

□ File No.: PS/00415/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the complaining party) dated March 12, 2021

filed a claim with the Spanish Data Protection Agency.

The claim is directed against IBERCAJA BANCO, S.A. with NIF A99319030 (in  
hereafter, the party claimed).

The ground on which the claim is based is that the claimant's former brother-in-law,  
(worker of the claimed entity) and his wife, on July 1, 2020,  
opened an account in said entity in the name of the claimant's youngest daughter, without her consent.  
consent and using for this the personal data of the claimant and his daughter,  
despite the fact that the claimant is the legal representative of the minor and has the  
power, as a result of the recent death of his ex-wife.

After what happened, the claimant files several claims with the entity  
claimed, which acknowledges the existence of the current account and states that it was  
a computer error, despite the signatures of his ex-brothers-in-law appearing on the account.  
However, after the claim, the entity claimed canceled the disputed account.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5  
December, of Protection of Personal Data and guarantee of digital rights (in  
hereinafter LOPDGDD), on April 15, 2021, said claim was transferred to the  
claimed party, to proceed with its analysis and inform this Agency in the  
period of one month, of the actions carried out to adapt to the requirements  
provided for in the data protection regulations.

On May 20, 2021, this Agency received a written response from the claimed entity, indicating that the claimant expressed his disagreement with the opening of the savings account, number \*\*\*ACCOUNT.1, in the name of her minor daughter age B.B.B., and in whose contract he appears as the legal representative of the owner. Said account was opened, on July 1, 2020, by the executors-partner accountants and administrators of the assets of the inheritance of C.C.C., deceased mother of the minor, by virtue of the holographic will dated June 20, 2020.

In said will, the deceased designated her siblings D.D.D. and E.E.E., executors, accountants-dividers and administrators of his inheritance, expressly excluding the father of his daughter from the administration of the assets that she could receive for inheritance until he came of age.

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A copy of the account contract signed by the administrators of the company is attached. inheritance and the holographic testament where the aforementioned designation is collected, which was notarized by the Notary of \*\*\*LOCALIDAD.1, F.F.F., dated February 3, 2021.

As can be seen from the aforementioned contract, the account is listed as the owner B.B.B., daughter of the claimant and a minor, as authorized by the two administrators of the estate. rence, D.D.D. and E.E.E., and the claimant, appears as the legal representative of the owner, which that motivates its reflection in the contract even when it has been excluded from the administration of the inheritance assets.

The claimant appears in the contractual document as the legal representative of

the minor, although the authorized persons of the account are the two administrators of the inheritance. As the owner is a minor, the details of the identification of your legal representative, although in this case you are not authorized to administration of certain assets of the minor (those received from the inheritance of her deceased mother).

A copy of the screenshot of the response of the transaction is attached, which informs about the interveners of the account (holder and authorized), without appearing as intervener of the same the claimant.

The administrators of the inheritance can formalize the opening of the account, without the consent of the legal representative of the minor, in order to administer the assets of the C.C.C. inheritance.

On December 14, 2020, the claimant filed with the Center for Attention to the Heir diverse documentation for the processing of the inheritance of C.C.C., such as the act of declaration of heirs and the declaration deed, acceptance and adjudication of the intestate inheritance, documents in which no did not refer to the holographic will or to the appointment of executors-accountants dividers and administrators of the inheritance.

Given the discrepancy revealed between the aforementioned documents, out of caution, and given that the account had not presented any balance or operations until that date, it was cancelled.

Proof of account cancellation dated December 18 is attached.

of 2020 and extract of movements of the account from which the total absence is inferred of operations in said account during the period in which it was kept open.

The act of declaration of heirs and the deed of manifestation of inheritance provided both by the claimant to this Entity.

THIRD: On August 12, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party claimant.

FOURTH: On November 17, 2021, the Director of the Spanish Agency of Data Protection agreed to initiate sanctioning procedure to the claimed, with

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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 6 of the RGPD, typified in article 83.5 of the GDPR.

FIFTH: Once the aforementioned initiation agreement was notified, on December 9, 2021, the The respondent filed a pleadings statement stating the following:

The opening of the aforementioned account was formalized, on July 1, 2020, by the persons who held the position of executors, dividing accountants and administrators of the assets of the inheritance of C.C.C., deceased mother of the minor, by virtue of the will holograph dated June 20, 2020 that expressly excluded from the administration of said assets to the father of the minor, now a claimant.

In said will, the deceased designated her siblings D.D.D. and E.E.E., executors, accountants-dividers and administrators of his inheritance, expressly excluding the father of his daughter from the administration of the assets that she could receive for inheritance until he came of age.

Attached as document number 1 is the account contract signed by the executors, accountants-partners and administrators of the estate and as a document

number 2 the holographic testament where the aforementioned designation is collected.

The testator appointed in her will her brothers as executors, accountants-dividers and administrators of the assets of the inheritance until his daughter (only heiress and legitime) reached his majority. In turn, it expressly excludes to the claimant of the administration of the assets of the inheritance.

The Civil Code, in its article 162.3, exempts from the legal representation of minors res to the parents who hold parental authority for those acts related to assets that are excluded from parental administration, by establishing the following:

“Parents who hold parental authority have the legal representation of their children unemancipated minors.

Exceptions are:

1. The acts related to the personality rights that the child, in accordance with his maturity, he can exercise by himself.

However, those responsible for parents will intervene in these cases by virtue of their duties of care and assistance,

2. Those in which there is a conflict of interest between the parents and the child.

3. Those related to assets that are excluded from the administration of the parents.”

In accordance with the will of the testator, mother of the minor, upon her death death while his daughter was a minor, the father, holder of parental authority and by legal representative of the minor, cannot manage the assets that make up the patrimony of the testator and therefore, in accordance with the provisions of article 162.3

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of the Civil Code, nor can he represent the minor in any act related with said goods whose administration has been excluded.

Then, they are the brothers of the deceased, by virtue of the testamentary dispositions, who have the legal representation of their minor daughter in all those acts related to the goods that make up the relict wealth, before and after their reception by the minor, including, therefore, all those acts that could be necessary for the conservation and administration of said assets.

Taking into account that the testator excluded the claimant from the administration of the assets that made up his estate until his youngest daughter reached the majority of age, the consent of the claimant would not be necessary for the opening of the has the purpose of managing said assets. That is, in any case, an account opened in relation to those assets would not require the consent of the claimant for its correct formalization because those who can represent to the minor to formalize its opening are the brothers of the deceased.

The deceased has designated in her will her siblings as executors, accountants-participants and administrators of the estate until his daughter (the only heiress and legitime) reaches the age of majority. In turn, it expressly excludes the claimant for the administration of these assets.

The legal powers of the executors are included in articles 901 to 903 of the Code Go Civil.

Thus, article 901 indicates that "The executors will have all the powers that expressly conferred upon them by the testator, and are not contrary to law".

In addition to the legal powers conferred on the executors by the Civil Code (art.902), and in relation to which they can carry out acts of ordinary administration necessary for its fulfillment (for example repairs ordinary in order to preserve the assets of the inheritance), the testator

may entrust as many powers as it deems convenient in order to execute the his last will, as occurs in the present case in which he grants the additional faculties of partition of the inheritance and of administration of the goods that are part of the relict wealth, since the same people have been designated with the powers inherent to the three positions indicated.

Among the acts necessary for the management of the administration of the assets of the inheritance may require the opening of a bank account in which it appears as the sole heir and heir, given that the executors, accountants, accountants and administrators of the estate cannot appear as owners, but as authorized.

Therefore, my client considers that, since the opening of the account was requested by the brothers of the deceased in the scope of the faculties that her Appointment as executors, accountants and administrators of assets that made up the relict flow give them, also taking into account that the legal representative of the minor had been expressly excluded from the administration of these assets by the testator, and being necessary to open a bank account in the name of the sole heir and in turn legitimate to carry out

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out these faculties, the formalization of said account would not require the consent of the father of the minor, since he would not hold the legal representation of the minor by virtue of the provisions of article 162.3 of the Civil Code.

The opening of an account is an act of ordinary administration or mere management that can be found in the scope of the powers of administration of the executors companies, in turn administrators of the assets of the inheritance, and it may be required more to preserve or maintain the relict flow. If they request the opening of a account for the exercise of the powers of the position they hold, given that they hold would tempt the legal representation of the minor in all those acts related to assets that make up the relict wealth, even when dealing with acts prior to the acceptance of the inheritance, since for them the legal representation would not be held by the father of the minor, it would not be necessary to have the consent of the father to it.

For this reason, the respondent entity considers that it is appropriate to open a different account of others that the minor could already dispose of, and on which said administrators administrators would not have any power, as an act of administration related to the goods that are part of the relict flow.

SIXTH: On December 16, 2021, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, as well as the documents provided by the reclaimed.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: The claimant denounces that the entity claimed has opened an account for name of her minor daughter, without her consent and using the data of the claimant and his daughter, despite the fact that the claimant is the legal representative of the minor and has parental authority, as a result of the recent death of his ex-wife.



SECOND: The claimed entity states that it opened the account

at the request of the administrators of an inheritance of which the minor is the beneficiary.

It states that the administrators can formalize the opening of the account, without the

consent of the legal representative of the minor, in order to administer the

assets of the C.C.C. inheritance.

This is so, since in accordance with article 162.3 in accordance with the

article 901 both of the Civil Code,

the executors, accountants and

administrators of the estate, in this specific case the siblings of the deceased,

can formalize the opening of the account, within the scope of their powers, without requiring

for this, the consent of the father of the minor who, despite holding the country

authority and legal representation of the minor in general, given that it has been

expressly excluded from the administration of the assets of the inheritance, become

the siblings of the deceased, by virtue of the testamentary dispositions, who

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have the legal representation of their minor daughter in all those acts

related to the goods that make up the relict flow, before and after their

reception by the minor, including, therefore, all those acts that could

be necessary for the conservation and administration of said assets.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

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 resolve this procedure.

## II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, in its article 4.11 defines the consent of the interested party as "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data that concerns you".

In this sense, article 6.1 of the LOPDGDD, establishes that "in accordance with the provided in article 4.11 of Regulation (EU) 2016/679, consent is understood affected person, any manifestation of free, specific, informed and inappropriate will. unequivocal by which he accepts, either through a statement or a clear action affirmative, the treatment of personal data that concerns you".

For its part, article 6 of the GDPR establishes the following:

"1. The processing will only be lawful if at least one of the following conditions is met:  
nes:

- a) the interested party gave their consent for the processing of their personal data for one or more specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;
- c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;
- d) the treatment is necessary to protect the vital interests of the interested party or another Physical person;
- e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the data controller or by a third party, provided that said interests

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interests do not prevail or the fundamental rights and freedoms of the interest

cases that require the protection of personal data, in particular when the interested

sado be a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

by public authorities in the exercise of their functions.”

Likewise, article 7 of the LOPDGDD in relation to the consent of the

minors establishes the following:

“1. The processing of personal data of a minor may only be

be based on your consent when you are over fourteen years of age.

The cases in which the law requires the assistance of the holders of the country are excepted.

power or guardianship for the celebration of the legal act or transaction in the context of which

obtain consent for treatment.

2. The treatment of the data of minors under fourteen years of age, based on the

consent, it will only be lawful if the consent of the holder of parental authority or guardianship is recorded, with

the scope determined by the holders of parental authority or guardianship.”

III

In the present case, it is reported that the entity claimed proceeded to open

of an account in the name of the minor daughter of the claimant, to proceed with the

distribution of an inheritance, considering that the claimed entity has used the personal data of the minor to open an account without having the legitimacy necessary for this, since the legitimacy alleged by the claimed entity is the distribution of an inheritance that had not yet been accepted.

In response to such statements, the respondent entity has argued that its proceedings proceeded in accordance with the will of the testator, mother of the minor.

It is indicated that when the death of the minor's mother occurred, despite the fact that her daughter is a minor, and the father is the holder of parental authority, he cannot manage the assets that make up the estate of the testator, nor represent the minor in any act related to said property whose administration has been been excluded as manifested in the holographic will of the mother of the minor, in accordance with the provisions of article 162.3 of the Civil Code.

Then, they are the brothers of the deceased, by virtue of the testamentary dispositions, who have the legal representation of their minor daughter in all those acts related to the goods that make up the relict wealth, before and after their reception by the minor, including, therefore, all those acts that could be necessary for the conservation and administration of said assets, enabling the law to the claimed party for the opening of an account and therefore the treatment of the personal data of the minor, when the cause is the purposes previously indicated.

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Therefore, after learning of the existence of the holographic will of the deceased mother of the minor, and that the brothers of the deceased are executors, starting accountants and administrators of the estate in accordance with said will accredits them to represent the minor in everything related to the inheritance and Consequently, upon opening the account, the Director of the Spanish Agency for Data Protection RESOLVES:

FIRST: PROCEED TO FILE these proceedings.

SECOND: NOTIFY this resolution to the claimant and claimed.

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 as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations, and in accordance with the provisions of the

art. 112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may file, optionally, an appeal for reconsideration before the Director of the Agency

Spanish Data Protection Authority within a month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and paragraph 5 of the provision

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

Contentious-Administrative, within two months from the day after

to the notification of this act, as provided in article 46.1 of the aforementioned Law.

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