

□ File No.: PS/00046/2022

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Don A.A.A. (hereinafter, the complaining party) dated July 31,

2019 filed a claim with the Spanish Data Protection Agency. the re-

The complaint is directed against the MINISTRY OF JUSTICE (D.G. FOR PUBLIC SERVICE)

BLIC OF JUSTICE) with NIF S2281361I (hereinafter, the claimed party).

The grounds on which the claim is based are as follows:

- That the Ministry of Justice had not responded to a request made on 28

May 2019. Likewise, it stated that the Subdirector General for Relations

with the Administration of Justice and the Public Prosecutor published on the website of the

Ministry of Justice the list of admitted / not admitted of the call for the exam

of access to the Bar, revealing the name and ID of the applicants (recognizes

that some day later the Ministry corrected the list for another with the protected DNI).

Along with the claim, it provided the documents submitted to the entity claimed

exercising the right of access to the administrative file, not detaching from

the documentation provided that had requested access to your data provided for in the

data protection regulations. Regarding the publication of the list with

the personal data of the applicants did not provide any document that proves the

disclosure, in particular, of your own personal data.

- On September 18, 2019, a Resolution of inadmissibility was issued as

sufficient documentary evidence of infringement can be seen.

. On November 4, 2019, the claimant filed an Appeal for

replacement against the decision of inadmissibility.

- On December 20, 2019, the inadmissibility of the appeal was resolved by

extemporaneous (the resolution had been notified on 9/30/2019).

- On January 14 and 15, 2020, a request for information was received

(identification of authorities and personnel assigned to the file); access request

to the file and request for declaration of nullity under art. 47.1a LPACAP.

- On January 21, 2020, the complainant was answered stating

the following: According to the provisions of article 48.1 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(LOPDGDD), the Presidency of the Agency directs it and dictates its resolutions. According

to what is established in articles 27 to 28 of Royal Decree 428/1993, of March 26,

by which the Statute of the Data Protection Agency is approved, it corresponds

to the Data Inspection, whose head is the Deputy Director General of Data Inspection.

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rights, the functions inherent to the exercise of the power of inspection and the exercise of

the acts of investigation related to sanctioning files. The code

010893/2019 is a reference number of a registration corresponding to another unit

of this Agency, the Technological Assessment and Studies Unit. [...] for how long

refers to the challenge of the aforementioned resolutions of inadmissibility and the subsequent

resolution of the appeal for reversal, by virtue of the provisions of article 48.6 of the

mentioned LOPDGDD, the acts dictated by the Presidency of the AEPD put an end to

the administrative route, being appealable directly before the Contentious Chamber-

administrative of the National High Court. In any case, the resource regime was ex-specifically indicated in each of the aforementioned resolutions.

- On July 28, 2021 and January 25, 2022, the claimant requests a meeting with the Director of the Spanish Agency for Data Protection, pre-establishing Judgment of the National High Court dated April 8, 2021, number of Appeal 000634/2020, on a claim for an amount for the operation of the public services against the Ministry of Justice, in which that Ministry is condemned to the payment of 5000 euros to the claimed party; in the Fundamentals it is indicated: "On February 18, 2019, it was published on the portal (web) of the Ministry of Justice the list of applicants admitted and excluded to carry out the first test for the evaluation of professional aptitude for the practice of law for the year 2019, whose publication included the complete DNI of the interested parties, including the plaintiff here. Given this circumstance, on March 1, 2019, the aforementioned publication of the portal of said Ministry, the notification of the incident to the Spanish Agency for Data Protection, and was replaced on page on a website the list published by another without complete identity data, publishing An informative note is also given...

In the current process, only the issue of protection of personal data as a presupposition of the abnormal functioning of public services, but the actions of the interested party before the AEPD and the file to which they gave rise remain outside the walls of this process

The Chamber cannot deal with possible future or hypothetical damages, although

There is no basis to recognize the existence of non-pecuniary damage for the injury suffered by the plaintiff in his rights to privacy and the protection of his personal data whose non-pecuniary damage is compensable depending on the circumstances that occur in the case and in the plaintiff, being so that in a weighting of all

the concurrent circumstances, the Chamber discretionally sets the compensation

tion to which the plaintiff is entitled in the amount of €5,000,..."

SECOND: On February 14, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of Public Administrations (hereinafter

LPACAP), for the alleged infringement of Article 5.1.f) of the RGD, typified in Art.

article 83.5 of the RGD.

THIRD: Having been notified of the aforementioned initiation agreement, the claimed party submitted a written

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requesting an extension of the term to present arguments to the initial agreement. With-

granted the extension requested, a written statement was received in which, in summary,

stated the following:

"That, having seen and examined by the respondent the file sent by the AEPD,

The following points are accredited:

1. Dated May 28, 2019 D. A.A.A. requests the Ministry of Justice

access, in accordance with the provisions of article 53 of the LPACP, to the Administrative File

that the Subdirector General for Relations with the Administration of Justice

and the Public Prosecutor instructs in relation to Order PCI/1424/2018 of 28 December

December, which calls for the professional aptitude evaluation test for the

exercise of the legal profession for the year 2019. The claimant identifies himself

as a participant in the aforementioned access test. Also, based on the same

By legal precept, it requests the identification of the authorities and personnel at the service of the Public Administrations under whose responsibility the procedure is processed referred to and the identification of the Data Protection Delegate of the Ministry of Justice. Inc.

2. On June 17, 2019, the claimant requests the Ministry of Justice "DPD" hearing procedure on data protection incident, in virtue of tude of the provisions of article 37.1 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights, (hereinafter LOPDPGDD) and article 82.1 LPACP, prior to the possible presentation of a claim before the AEPD, to know what has been done by the Data Protection Delegate of the Ministry of Justice, as well as the established liability regime. Said request The situation was duly attended to: the response of the DPD is attached (document nº 1), that has not been the subject of appeal or complaint by the interested party.

3. On July 31, 2019 D. A.A.A. files a claim with the AEPD for alleged violation of the LOPDPGDD by the Ministry of Justice in terms of the publication on the website of the list of those admitted and excluded from the aptitude test. tude for access to the profession of Lawyer convened by the aforementioned order PCI / 1424/2018 of December 28, without protecting the digits on the "D. NEITHER." of the candidates data, and from the list of students with their full names, the universities in which they who completed their studies and the grades they obtained in the qualifying master's degree (Reg. of entry: 038471/2019).

In the presentation of the facts, the claimant mentions the request procedure for the hearing formulated on June 17, 2019 to the Delegate of Protection tion of data from the Ministry of Justice, and of information addressed to the Unit of Information and Transparency of said Ministry on May 28, 2019, cu- The written documents are attached (documents nº 2 and nº 3), and that they were correctly attended to.

two (documents No. 1 and No. 4) and that have not been the subject of appeal or complaint by

Of the interested.

The supporting documents of the claim are not attached to the aforementioned claim.

the facts claimed in terms of personal data protection, only

provides as an annex the informative note published on the website of the Ministry of

Justice on the provisional and definitive publications of admitted and excluded to

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the tests of professional aptitude for the exercise of the profession of lawyer,

community attorney and lawyer, and the application of the data minimization principle of the

Article 5.1.c) of the General Data Protection Regulation (RGPD) (document no.

5).

4. On September 18, 2019, the Director of the AEPD issued re-

solution in relation to the claim filed by the claimant on July 31,

2019 on violation of the LOPDGDD on the facts that have been related,

agreeing the inadmissibility for not appreciating rational indications of the existence of a

infringement within the jurisdiction of the AEPD (Resolution E/08751/2019).

5. On September 27, 2019, by D. A.A.A. the AEPD is requested to process

hearing in relation to the claim filed on July 31, 2019 (Reg. de en-

entry: 038471/2019) in order to facilitate the examining body “access to the vulnerability

REITERATED information on data protection by the General Subdirectorate

Director of the Administration of Relations with the Administration of Justice and the Ministry

Fiscal River”.

6. On November 4, 2019, the claimant filed an appeal

request for replacement against the Resolution of the Director of the AEPD E/08751/2019, by lack of consistent motivation, as well as for not having gone into the substance of the matter of the claim filed.

7. On December 20, 2019, the Director of the AEPD resolved

inadmissible the reversal appeal filed by D. A.A.A. against the resolution dictated

dated September 18, 2019, filing the claim E/

08751/2019, based on the fact that the aforementioned appeal for reconsideration was filed

November 4, 2019, that is, outside the legally established period according to

the provisions of article 30.4 of the LPACP (RR/00753/2019).

8. On January 14 and 15, 2020, the claimant requested before the

AEPD, information (identification of authorities and personnel assigned to the file);

request for access to the file, in accordance with the provisions of article 53 a) of the

LPACP, access to the file instructed based on the claim filed on December 31,

December 2019 against the Ministry of Justice and resolved by the resolution of inad-

mission of RR/00753/2019, and request for declaration of nullity under article

47.1. A) of the LPACAP.

9. On January 21, 2021, by the Subdirector General for Inspection

of Data of the AEPD, a response is given to the writings sent by D. A.A.A. with in-

AEPD 01523/2020, 01547/2020 and 01644/2020 in which the request is answered

identification of the authorities and personnel under whose responsibility the

procedures referred to codes "E/08751/2019", "RR/00753/2019" and

the "security breach with registration number 010893/2019" and a copy of the

requested records; pointing out, in addition, insofar as it refers to the challenge

of the resolutions of inadmissibility and of the subsequent resolution of the appeal for repossession.

tion, by virtue of the provisions of article 48.6 of the LOPDGDD the acts dictated

by the AEPD put an end to the administrative process.

10. The complainant requests a meeting with the director of the AEPD, pre-

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establishing the Judgment of the National High Court dated April 8, 2021, number

of Appeal 000634/2020, on claiming amount for the operation of the

public services against the Ministry of Justice, in which it is condemned to pay

of 5000 euros to the claimed party, of whose grounds the following are indicated

paragraphs:

“On February 18, 2019, it was published on the portal (web) of the Ministry of Justice

the list of applicants admitted and excluded to take the first evaluation test

assessment of professional aptitude for the practice of law for the year 2019, whose

publication included the complete DNI of the interested parties, among them the plaintiff here-

tea. Given this circumstance, on March 1, 2019, the aforementioned publication was withdrawn.

portal of said Ministry, the incident was notified to the Agency

Spanish Data Protection Agency, and the list published on the website was replaced

another without complete identity data, also publishing a note in-

formative...”.

“In the current process, only the issue of the proposal can be studied or considered.

protection of personal data as a budget of the abnormal functioning of the

public services, but the actions of the interested party before the AEPD and the file to

that gave rise remain outside the walls of this process”.

- Due to the background information in this Ministry of Justice, there is no evidence that

the claimant has exercised, through the expressly provided contact channels, no request for rights regarding the protection of personal data (articles 12 to 18 LOPDGDD) in relation to their participation in the aptitude test for access So the profession of Lawyer convened by the aforementioned order PCI / 1424/2018 of 28 from December. In any case, it should be noted that the dates on which the entry of the two requests addressed by the claimant, in May and June 2019, to the Ministry rio de Justicia as responsible for data processing (which have motivated the presentation of the claim before the AEPD) are after the closing date of the security breach, as is proven.

– That, even though this Ministry of Justice recognizes that the measures security measures applied until the date on which the list is published.

List of applicants admitted and excluded for the entrance exams to the legal profession whose examination took place on April 6, 2019 containing the data of names name, surnames and personal identification document number (DNI) have not been sufficient, the security crisis has been managed diligently, proceeding to replacement of the list in question by the new publication in which the latter has been omitted.

last piece of information, in addition to publishing the aforementioned substitution note given the impossibility technique of individually informing the more than 6,000 affected; and, likewise, carried out the corresponding tests to verify non-repetition at the same rate.

suística and, finally, the security breach has been reported to the AEPD (document no. 6). In addition to the above, it should be noted that, after the registration of the aforementioned security breach, by the General Directorate for the Public Service of Justice have carried out continuous measures exhaustive review and control of the publications that appear on the portal website of the Ministry of Justice in relation to the calls for assessment tests assessment of aptitude for the exercise of the professions of law and procurement

(years 2014-2021); registering the last of these actions in the month of January

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2022 (document no. 7).

- That the AEPD itself considered at the time that there was no indication evidence that the events that occurred were punishable (document No. 8), attended to all given the concurrent circumstances; and that, apart from the underlying issue, this own authority has indicated the extemporaneity (cause of inadmissibility) of one of the written documents of the interested party (document nº 9).

- It should also be taken into account that, since these resolutions were issued, AEPD to date, there has been no new element related to the background that appears in the disciplinary file and that justifies the change of criteria of the AEPD. Therefore, legitimate expectations are invoked, as well as the firmness of resolutions and the absence of new justifying elements for an eventual revision to request that the AEPD not go against its own acts in the absence of new relevant data. Lastly, this party considers that the initiation of this pro-sanctioning procedure, in the absence of relevant developments, goes against the acts own issued by the AEPD itself when it did not admit due to lack of reasonable evidence the claimant's claim, having resulted in said firm resolution and without record prior declaration of nullity.

I REQUEST that, having submitted this brief of arguments, it be taken as mulated the allegations that appear in it, in order that they be taken into account taken into account in the reference procedure and especially in its resolution.

with the definitive closure agreement and filing of the file for the presumed infraction
tion of article 5.1. f) of the RGPD.

FOURTH: On March 15, 2022, the instructor of the procedure agreed
perform the following tests:

1. The claim filed by

A.A.A. and its documentation, the documents obtained and generated during the
admission to processing of the claim, and the report of previous investigative actions
tion that are part of the procedure RR/00753/2019.

2. Likewise, it is considered reproduced for evidentiary purposes, the allegations to the agreement
initiation of the referenced sanctioning procedure, presented by the MINISTRY
OF JUSTICE (DG OF RELATIONS WITH THE ADMINISTRATION OF JUSTICE), and
the accompanying documentation.

FIFTH: On April 8, 2022, a resolution proposal was formulated,
proposing that the Director of the Spanish Data Protection Agency
imposed on the MINISTRY OF JUSTICE (D.G. OF RELATIONS WITH THE
ADMINISTRATION OF JUSTICE), for an infringement of article 5.1.f) of the RGPD,
typified in article 83.5 of the RGPD, a sanction of warning.

SIXTH: On May 17, 2022, a letter of allegations is received from the
motion for a resolution stating the following:

- "This Ministry as claimed is reiterated in each and every one of the
arguments filed on March 8, 2022 against the Initiation Agreement

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sanctioning procedure, dated February 15, 2022, issued by the Agency

Spanish Data Protection (AEPD).

- That, in view of the proven facts, by this Ministry of Justice as

claimed, the contradiction between the second proven fact

where it is reported that the AEPD, having no proof of evidence on the 18th of

September 2019, since the documentation provided by the claimant, in 31

of July 2019, "did not accredit", as it is said textually, "the exercise of the right

of access collected in the RGPD nor the referred publication", said said inadmissible.

claim, and the third proven fact where it is accredited that said

The authority was already aware of the fact that is the subject of the claim since March 1, 2019.

In other words, the publication "on the website of the Ministry of Justice the list of applicants

admitted and excluded to carry out the first aptitude evaluation test

professional for the practice of law for the year 2019, whose publication included

the complete DNI of the interested parties", as well as the correction of the same thanks to

the prompt action of the Ministry of Justice in reporting the security incident.

Therefore, in consideration of the foregoing and taking into account the

order of the aforementioned proven facts, by this Ministry as

claimed, a flagrant contradiction is evident that is revealed in the dilatory action

carried out by the AEPD, in its performance, from March 1, 2019 to 18

September 2019, the latter date on which the

inadmissibility of said claim for not appreciating rational indications of the existence

of an alleged violation of data protection.

- That, in relation to the chronological succession of the aforementioned events

proven, by this Ministry of Justice as claimed it wants to draw the attention

As for what seems like something inexplicable from the legal point of view in

matter of sanctioning law on the action carried out by the AEPD when not

Appreciate signs of administrative infringement in terms of data protection with date of September 18, 2019 to conclude on February 14, 2022 with the opening of sanctioning procedure for the same act, and counting on the same factual information that you already had prior knowledge of.

In this sense, it should be underlined that in matters of procedure sanctioning are the facts are those that configure the corresponding infraction; it which is a fundamental principle that the AEPD now opposes, returning about the same fact that has given rise to the claim of Mr. A.A.A. and that, in his At the time, it did not constitute an infringement in terms of data protection. So that the AEPD goes against its own criteria expressed in many of its resolutions.

- That on the violation of the principle of legitimate expectations referred to

In the second legal basis, this Ministry considers that there are principles and sufficient arguments applicable to the case against the action of the AEPD on the opening of the disciplinary file.

In this regard, the Judgment of the Supreme Court of February 1 is valid of 1990, which establishes that the principle of legitimate expectations must be applied “not only when there is any kind of psychological conviction in the particular benefited [in this case the Ministry of Justice], but rather when it is based on

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signs produced by the Administration that are sufficiently conclusive [Resolution AEPD September 18, 2019, in accordance with the provisions of article 65.2 of the LOPDGDD] so that they reasonably induce you to trust the legality

administrative action [in this case the Ministry of Justice].”

So, although the event giving rise to the claim before the AEPD

constituted an "unlawful conduct", it is evident that, for the imposition of

a sanction of whatever type, the necessary elements must be present for it;

but in the present case, as has been proven, the Ministry of Justice

repaired and corrected the security incident, an action that, on the other hand, did not constitute,

in September 2019, subject to objection by the AEPD.

- That, furthermore, by this Ministry of Justice it is manifested

party that cannot be considered -as expressed in the primary legal basis-

Firstly, as a "new element" that has justified the change of criteria of the AEPD- the

incorporation to the sanctioning file of the Judgment of the National High Court of

dated April 8, 2021, Appeal number 000634/2020, on claim of

amount for the operation of public services against the Ministry of Justice,

on whose grounds it is proven that the claimant is one of those affected

- With regard to the fifth legal basis, this Ministry wants to re-

jump in relation to the resolution proposal that the AEPD has not had to analyze

enforce the diligence of the data controller or the security measures applied

given that, as it is said textually, "corrective measures would not be requested since

that the listings were withdrawn immediately”; which, in recognition of

diligent management and proactivity in data processing by the res-

ponsible, contrasts greatly with the sanction proposal that by the Subdirectorate

General Data Inspection is requested from the Director of the AEPD, especially when

It is recognized, as has been made clear throughout the procedure, that

There are other third-party claims related to the pre-

sit down

Based on the above, request the file of the actions

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: on July 31, 2019, he filed a claim with the Spanish Agency

Law of Data Protection against the MINISTRY OF JUSTICE for not having

responded to a request made on May 28, 2019. It also stated that

the General Subdirectorate for Relations with the Administration of Justice and the Ministry

Prosecutor published on the web portal of the Ministry of Justice the list of admitted/not

admitted from the call for the examination for access to the Bar, revealing the name

and the DNI of the applicants (acknowledges that some day later the Ministry corrected the

list by another with the DNI protected). Along with the claim, he provided the documents

submitted to the claimed entity exercising the right of access to the file

administrative, not detaching from the documentation provided that there was

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requested access to your data provided for in the data protection regulations. In

Regarding the publication of the list with the personal data of the applicants,

did not provide any document that proves the disclosure, in particular, of their own

personal information.

SECOND: In view of the documentation provided that did not prove the exercise of the

right of access contained in the RGPD or the aforementioned publication, the claim will be

inadmissible, dated September 18, 2019, in accordance with the provisions of

Article 65.2 of the LOPDGDD. Against this resolution, the claimant filed

extemporaneous reconsideration appeal that was inadmissible.

THIRD: On February 18, 2019, it was published on the website of the Ministry of Justice initiates the list of applicants admitted and excluded to carry out the first test of evaluation of professional aptitude for the practice of law for the year 2019, whose publication included the complete DNI of the interested parties, including that of the claimant. keep. Given this circumstance, the respondent, on March 1, 2019, withdrew the aforementioned publication of the portal of said Ministry, proceeded to notify the incident before the Spanish Agency for Data Protection, and was replaced on the website the listing published by another without full identity data

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-General Data Protection Regulation, hereinafter RGPD), grants each authority control and as established in articles 47 and 48.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the rights digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The formal procedures ted by the Spanish Agency for Data Protection will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions dictated in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In response to the allegations presented by the respondent entity, it should be noted the next:

Regarding the fact that the AEPD itself considered, at the time, that there were no indications

that the events that occurred were punishable in the resolution of inadmissibility of the claim filed by the claimant, it should be noted that this resolution was issued taking into consideration the documentation submitted with the claim. This documentation did not provide the publication on the web portal of the Ministry of Justice of the list of admitted / not admitted of the call for the entrance examination to the Legal Profession, revealing the name and DNI of the applicants, nor the exercise of

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right of access recognized by the RGPD.

Article 65.2 of the LOPDGDD indicates:

“The Spanish Agency for Data Protection will not admit claims presented when they do not deal with personal data protection issues, are manifestly unfounded, abusive or do not provide reasonable evidence end of the existence of an infraction.”

By not providing rational indications of the existence of the infraction, nor that it was one of the affected people, the claim was dismissed.

They add in their arguments that there has been no new element related to the merits that is recorded in the sanctioning file and that justifies the change of criteria of the AEPD. The new element is the Judgment of the National High Court dated 8

April 2021, Appeal number 000634/2020, on claim of amount for the

functioning of public services against the Ministry of Justice, in whose functions

The following is noted:

“On February 18, 2019, it was published on the portal (web) of the Ministry of Justice

the list of applicants admitted and excluded to take the first evaluation test assessment of professional aptitude for the practice of law for the year 2019, whose publication included the complete DNI of the interested parties, among them the plaintiff here- tea. Given this circumstance, on March 1, 2019, the aforementioned publication was withdrawn. portal of said Ministry, the incident was notified to the Agency Spanish Data Protection Agency, and the list published on the website was replaced another without complete identity data, also publishing a note in- formative...”.

In the Grounds of the reviewed Judgment, it is proven that the claimant is one of those affected.

Although the security breach had been reported, the incident had been corrected. had been communicated to the interested parties, no claim had been received for the affectation of the claimant's data.

In its allegations, the Ministry of Justice explains why, in its opinion, this judgment would not be considered a “new element”. He argues that the same was issued in a procedure of patrimonial responsibility of the Administration (therefore with a different object to the present one), and that, likewise, it declares that “the actions of the interested party before the AEPD and the file to which they gave rise remain outside the walls of this process”

This affirmation is nuanced by two aspects: firstly, by the he- fact that, as indicated above, the Court considers it undisputed that the list of admitted and excluded was published on February 18, 2019 including the Full ID. Secondly, because precisely this proven fact is the one that causes the de- right to compensation of 5,000 euros recognized to the claimant. And declares that “In the current process can only be studied or considered the issue of data protection. personal costs as a presupposition for the abnormal functioning of public services.

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public.”

For all these reasons, it is not until the reception of the aforementioned sentence when the AEPD has formally verified the publication of the list of admitted and excluded two with violation of article 5.1.f) of the RGPD, since it contained the DNI of all applicants. Hence no contradiction can be attributed to the action situation of the AEPD, having acted at each procedural moment based on accreditation available.

Based on the arguments presented, in no case can it be understood violated the principle of legitimate expectations. In this regard, this Agency in no way moment decreed the filing of actions for having verified the non-existence of a non-compliance with data protection regulations, but, as has been stated, position, because in his original claim, the claimant did not provide reasonable evidence that the offense had been committed.

In relation to this aspect, the respondent entity itself acknowledges the existence security breach. On the one hand, it expressly recognizes it, by indicating that:

“That, even though this Ministry of Justice recognizes that the measures security measures applied until the date on which the list is published.

list of applicants admitted and excluded for the entrance exams to the lawyer company whose examination took place on April 6, 2019 containing the data of name, surnames and number of personal identification document (DNI) not

have been enough...”

On the other hand, it claims to have implemented measures, both in relation to this course as for others that may occur, to prevent this type of vulnerability portions can be repeated.

With this, the only limit that this Agency had to proceed with the opening of sanctioning file would be the prescription of the infraction, something that does not concur in this assumption, as it is considered very serious for purposes of prescription conform to article 72.1.a) of the LOPDGDD.

In no way does this consideration alter the allegation of the respondent that the Judgment of the contentious-administrative chamber of the National High Court of 8 April 2021 establishes an objective responsibility of the Administration.

Although this character is true in accordance with articles 32 and following of the Law 40/2015, of October 1, on the Legal Regime of the Public Sector, is no less so than Article 34.1 of the aforementioned Law establishes that “Only the laws will be indemnifiable. injuries produced to the individual from damages that he does not have the legal duty I say to endure in accordance with the Law.”, which in this case highlights the anti-legal injury.

For the rest, the ruling on the principle of legitimate expectations provided by the defendant in his allegations only reinforces the correctness of the imputation contained in this resolution. Indeed, it is stated in the cited legal basis that “the principle of legitimate expectations must be applied “not only when there is

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ca any type of psychological conviction in the particular beneficiary [in this case the Ministry of Justice], but rather when it is based on signs produced by the Ad-sufficiently conclusive ministration”

In this regard, it should be remembered once again that the initial resolution of inad-claim by the AEPD was not based at all on a commitment bation of the legality of the actions of the Ministry of Justice, but only in the lack of contribution by the claimant of the accreditation that the publication of the lists had taken place with the complete inclusion of the DNI number. In conclusion, the AEPD did not declare that the facts or the infraction had not occurred, but simply that there was no evidence to prove them. These elements cough, as already indicated, were received later.

In conclusion, the initial resolution of inadmissibility for processing was not capable of pro- induce any “legitimate trust”, since it only inadmissible due to lack of evidence.

III

The party claimed in the proposal alleges that there is a contradiction between the Fact pro- bad second and third. As already pointed out, the second fact refers to the lack of accreditation of the exercise of the right of access by the complaining party and the publication of the lists, which gave rise to the inadmissibility of the claim. In Regarding the third fact, it refers, specifically, to the finding of the publication of said lists of candidates for the bar exam with the name, surnames and DNI concrete. Therefore, these are not contradictory facts but rather complementary and subordinate ones. cessive.

In this same sense, a response is made to his allegation that the same facts are inadmissible on September 18, 2019 and a sanctioning procedure is initiated in dated February 14, 2022. The inadmissibility was made due to the lack of evidence rios that the complaining party had exercised the right of access to their data;

while the sanctioning procedure has its origin in the verification of the

Publication of the lists of applicants referred to.

In relation to the non-imposition of corrective measures, it is a power of the

data protection authority complementary to the sanction, if necessary. In

the supposed object of this procedure is not necessary because it had already been corrected.

do the offending action, which does not exempt from declaring its commission and sanctioning it.

Finally, the fact that the violation of the right of the claim was corrected

maintenance, through the subsequent publication of the lists with the protected DNI number,

in no way alters the responsibility of the defendant, since the infraction had already

been committed.

IV

Article 5.1.f) of the RGPD establishes the following:

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“Article 5 Principles relating to the treatment

1. The personal data will be:

(...)

f) treated in such a way as to guarantee adequate security of the damages

personal data, including protection against unauthorized or unlawful processing and

against its loss, destruction or accidental damage, through the application of measures

appropriate technical or organizational (“integrity and confidentiality”).”

The LOPDGDD states in its article 5:

"1. Those responsible and in charge of data processing, as well as all

people who intervene in any phase of this will be subject to the duty of

confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679”.

The seventh additional provision of the LOPDGDD, establishes, in reference to the identification of those interested in notifications through advertisements and publications of administrative acts, the following in section 1:

"1. When it is necessary to publish an administrative act that contains sees personal data of the affected party, it will be identified by its name and surnames, adding four random numerical figures of the national document of identity, foreign identity number, passport or equivalent document.

When the publication refers to a plurality of affected these random figures

They should alternate...”

In the present case, the Ministry of Justice published, on February 18, January 2019, on the website of the Ministry of Justice, the list of applicants admitted and excluded to carry out the first professional aptitude evaluation test. for the practice of law for the year 2019, whose publication included the Full DNI of the interested parties, including that of the claimant. Warned said circumstance, on March 1, 2019, the aforementioned publication of the porch of said Ministry.

Article 83.5 of the RGPD indicates:

v

"5. Violations of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, alternatively, being from a company, of an amount equivalent to a maximum of 4% of the volume overall annual total turnover of the previous financial year, opting for the higher amount:

a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;"

Article 58.2 of the RGPD provides: "Each control authority will have all

two of the following corrective powers indicated below:

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d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

i) impose an administrative fine pursuant to article 83, in addition to or instead of

gar of the measures mentioned in this section, according to the circumstances of

each particular case;

Applicable in this case because the alleged offender is a public entity, it is the

article 83.7 of the RGPD indicates:

Without prejudice to the corrective powers of the control authorities under

of Article 58(2), each Member State may lay down rules on whether

can, and to what extent, impose administrative fines on authorities and organizations

public authorities established in that Member State.

Likewise, article 77 "Regime applicable to certain categories of res-

ponsible or in charge of the treatment" of the LOPDGDD provides the following:

"1. The regime established in this article will be applicable to treatments

of which they are responsible or entrusted:

(...)

c) The General State Administration, the Administrations of the communities

autonomous entities and the entities that make up the Local Administration.

(...)

2. When the persons in charge or persons in charge listed in section 1

had any of the infractions referred to in articles 72 to 74 of this law

organic, the data protection authority that is competent will issue resolutions

tion sanctioning them with a warning. The resolution will also establish

as the measures that should be adopted to stop the behavior or correct the effects

cough of the infraction that had been committed.

(...)

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions

analogous of the autonomous communities the actions carried out and the resolutions

tions issued under this article.

In the present case, it is proven that the personal data of the claimant

and thousands of participants were published on the website of the Ministry of Justice at

the list of admitted / not admitted of the call for the entrance examination to the

Advocacy, revealing the name and ID of the applicants, which may be unduly

accessed by third parties, violating the principles of integrity and

confidentiality, both established in the aforementioned article 5.1.f) of the RGPD.

Therefore, the aforementioned infringement of article 5.1.f) of the RGPD corresponds to penalties.

nar with a warning to the Ministry of Justice.

SAW

In accordance with the evidence available at this time,

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moment, it is considered that the party complained against has infringed the principle of confidentiality when publishing the data of name, surnames and complete DNI of the Applicants admitted/not admitted to the examination for access to the Bar on their page Web.

The known facts constitute an infraction, attributable to the party claimed, for violation of article 5.1.f) of the RGPD.

Article 72.1.a) establishes, for prescription purposes, that they will be considered

Very Serious Infraction ration:

a) The processing of personal data violating the principles and guarantees established established in article 5 of Regulation (EU) 2016/679.

Among the corrective powers provided by article 58 "Powers" of the RGPD,

Section 2.d) establishes that each control authority may "order the res-

ponsible or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way.

in a manner and within a specified period...".

In this case, corrective measures would not be requested since the listings were withdrawn immediately.

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 the MINISTRY OF JUSTICE (D.G. OF RELATIONS WITH THE ADMINISTRATION OF JUSTICE), for a violation of Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the MINISTRY OF JUSTICE (D.G. OF RELATIONS WITH THE ADMINISTRATION OF JUSTICE).

THIRD: COMMUNICATE this resolution to the Ombudsman,

in accordance with the provisions of article 77.5 of the LOPDGDD.

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

counting 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

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

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica->

web/], or through any of the other registers provided for in art. 16.4 of the
aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the
documentation proving the effective filing of the contentious appeal-
administrative. If the Agency was not aware of the filing of the appeal
contentious-administrative within a period of two months from the day following the
notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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