

□ Procedure No.: PS/00494/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated May 30, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against Asociación Proyecto Eduka with CIF G37511862 (in
hereinafter, the claimed or Association).

The reasons on which your claim is based are that having accepted the request for
limitation of your data by the Association, which was aware that it
published his data on Facebook on ***DATE.1.

Well, he went by email to the Data Protection Delegate

(hereinafter, DPD) that appears in the privacy policy of the Association, on the date
May 27, 2020, receiving a reply on May 29 that the DPD listed
no longer provides its services to the claimed.

Along with the claim, it provides a reply from the respondent to the request to exercise
Right to limitation of treatment.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(LOPDGDD), which has provided a mechanism, prior to the admission for processing of the
claims made before the Spanish Agency for Data Protection,

consisting of transferring them to the Data Protection Delegates designated by

those responsible or in charge of the treatment, for the purposes provided in article 37

of the aforementioned norm, or to these when they had not been designated, the transfer of the

claim presented by the claimant to the claimed, so that it proceeded to its

analysis and respond to this Agency within a month.

Within the framework of file E/04783/2020, by means of a letter dated June 15,

2020, the claim was transferred to the respondent, being notified

electronically on June 26 of the same year, as evidenced by the certificate

issued by the FNMT.

After the period granted to the defendant without having responded to the request

of information, in accordance with the provisions of article 65.2 of the LOPDGDD,

On September 18, 2020, the agreement for admission to processing of this document is signed.

claim.

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Subsequently, within the framework of file E/07271/2020, by means of a document dated

September 17 and reiterated on September 28, 2020, transfer was given

again the claim to the claimed requesting him so that, within a period of one

month, send the following information: 1. Report on the causes that have motivated

the incident that gave rise to the claim. 2. Report on measures taken

to prevent similar incidents from occurring, implementation dates and controls

carried out to check its effectiveness. 3. The decision adopted regarding this

claim. 4. Accreditation of the response provided, where appropriate, to the claimant. 5.

Any other that you consider relevant.

Thus, it was notified electronically on September 28, 2020 to

claimed, as evidenced by the certificate issued by the FNMT that works in the

file, and delivered the notification through the postal service on October 6

of the same year.

THIRD: On March 15, 2021, 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 of the RGPD, typified in Article 83.5 a) of the RGPD.

Said agreement was notified electronically on March 26, 2021 to the respondent,

as evidenced by the certificate issued by the FNMT that is in the file

FOURTH: Formal notification of the initiation agreement, the one claimed at the time of the

This resolution has not submitted a brief of arguments, so it is

application of what is stated in article 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations, which in its

section f) establishes that in the event of not making allegations within the stipulated period

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.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: It is stated that the claimant in relation to the claimant's email that

received on June 10, 2019, told him: "that your personal data is

limited in terms of their treatment by this entity, in the terms

arranged in art. 18 RGPD, and may be treated solely and exclusively to give

compliance with existing legal obligations.

SECOND: It is verified that having accepted the request for limitation of your data

by the respondent, he published his data on Facebook on ***DATE.1.

THIRD: On March 15, 2021, this sanctioning procedure was initiated by the

alleged infringement of article 6) of the RGD, being notified on March 26, 2021. Not having made allegations, the respondent, to the initial agreement.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

Article 6.1 of the RGD establishes the assumptions that allow considering lawful processing of personal data.

For its part, article 5 of the RGD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party ("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

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

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties

for no longer than is necessary for the purposes of data processing

personal; personal data may be kept for longer periods

provided that they are treated exclusively for archiving purposes in the public interest, purposes of

scientific or historical research or statistical purposes, in accordance with article

89, paragraph 1, without prejudice to the application of technical and organizational measures

measures imposed by this Regulation in order to protect the rights and

freedoms of the interested party ("limitation of the conservation period");

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

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").

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The data controller will be responsible for compliance with the

provided for in section 1 and able to demonstrate it ("proactive responsibility")."

III

In accordance with the evidence available, it is considered proven

that on May 26, 2020, the defendant, proceeded to spread through the social network

Facebook

the personal data of the claimant, when previously there was replied to the claimant before his request to exercise the right of limitation of treatment, that your personal data is limited in terms of its treatment by part of the claimed, in the terms provided in article 18 RGD, and may be treated solely and exclusively to comply with legal obligations existing.

Therefore, it is verified that the respondent spread through the social network the data of the claimant, and therefore is responsible for the violation of the confidentiality when disseminating said data, for which it is considered that it has violated the article 6.1 for an illicit treatment of the personal data of the claimant, in relation to article 5.1 f) of the RGD, which governs the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

On the other hand, in relation to what is alleged by the claimant that the respondent does not have a Data Protection Delegate, it should be noted that it is not mandatory for the claimed party to have the Data Protection Delegate, without prejudice that he may dispose of it, in accordance with the provisions of article 37.1 of the RGD, in relation to article 34 of the LOPDGDD.

IV

Article 83.5 a) of the RGD, considers that the infringement of "the basic principles costs for treatment, including the conditions for consent under the articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned article.

Article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 maximum. or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount."

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

the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this Regulation.

glament;

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."

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Points out in Considering 148:

"In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than

sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its

intentional nature, to the measures taken to alleviate the damages suffered,

the degree of liability or any relevant prior violation, the manner in which

that the control authority has been aware of the infraction, compliance

of measures ordered against the person responsible or in charge, adherence to codes of

conduct and any other aggravating or mitigating circumstance."

There are no previous sanctions against the defendant, the activity of the defendant does not

It is the usual data processing, nor was it intended to obtain benefits.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE EDUKA PROJECT ASSOCIATION with CIF G37511862,

for an infringement of Article 6 of the RGPD, typified in Article 83.5 a) of the RGPD,

a warning sanction.

SECOND: NOTIFY this resolution to the PROJECT ASSOCIATION

EDUKA with CIF G37511862, and require it to proceed within a month, to

adopt the necessary measures to stop the behavior that is the subject of this claim

and inform the AEPD within a month of the measures adopted.

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

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->

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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

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