

□ Procedure No.: PS/00340/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and
based on the following

FACTS

FIRST: Mrs. A.A.A. (*hereinafter, the claimant) dated June 12, 2019
filed a claim with the Spanish Data Protection Agency. The
claim is directed against PARTIDO ARAGONES REGIONALISTA (*hereinafter, the
reclaimed).

The grounds on which the claim is based are "reception of advertising
politics" despite having expressed his express opposition to this effect. (folio no. 1).

Together with the claim, it provides documentary evidence dated 06/10/19 of the
Provincial P.A Delegate (Zaragoza Electoral Census Office) certifying that "it appears
registered in the Electoral Census as opposed to receiving propaganda from political parties
politicians since March 8, 2018."

Item, provides documentary evidence that proves the receipt of propaganda from the
denounced training (Proof No. 1) without the address of the denouncer.

SECOND: In view of the facts denounced in the claim and the documents
data provided by the claimant, the Subdirector General for Data Inspection pro-
vided to carry out preliminary investigation actions for the clarification
of the facts in question, by virtue of the powers of investigation granted to the
control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation
General Data Protection, hereinafter RGPD), and in accordance with the provisions
ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

THIRD: On 06/20/19 the claim was transferred to the entity National Statistics Institute (INE) in order to carry out the explanations opportune, before the exercise of the outlined right of opposition.

The entity -INE--confirms the delivery of the exercised right by providing evidence electronic document for this purpose.

FOURTH: On October 30, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 6.1.a) of the RGPD, typified in Article 83.5 of the GDPR.

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In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

PROVEN FACTS

First. On 06/12/19, a claim was received from the complainant through the which transfers as the main "fact" the reception of political propaganda, despite his express opposition (folio nº 1).

Second. It is proven that political propaganda is received from training Aragonese Regionalist Party.

Third. It is accredited that the affected person addressed the INE (Institute of National Statistics) exercising their right of opposition not to receive propaganda politics.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

The RGPD (as well as the LOPDGDD) expressly recognizes the right of the interested party to oppose -at any time- for reasons related to their particular situation, to the fact that the personal data that concerns him or her are the object of a treatment based on the provisions of article 6, paragraph 1, letters e) or f) of the RGPD, including profiling on the basis of those provisions.

This right is regulated in article 21 of the RGPD in the following terms:

“The interested party shall have the right to oppose at any time, for reasons related to your particular situation, to which personal data concerning you are subject to treatment based on the provisions of article 6, paragraph 1, law after e) or f), including profiling on the basis of those provisions. The responsible for the treatment will stop treating the personal data, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, the rights and freedoms of the interested party, or for the formulation, exercise or defense of claims”.

The right of opposition allows the interested party, in the cases provided for in the RGPD, object to the processing of your personal data. And the data controller

you will have to stop treating them

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Thus, in accordance with the provisions of article 21 of the Regulation, the controller will be obliged to stop processing the personal data of the interested party, unless prove compelling legitimate reasons for the treatment that prevail over the interests, rights and freedoms of the interested party, or for the formulation, exercise or the defense of claims.

Notwithstanding the foregoing, for the specific case of exercising the right to oppose the data processing for sending electoral propaganda, said de-

The right must be exercised in accordance with the provisions of the regulations that regulate the electoral processes and will have the effects provided for therein.

Regarding the temporary requirements for the exercise of the right of opposition, depending on difference from the general rule established in article 21 of the RGPD, according to which different

This right may be exercised by the interested party at "any time", in the event of opposition to the sending of electoral propaganda the opposition must be exercised within the period established in the electoral regulations, which extends until the thirteenth day zero after the call for the electoral process in question, and will take effect in the same and subsequent ones, as long as the interested party does not express another intention.

In this regard, article 39, sections 2 and 3 of Organic Law 5/1985, of July 19, of the General Electoral Regime (LOREG), the latter modified by Provision final 3.1 of the LOPDGDD, determines the following:

"two. Town halls and consulates will be obliged to maintain a service

consultation of the current electoral lists of their respective municipalities and districts.

cations during a period of eight days, from the sixth day after the call
election race.

The consultation may be carried out by computer means, prior identification of the
interested party, or by exposing the electoral lists to the public, if they do not have
ta with sufficient computer means for it.

3. Within the above term, any person may file a claim addressed to the
Provincial Delegation of the Electoral Census Office about their census data, if
either only those that refer to the rectification of errors can be taken into account
in personal data, to changes of address within the same circumscription
non-inclusion or non-inclusion of the claimant in any Census Section of the circumstance
encryption despite having the right to it. Requests from the
voters who oppose their inclusion in the copies of the electoral census that are provided
have the representatives of the candidacies to make postal mailings of propa-
election win. They will not be taken into account for the called election those that reflect
jen a change of residence from one constituency to another, made after
to the closing date of the census for each election, having to exercise their right in the
section corresponding to their previous address” (section 3 of article 39 of the LO-
REG modified by the 3rd Final Provision. One of the LOPDGDD).

Agreement 2/2019, of January 23, 2019, of the Central Electoral Board establishes the
following about this opposition:

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<<1st) In order to facilitate the processing of voters' requests

who oppose their inclusion in the copies of the electoral roll that the Office of the

Electoral Census must deliver to the representatives of the candidacies to carry out

mailings of electoral propaganda, such requests may be made in advance

to the call for an electoral process, in Town Halls, Consulates and Delegations

Provincial Electoral Census. Likewise, they may be carried out at the electronic office.

nica of the National Institute of Statistics, once the Electoral Census Office

have enabled this procedure.

2º) The aforementioned exclusion requests will have permanent effect until the election

tor manifests itself in the opposite direction.

3º) The Electoral Census Office will inform the voters of the requested exclusion.

4º) This exclusion must be compatible with the representatives of the candidates

daturas may have the complete list of electors for the purposes of voting and

crutiny, with the essential data for the identification of the voter.>>

It should be remembered that any citizen can apply to the INE (Instituto Nacional

Statistics Office) to unsubscribe from the Electoral Propaganda Census.

To avoid this, there is an online form available to voters on the website of the

National Institute of Statistics (INE), with which we can request to be excluded

of the copies of the electoral census that are delivered to the representatives of the parties

to make postal mailings of electoral propaganda.

III

In relation to the facts reported by this Agency, the entity denounced

PAR answered in the previous phase (07/09/19) to the opening of the procedure the following:

“...this Party is not informed either when the Census is delivered, the voters

that they had manifested or claimed anything regarding their registration in

him, being therefore this Party a mere viewer of the data that appears in it,

being the Census Bureau the total responsible for manipulating the data that in the apparatus and should not appear"

"That in none of the cases, neither the PAR, nor any other political party concurrent to the elections, they are informed from the Electoral Census Office or of any other organization the voters who have expressed their will to be excluded from what is known as electoral mailing"

So that citizens can exercise their right not to receive propaganda electoral (electoral mailing) the INE enabled a way to carry out this process in an electronics.

It was necessary to enter the INE website, specifically the Electronic Headquarters. nica of the organism, where "Procedures" was selected, emerging a drop-down "Request for exclusion/inclusion in copies of the Census for electoral propaganda".

A file of the procedure appears on the website of this procedure with the description and some brief instructions. To apply, you must have one of

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electronic certificates recognized by the INE, such as the electronic DNI, or the certificate CI@ve.

Once we have identified ourselves electronically, a screen will appear on the our census data comes out. At the bottom there is a link that will take us to a form with a tab: you have to choose between "included (default)" or "excluded".

Almost immediately we will obtain a receipt where it is communicated that

our election "has been estimated and will have permanent effect until it is manifested."

Party the other way."

The complainant provided documentary evidence (Proof No. 1) consisting of certificate issued by the Provincial Delegate of the Electoral Census Office (Zaragoza) which confirms that the complainant "is registered as opposed to receiving propaganda of the political parties on March 8, 2019".

Also, as stated, the complainant provides documentary evidence (Doc. nº 2) that accredits reception of electoral propaganda, of the Aragonese Party where

The data of the affected party is found on the envelope, without stating the home address-
ria, but if the Postal Code and the locality.

Article 41.5 LOREG provides the following: "The representatives of each candidacy may obtain within the two days following the proclamation of their candidacy. didature a copy of the census of the corresponding district, ordered by tables, in so-size suitable for computer processing, which may be used exclusively for the purposes provided in this Law. Alternatively, the general representatives may obtain under the same conditions a copy of the current census of the districts where your party, federation or coalition presents candidacies. Likewise, the Zone Electoral Boards will have a usable copy of the electoral census, with corresponding to its scope".

III

In accordance with the evidence available in this proceeding, sanctioning, it is considered that the person claimed has not complied with the right to oppose exercised in a timely manner by the complainant, who continues to receive propaganda despite having expressly opposed it.

Known facts could constitute an infringement, attributable to the claimant.

for violation of article 21 RGPD, by not effectively attending the exercise

cycle of the aforementioned right.

On the other hand, the LOPDGDD, in its article 72.1.k), qualifies as a very serious infraction, effects of prescription, "The impediment or the obstruction or the repeated non-attention of the exercise of the rights established in articles 15 to 22 of the Regulation (EU) 2016/679."

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The documentation in the file shows that the defendant violated the article Article 21 of the RGPD, since despite the fact that the claimant exercised his right of opposition time and form, so that no postal electoral advertising was sent, the receipt He went to his home.

On the one hand, it is proven that the respondent processed the claimant's personal data. mante - address data, name, surname and postal address- associated with the sending of postal election advertising. In the file is a copy of the envelope sent by the PSC-PSOE to your postal address, and of the electoral propaganda received.

On the other hand, the defendant lacked legitimacy for the processing of personal data. claims of the claimant for sending electoral propaganda for having opposed the re-reception of said propaganda in the Electoral Office of the INE.

Article 83.5 RGPD provides the following: "Infringements of the following provisions

The following will be sanctioned, in accordance with section 2, with administrative fines of EUR 20,000,000 maximum or, in the case of a company, an equivalent amount. to a maximum of 4% of the total global annual turnover of the fiscal year previous financial statement, opting for the highest amount:

b) the rights of the interested parties pursuant to articles 12 to 22 (...)."

IV

In determining the appropriate administrative sanction to impose, we must

read some Recitals of the RGPD, among others, 148, which indicates the following:

<<In order to reinforce the application of the rules of this Regulation, any

Any violation of this must be punished with sanctions, including administrative fines.

additionally to adequate measures imposed by the authority of

control under this Regulation, or in substitution of these. In case of

minor fraction, or if the fine likely to be imposed constituted a burden

disproportionate for a natural person, instead of sanctioning by means of a fine,

impose a warning. However, special attention must be paid to the nature

nature, seriousness and duration of the infraction, its intentional nature, the measures

taken to mitigate the damages and losses suffered, to the degree of responsibility or to

any previous relevant infringement, to the way in which the supervisory authority has

had knowledge of the infraction, to comply with the measures ordered against the

responsible or in charge, adherence to codes of conduct and any other cir-

aggravating or mitigating circumstance. The imposition of sanctions, including fines

administrative, must be subject to sufficient procedural guarantees in accordance with the

general principles of Union law and the Charter, including the right to

effective judicial protection and a process with all the guarantees.>>

In the case object of the claim, we must bear in mind that, until recently,

In just a few months, the political parties were authorized to send propaganda

to all voters during the election campaign. It was not collected in any

rule the possibility of opposing such shipments.

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This authorization has been limited by the modification of the LOREG included in the LO-PDGDD. Therefore, political parties have had a very short period of time to adapt to this limitation and there have been few claims for it.

Taking into account the very limited number of those affected, the measures adopted, the little damage produced by the treatment carried out, and that it is the first time this situation occurs, it is agreed to initiate a sanctioning procedure proposing to warn the political party--the Aragonese Regionalist Party--as possible penalty.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE ARAGONESE PARTY political party, with NIF for a infringement of Article 6.1.a) of the RGPD, typified in Article 83.5 of the RGPD, a penalty of WARNING, in accordance with the provisions of article 58.2 GDPR.

SECOND: NOTIFY this resolution to the political formation PARTY

ARAGONÉS and REPORT the result of the proceedings to the complainant Mrs. A.A.A.

Received the notification and once executed, if the date of execution is is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Sea Spain Marti

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