

Summary Final Decision Art 60

Complaint

Administrative fine, Compliance order

EDPBI:ES:OSS:D:2020:146

Background information

Date of final decision:	N/A
Date of broadcast:	15 October 2020
LSA:	ES
CSAs:	All SAs
Controller:	MIRACLIA TELECOMUNICACIONES, S.L.
Legal Reference:	Lawfulness of processing (Article 6), Transparency and Information (Articles 12, 13 and 14), Right to erasure (Article 17)
Decision:	Administrative fine, Compliance order
Key words:	Administrative fine, Data subject rights, Lawfulness of processing, Legitimate interest, Consent, Right to be informed

Summary of the Decision

Origin of the case

The LSA received two separate complaints against the processing of personal data through the controller's mobile application for Android, from the complainants who received the prank calls via the controller's application.

This application allows its users to carry out telephone pranks on third parties. The user selects a prank and a third party (a "victim") is then contacted by phone, through a hidden number via the controller's application. The audio of the conversation is recorded and made available to the user. The user is able to share the recording in the social media. The third party is not asked for a consent for processing of his/her personal data.

Findings

The LSA considered that the controller carried out the processing without first informing data subjects (the persons receiving the prank call). Therefore, the data subjects were not aware of the controller's processing of their personal data.

The controller claimed that it processed personal data based on the legitimate interest of Article 6 (1) (f) GDPR. However, the controller did not inform data subjects of its use of the legitimate interests of the controller or of a third party as a legal basis for the processing. The controller's processing of data is not necessary for the purposes of the protection of its legitimate interests, nor do these interests outweigh the fundamental rights and freedoms of the data subject to the protection of his/her personal data. The LSA concluded that the legitimate interest referred to in Article 6 (1) (f) GDPR cannot be used as a legal basis for the processing of personal data in this case.

Consent cannot serve either as a legal basis in this processing of data. The conditions it requires, such as being informed, were not met.

The LSA concluded that the processing carried out by the controller cannot under any circumstances be regarded as lawful and violated Article 6 GDPR.

Decision

For the infringement of Articles 13 and 14 of GDPR and infringement of Article 6 of GDPR, the LSA imposed on the controller two administrative fines, each of EUR 20 000.

The LSA also required the controller to ensure within three months the compliance with the rules on the protection of personal data of the processing operations it carries out, the information it provides to its clients and the procedure by which they must give their consent to the collection and processing of their personal data.