only be provided *“through of a court order or request of some entity or official body, such as the CNPD, police, etc.”*.

Additionally, after the storage period of 90 days exceeded, the Defendant ordered the elimination of those calls. Subsequently, as part of the process triggered by the Data Subject complaint, the Defendant was notified of the CNPD Resolution, which determined that the Data Subject should have the recordings of the remaining call not yet deleted. Following the Resolution, the Defendant did not delete the remaining recordings and provided the requested information to the Data Subject.

The Defendant, in broad strokes, stated that in its defense that:

- a) It was not able to identify timely if the Data Subject was effectively the sender of the e-mails in which the access to the records was requested;
- b) by the time the Resolution was issued, determining that access to the remaining recordings should be granted to the Data Subject, it proceeded immediately accordingly. Besides, the Defendant mentioned that it had consulted CNPD in order to clarify the way of acting in this case.

CNPD replied to these arguments, stating that the Defendant did not mention the justification provided by the Data Protection Officer to the Data Subject, instead it was mentioned that *“a court order or request of some entity or official body, as CNPD, police, etc.”* was needed. In addition, the Defendant did not destroy the documentation in order to comply with law but after CNPD’s imposition.

In reply to the Defendant arguments, CNPD also referred that the consultation implies a company’s paradigm transition of the *“regulation by other bodies regime (...) to self-regulation”*, which should *“ensure the legality of the processing of personal data carried out, without any intermediation of the control authorities”*, so that the misinterpretation or ignorance of the law cannot benefit the Defendant.

As result of factual appreciation, the Portuguese Supervisory Authority considered that the Defendant failed to comply with the right of access of the Data Subject.¹



“(...) should not be forgotten the paradigm transition made by GDPR of the regulation by other bodies regime (...) to self-regulation, and now the data controllers and processors ensure the legality of the processing of personal data carried out (...)”

Resolution 21/2019 of the Portuguese Supervisory Authority on Data Protection

¹ Offense in breach of Article (35) (1) of Constitution of the Portuguese Republic and the Articles (15) (f) and (83) (5) (b) of the GDPR.

II – Resolution 207/2019 of the Portuguese Supervisory Authority on Data Protection

The Resolution 207/2019 of 19 March 2019 imposed a fine of **EUR 2.000,00** (two thousand euros) to the Defendant based on failure to comply with the **Data Subject right of information**.

In summary, CNPD considered that there was a violation of the duty of information, in the course of an inspection by the Public Security Police (PSP) of a store, because they found **non-conformity of the signs** (i.e., there was no informative warning about video surveillance cameras).

The Defendant invokes in her defense that by the time of the infraction, the commercial establishment had the necessary signs, but that a cabinet obstructed it and, to comply with the law, they had bought new signs. In addition, the Defendant alleged that she was in difficult economic-financial circumstances with several debts.

In the context of the Defendant defense, CNPD considered that the Defendant, having processed personal data through video surveillance, should have complied with the information duty, according to Article (13) (1) and (2) of the GDPR. In addition, CNPD did not consider that the Defendant had an alleged precarious economic situation since it failed to prove it.

As result of factual appreciation, the Portuguese Supervisory Authority considered that the Defendant failed to comply with the right of information of the Data Subject.²

III – Resolution 222/2019 of the Portuguese Supervisory Authority on Data Protection

The Resolution 222/2019 of 25 March 2019 impose a fine of **EUR 2.000,00** (two thousand euros) to the Defendant based on failure to comply with the **Data Subject right of information**.

Once again, CNPD considered that there had been a breach of the duty of information to the Data Subject since, following a Public Security Police (PSP) surveillance action; it was found that the notice of the existence of the **video surveillance system was not affixed in a visible place**.

In this case, the Defendant said that the project of Resolution of CNPD was null, since it was not notified of the copy of the administrative offense notice and the necessary elements to exercise its right of defence. It also stated that that the informative notices were correctly displayed at the time of inspection, although no note was posted on the exterior door of the building.

In the context of the Defendant defense, CNPD considered that nullity pleaded by the Defendant is unfounded, once she could have requested the consultation and examination of the documents. Besides, the Portuguese Supervisory Authority considered that the facts contained in the notice were deemed established, insofar as the Defendant did not contest them.³

As result of factual appreciation, the Portuguese Supervisory Authority considered that the Defendant failed to comply with the right of information of the Data Subject.⁴

“By failing to comply with the duty to providing information, it has drastically limited one of the most important rights in the protection of personal data (...)”

Resolution 207/2019 of the Portuguese Supervisory Authority on Data Protection



² Offense in breach of Article (35) (1) of Constitution of the Portuguese Republic and the Articles (13) and (83) (5) (b) of the GDPR.

³ Cf. Article (169) of the Code of Criminal Procedure, *ex vi* Article (41) (1) Of the Decree-Law no. 433/82, of 23 October *ex vi* article (35) of the Law no. 67/98.

⁴ Offense in breach of Article (35) (1) of Constitution of the Portuguese Republic and the Articles (13) and (83) (5) (b) of the GDPR.

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