

□ Procedure No.: PS/00388/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 05/17/2019 filed

claim before the Spanish Data Protection Agency. The claim is

directed against the Municipal Group of the Popular Party, NIF G28570927, (hereinafter, the

reclaimed). The reasons on which the claim is based are: that a PP councilor

made the publication on the social network Facebook of a Decree of the City Council in the

which includes your name and ID for the purpose of political criticism before the adoption of the aforementioned

administrative resolution, considering that there has been an infringement of the

regulations on personal data protection.

SECOND: Upon receipt of the claim, the Subdirector General for

Data Inspection proceeded to carry out the following actions:

On 07/19/2019, the brief filed was transferred to the defendant for analysis and

communication to the complainant of the decision adopted in this regard. Likewise, it

required so that within a month it would send to the Agency determined

information:

- Copy of the communications, of the adopted decision that has been sent to the

claimant regarding the transfer of this claim, and proof that

the claimant has received communication of that decision.

- Report on the causes that have motivated the incidence that has originated the

claim.

- Report on the measures adopted to prevent the occurrence of

similar incidents.

- Any other that you consider relevant.

The respondent, in a letter dated 07/23/2019, replied that it was not appropriate to recognize legitimacy to the PP since the publication had been made in the account of Facebook whose owner is an individual, not constituting a means of dissemination on the network of the PP, which does not have the capacity to dispose of the contents contained in a strictly private page.

THIRD: On 10/23//2019, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

FOURTH: On 02/28/2020, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the person claimed for the alleged infringement of article 6.1.a), typified in article 83.5.a) of the RGPD.

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FIFTH: Notification of the start agreement, the claim in writing of 03/06/2020 requested a copy of the file for the purposes of allegations; the copy and extension letter of term was transferred to him on 06/03/2020.

However, after the established term has elapsed, the claimant as of the date of this

The resolution has not presented a written statement of allegations, for which reason the indicated in article 64 of Law 39/2015, of October 1, on the Procedure Common Administrative Law of Public Administrations, which in section f) establishes that in the event of not making allegations within the period established on the

content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

SEVENTH: Of the actions carried out in this procedure, they have been accredited the following:

PROVEN FACTS

FIRST: The claimant filed a claim with the Spanish Agency for Data Protection on 05/17/2019 stating that a PP councilor had made the publication on the social network Facebook of a Decree of the City Council in the that includes your name and ID for the purpose of political criticism before the adoption of that administrative resolution, considering that there has been an infringement of the regulations on personal data protection.

SECOND: On 05/07/2019 the PP councilor in the City Council of Vélez-Málaga D. B.B.B., publishes on the social network Facebook a Council Decree, No. 2948, Subject: appointment of a third party in the position of temporary staff of this entity, and in which the name and surnames of the claimant appear together with their DNI number, making the following comment:

"I have never seen so little shame!!!

Less than a month before the local elections C.C.C. appoint eventual position as Group Secretary to the candidate (...) of the PSOE, A.A.A..

This fact is demonstrative that the only thing they want and are in the police is for a "sueldecito" as it is, whenever and best cost of all of us. for that they want continue in the government to place their acolytes until the last moment.

Public resources serve the interests of the PSOE by placing its people without no modesty and decency...And they said they were not going to have positions of trust.

Shame on them"

FOUNDATIONS OF LAW

Yo

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

Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators of the procedure so provide.

2. The initiation agreement must contain at least:

- a) Identification of the person or persons allegedly responsible.
- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what result of the instruction.
- c) Identification of the instructor and, where appropriate, Secretary of the procedure, with

express indication of the system of recusal of the same.

d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.

e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in If you do not make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility imputed.

3. Exceptionally, when at the time of issuing the initiation agreement there are not sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to the interested".

In application of the previous precept and taking into account that no formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

III

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The facts denounced materialize in that the personal data of the claimant (name, surnames and DNI), have been published by a PP councilor of the same Corporation in the social network Facebook, proving excessive since for express the political criticism to which he alludes, it was not necessary to include his personal data. personal character.

Said treatment constitutes an infringement of article 5, Principles related to the treatment, of the RGPD that establishes that:

"1. The personal data will be:

(...)

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

(...)"

IV

The documentation in the file shows that the defendant violated article 5 of the RGPD, principles related to treatment and, as indicates in the previous foundation, when the personal data of the claimant on the social network Facebook by a councilor from the municipal group of the political formation PP member of the Corporation, resulting in said publication excessive since it was not necessary to include in that the name and DNI to make his criticism of a political nature is possible, as a consequence of the appointment of a third party in the position of temporary staff of the Corporation.

This duty of secrecy and confidentiality must be understood to have the purpose to prevent leaks of data not consented by the holders thereof.

On the other hand, the personal data will be adequate, pertinent, limited and

not excessive, that is, if the intended objective can be achieved without making a

data processing, they should not be processed

Therefore, this duty of confidentiality is an obligation that falls not

only to the person in charge and in charge of the treatment but to everyone who intervenes in

any phase of the treatment and complementary to the duty of professional secrecy.

v

Article 83.5 a) of the RGPD, considers that the infringement of “the principles

basic for the treatment, including the conditions for the consent in accordance with

of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the

mentioned article 83 of the aforementioned GDPR, “with administrative fines of €20,000,000

maximum or, in the case of a company, an amount equivalent to 4% as

maximum of the overall annual total turnover of the previous financial year,

opting for the highest amount.

On the other hand, the LOPDGDD, for prescription purposes, in its article 72 indicates:

“Infringements considered very serious:

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1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

(...)"

Also the LOPDGDD in its article 77, Regime applicable to certain categories of controllers or processors, establishes the following:

"1. The regime established in this article will be applicable to treatments of which they are responsible or entrusted:

- a) The constitutional bodies or those with constitutional relevance and the institutions of the autonomous communities analogous to them.
- b) The jurisdictional bodies.
- c) The General Administration of the State, the Administrations of the autonomous communities and the entities that make up the Local Administration.
- d) Public bodies and public law entities linked or dependent on the Public Administrations.
- e) The independent administrative authorities.
- f) The Bank of Spain.
- g) Public law corporations when the purposes of the treatment related to the exercise of powers of public law.
- h) Public sector foundations.
- i) Public Universities.
- j) The consortiums.
- k) The parliamentary groups of the Cortes Generales and the Assemblies Autonomous Legislative, as well as the political groups of the Corporations Local.

2. When the managers or managers listed in section 1

committed any of the offenses referred to in articles 72 to 74 of

this organic law, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body on which it reports hierarchically, where appropriate, and those affected who have the condition of interested party, if any.

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3. Without prejudice to what is established in the previous section, the

data protection will also propose the initiation of disciplinary actions

when there is sufficient evidence to do so. In this case, the procedure and

sanctions to apply will be those established in the legislation on disciplinary regime

or sanction that results from application.

Likewise, when the infractions are attributable to authorities and managers,

and the existence of technical reports or recommendations for treatment is proven

that had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and

will order the publication in the Official State or Autonomous Gazette that

correspond.

4. The data protection authority must be informed of the

resolutions that fall in relation to the measures and actions referred to

the previous sections.

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 issued under this article.

6. When the competent authority is the Spanish Agency for the Protection of Data, it will publish on its website with due separation the resolutions referred to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that would have committed the infringement.

When the competence corresponds to a regional protection authority of data will be, in terms of the publicity of these resolutions, to what is available its specific regulations.

In accordance with the evidence available to said conduct constitutes by the claimed party the infringement of the provisions of article 5.1.e) of the GDPR.

It should be noted that the RGPD, without prejudice to the provisions of article 83, contemplates in its article 77 the possibility of resorting to the sanction of warning to correct the processing of personal data that is not in accordance with your forecasts, when those responsible or in charge listed in section 1 committed any of the offenses referred to in articles 72 to 74 of this organic law.

As indicated previously, it has been proven that the defendant violated article 5.1.c) of the RGPD, when the personal data of the claimant on the social network Facebook by a councilor from the municipal group of the PP political formation, member of the Corporation resulting in said publication excessive since it was not necessary to include in that the name and DNI to carry out his critical work of a political nature, as a result of the appointment of a third party in the position of temporary staff of the Corporation.

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It is necessary to point out that if these deficiencies are not corrected by adopting the appropriate measures to prevent the violation of what is stated in article 5.1.c) or reiterate the behavior revealed in the claim and that is the cause of the this procedure, as well as not immediately informing this AEPD of the measures adopted could give rise to the exercise of possible actions before the responsible for the treatment in order to apply effectively the measures appropriate to guarantee and not compromise the confidentiality of the data of personal character and the right to privacy of individuals.

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 MUNICIPAL GROUP OF THE POPULAR PARTY IN VELEZ-MALAGA, with NIF G28570927, for an infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning in accordance with what is stated in article 77.2 of the LOPDGDD.

SECOND: REQUIRE the MUNICIPAL GROUP OF THE POPULAR PARTY IN VELEZ-MALAGA, with NIF G28570927, so that within a month from the notification of this resolution, accredits: the adoption of the necessary measures and relevant in accordance with the regulations on data protection of personal nature in order to prevent incidents from occurring again in the future such as those that have given rise to the claim and adapt to the requirements contemplated in article 5.1.c) of the RGPD.

THIRD: NOTIFY this resolution to the MUNICIPAL GROUP OF THE PARTY

POPULAR IN VELEZ-MALAGA.

FOURTH

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

: COMMUNICATE this resolution to the Ombudsman,

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.

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

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

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through the

if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of

Sea Spain Marti

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