

□ Procedure No.: PS/00339/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Mrs. A.A.A. (*hereinafter, the claimant) dated April 22, 2019

filed a claim with the Spanish Data Protection Agency.

The reasons on which the claim is based are “I am sending you this complaint because I have
having requested the National Institute of Statistics (INE) the exclusion of my data
to be transferred to political parties so as not to be able to send propaganda
election, I have received two postal items sent by political groups. Attach
copy of the justification issued by the INE and photographs of the shipments received”. (folio no.
1).

Along with the claim, provide Documentary evidence No. 1 "receipt of presentation
in the Registry Office" dated 04/06/19 with the Summary Opposition of Parties.

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

As a result of the research actions carried out, it is confirmed

that the data controller is the person claimed: Compromís.

THIRD: On 11/18/19, this Agency received a response to the training

Compromis policy stating the following:

“The facts object of the complaint correspond to the sending by this party

politician of the electoral propaganda for the general elections held on the 28th of

April 2019 in concurrence with the elections to Les Corts Valencianes.

In accordance with current regulations, in order to make said shipment, the

representatives of this candidacy received from the Electoral Census Office a

copy of the voter census file of the corresponding constituencies. In

Specifically, the file used to send propaganda in said elections was en-

delivered by the Electoral Census Office to COALICIÓ COMPROMÍS within the deadlines

determined by law.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/7

The copy of the voter census file that is sent to the political parties

cos has the registration design that appears in the document that is attached to this es-

written as DOCUMENT 1.

Therefore, if a political party sends electoral propaganda to the address of a

voter is, necessarily, because the file received included said address, which

which presupposes that that person has not exercised a right of opposition to receiving

electoral publicity.

In both cases, the fact that the right of opposition has not been

claimant's position is in no way attributable to COALICIÓ COMPROMÍS, since that it has no means of knowing whether a person has exercised their right to oppose before the INE, having limited itself to sending electoral advertising con-
relying on the correctness of the file that was received from the Public Administration with that finish.

The foregoing implies that this political party is not to blame for the events that are imputed to him.

For these reasons, I PRAY THAT SPANISH PROTECTION AGENCY
OF DATA:

That, having submitted this document together with the supporting documents, accompanying, please admit it and have allegations made, so that, in view of the same, this sanctioning file is DEFINITELY FILED ".

FOURTH: On November 4, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 6 of the RGPD, typified in Article 83.5 of the RGPD.

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

PROVEN FACTS

First. On 04/22/19, this Agency received a claim from the complainant by means of which it transfers as the main "fact" the following:

“reception of electoral propaganda from the Compromis formation despite so-
tenders the exclusion of my personal data to be transferred to political parties
so as not to be able to send electoral propaganda, I have received two postal items sent
by political formations.

Attach documentary evidence (Doc. No. 1) that certifies having practiced Law
Opposition before the INE on 04/06/19.

“Examined your request for exclusion from the copies of the electoral roll that is delivered to the representatives of the candidacies to make postal shipments of

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/7

electoral propaganda, you are informed that it has been estimated and will take effect permanent as long as it does not manifest itself in the opposite direction”.

Second. The sending of electoral propaganda of the political formation is accredited

Compromises when providing the denounced (Doc. nº 2) the envelope of the denounced training, to the address ***ADDRESS.1), coinciding with that of the affected party.

Third. The call for the General Elections of April 28, 2019 will be pro-

occurred on March 5, so the deadline for submitting claims

It was fixed from March 11 to 18, 2019.

These same deadlines apply to requests for exclusion.

It

This is so because the electoral census delivered to the political parties cannot be modified.

cos

for specific elections, once the claim period has closed

of

census for said elections.

It is accredited that the presentation of the request for non-receipt of propa-

electoral ganda is produced by the complainant on 04/06/2019 12:46:47 (Schedule peninsular).

FOUNDATIONS OF LAW

Yo

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

II

In the present case, we proceed to examine the claim of date of entry into this agency on 04/22/19 by means of which it was transferred as the main fact pal the following:

“reception of electoral propaganda from the Compromis formation despite so-tenders the exclusion of my personal data to be transferred to political parties so as not to be able to send electoral propaganda, I have received two postal items sent by political formations” (folio nº 1).

The legal tool that allows citizens to request the right of exclusion

The position that concerns us is found in the recent Organic Law 3/2018, of 5 December December, Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDPGDD), which introduced in its third final provision two modifications to Organic Law 5/1985, of June 19, on the General Electoral Regime (in addition before LOREG).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/7

Paragraph 5 of this article 58 bis guarantees that “the recipient a simple and free way of exercising the right to oppose this sending of pro-

electoral pay”.

Article 39.3 LOREG (LO 5/1985, of June 19, of the General Electoral Regime)

general) provides the following:

“Within the above term, any person may file a claim directed given to the Provincial Delegation of the Electoral Census Office about their census data. them, although only those that refer to the rectification of errors in personal data, changes of address within the same circle, enrollment or non-inclusion of the claimant in any Census Tract of the district. conscription despite having the right to it. Requests for voters who oppose their inclusion in the copies of the electoral census that are facilitate the representatives of the candidacies to make postal shipments of pro-election pay. They will not be taken into account for the called election those that reflect a change of residence from one constituency to another, carried out after on the closing date of the census for each election, having to exercise their right in the section corresponding to your previous address.

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

For its part, the LOPDGDD in its article 18 regulates the right of opposition in the following terms:

“The right of opposition, as well as the rights related to the decisions automated individual operations, including profiling, will be exercised in accordance with the provisions, respectively, of Articles 21 and 22 of the Regulation (EU) 2016/679”.

Article 21 GDPR REGULATION (EU) 2016/679 OF THE EU-PARLIAMENT

ROPEO AND THE COUNCIL of April 27, 2016 provides the following: "The interested party

You will have the right to object at any time, for reasons related to your situation.

particular situation, to personal data that concerns him or her being the object of treatment

based on the provisions of Article 6, paragraph 1, letters e) or f), including the elaboration

profiling on the basis of these provisions.

The controller will stop processing the personal data, unless

prove compelling legitimate reasons for the treatment that prevail over the

interests, rights and freedoms of the interested party, or for the formulation, exercise

or the defense of claim".

Agreement 2/2019, of January 23, 2019, of the Central Electoral Board establishes

establishes the following about this opposition:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/7

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

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

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

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

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

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

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

have enabled this process.

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

the voter manifests itself in the opposite direction.

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

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

candidacies can have the complete list of voters for voting purposes.

tion and scrutiny, with the essential data for the identification of the voter.>>

cited.

In the present case, we find two organic laws (art. 81 CE)

that regulate the matter that occupies us, understanding that based on the criterion of specialization

ity, that the matter that occupies us is that of the General Electoral Regime, and it is in

this framework where the affected exercised her right not to receive electoral propaganda.

As the exercised right has been proven, it was not done within the term

marked in the LOREG, that is, until 03/18/19 inclusive, reason that originated the

reception of electoral propaganda from the Compromis political formation at their home address.

usual mess.

This is not an obstacle, so that the exercised right - refusal to receive our new

goes political propaganda—unfold its effects in the following political campaigns,

as long as the affected party “does not state otherwise”.

The lists of the Electoral Census were sent to the political formations, with

the personal data updated to the closing date of the same, without stating

the opposition exercised by the complainant, having made it outside the stated period

marked by the regulations in force.

III

Article 25 of Law 40/2015 (October 1) provides the following:

”They can only be sanctioned for acts constituting an administrative infraction.

natural and legal persons, as well as, when a Law recognizes them capable

capacity to act, affected groups, unions and entities without legal personality.

dica and the independent or autonomous estates, which are responsible for the themselves by way of fraud or negligence”.

This principle of culpability also governs administrative infractions.

tive, because to the extent that the sanction of said infraction is one of the festivities of the ius puniendi of the State is inadmissible in our legal system a regime of strict liability or without fault (STC 76/1990 -EDJ 1990/4435-)...”.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/7

Moreover, this same ruling requires guilt in the case of ad-hoc infractions.

administrative actions committed by legal persons, stating that “.... Even this Court has described as “correct” the principle of personal responsibility for procedural acts. pios - principle of the personality of the penalty or sanction- (STC 219/1988 -EDJ 1988/535-).

The jurisprudence of the Supreme Court, in line with that of the Constitutional Court has established that the sanctioning power of the Administration, as manifestation of the “ius puniendi” of the State, is governed by the principles of the Personal Law. final, being the basic structural principle that of culpability, incompatible with a Strict liability, no fault.

Thus, the SSTs of 12 (rec. 388/1994) and May 19, 1998, Sixth Section, affirmed man that in the sanctioning field “any attempt to build a strict liability” and that “in the area of administrative liability there is no It is enough that the conduct is unlawful and typical, but it is also necessary that is guilty, that is, as a result of an action or omission attributable to its author by

malice or recklessness, negligence or inexcusable ignorance (...) that is, as required
agency derived from article 25.1 of the Constitution, no one can be convicted or
sanctioned but for facts that can be imputed to him by way of fraud or negligence
(guilt principle)».

IV

Based on the foregoing, it should be noted that the complainant exercised her right to
Non-receipt of political propaganda from the aforementioned formation, outside the established period
in the specific legislation regulating the matter, without appreciating the element
subjective of guilt, having proceeded the political formation denounced through tra-
collect the data of the same, as they were sent by the Office of the Census elect-
ral.

So it is appropriate to order the File of this procedure by not

The violation of the right asserted by the complainant must be proven.

Therefore, in accordance with the applicable legislation and based on the foregoing,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there was no
accredited the commission of any administrative infraction in the matter of protection of
data.

SECOND: NOTIFY this resolution to the political party COALICIO

COMMITMENTS and REPORT the result of the actions to the complainant Mrs.

A.A.A.

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

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

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

Following the notification of this act, as provided in article 46.1 of the aforementioned

Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es