

□ File No.: PS/00175/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 09/17/2018, a written claim entered this Agency presented by DÑA. A.A.A. (claimant) regarding an alleged violation of the against the autonomous body RESIDENTIAL ESTABLISHMENTS FOR THE ELDERLY OF ASTURIAS (ERA), attached to the MINISTRY OF HEALTH AND SOCIAL SERVICES, since 2019 called SOCIAL RIGHTS AND WELFARE.

Considers that Regulation (EU) 2016/679 of the European Parliament and of the Council of 04/27/2016 regarding the protection of natural persons, with regard to the processing of personal data and the free circulation of these data (hereinafter, RGPD), because there is documentation of the medical history (HC) of his father, deceased on 10/2/2016, in two administrative files, that of patrimonial responsibility, requested by her, in relation to her father's stay in residences: RP XX/2017, and another, the XX/982, estimating that:

a) In the RP file, there are incorporated three pages of non-interested persons, who they have nothing to do with the matter.

b) In the RP file, it is included on "Page 19 of the documentation file Adtva. Part I" "Clinical report" of his father for no reason, since its origin was for a different purpose.

c) Figure included in the RP on "Page 3 of the Adtva documentation file. Part I", (subsequently the claimant will refer to page 5 as a correction) a "Health Report" from his father, of which he provides a copy, dated 06/30/2015, signed by the Geriatrician who

indicates that it is recommended to start a treatment and that "this topic has been previously discussed with her daughter over the phone, but at that time she considered that the start of treatment It could do more harm than good." Rate the claimant that was issued without real knowledge of his father's health, "at the request of the Director of the nursing home" CPRM ***GERIATRIC.1" and did not contain all the data of the clinical information, considering that hid information. According to the complainant, the purpose of said report was that her father used a certain medication, confronting that doctor with the usual "who followed him".

It states that the report "was already used irregularly in file XX/982 of the ERA "providing reasons for his expulsion from the center", learning of that purpose was not legitimacy when he accessed his documents, October 2015. He indicates that after that knowledge, the "signing geriatrician" himself in January 2016, "offered to make another report

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amending the previous one". "This corrective report was sent to the ERA as an attachment to the second appeal to file XX/982".

She states that "As her father's guardian, after his death, she required the return of all medical reports to the autonomous body ERA dependent on the Ministry of Services and Social Rights", "once the reasons for their possession had been finalized".

"Supposedly, they had been delivered in their entirety in January 2017, although it is deduced from this RP file that is not so, because they continue to circulate and are used for reasons that considered illegitimate", contrary to the purposes of the signatory of the same, since it has been incorporated again as a basis for the RP XX/2017 file, which is a clone of the

XX/982, omitting however the allegations and the report of the same geriatrician amended the previous one of January 2016, which confirms its use in bad faith and partiality in the resolution of the file."

Provides:

-Copy of the document informing the DPD of the facts referred to on 08/31/2018, in which he expands the reasons why he understands they should not have been incorporated into the File your father's medical documents. It also refers to the fact that in the data given in January 2017 by the ERA, (annex two of that letter), "I only have reports communicated by SESPA, not all of them, as can be verified. Information generated by the nurses and auxiliaries of the geriatric centers has been denied to me in practice, I was given a mini report reworked only by the nurses of a nursing home, despite the approving resolution of the AEPD 2990/2016". It also refers alleged irregularities in the processing of the RP file.

- Copy of the letter of ***DATE.1, from the claimant to the claimant, reference to the AEPD procedure for the protection of rights TD/001652/2016, resolution R 2990/2016, (in which, according to the claimant, she requested the "return of her entire medical record"), managed as non-attention to the right of access, resolved on 12/20/2016, "...

You will find at your disposal the required medical history and documentation of the health of your father, who was listed in the CPRM Multipurpose Resource Center for the Elderly ***GERIÁTRICO.1, so you can remove it".

In the petitum of the facts of the resolution of the TD, it indicated: "he exercised the right of access to the medical history of his father in front of the entity ERA- MINISTRY OF WELFARE SOCIAL AND HOUSING, and declares having only received a report prepared by the nursing staff. Requires that they be given a copy of the clinical history as well as as all the reports prepared after your claims regarding the incidents suffered by his father and the records of incidents corresponding to the auxiliary personnel of

the different CPRs in which his father has been.”

He resolved, specified:

“...ESTIMATE the claim made... and urge the entity MINISTRY OF

SOCIAL WELFARE AND HOUSING so that, within the following ten working days

to the notification of this resolution, send the claimant a certification in which

facilitate full access to the required clinical history and other documentation that

contains data relating to the health of his father, or denies motivated and substantiated

requested access, and may incur in its absence in one of the offenses provided for in

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Article 44 of the LOPD. The actions carried out as a result of this

Resolution must be communicated to this Agency within the same period.”

In this regard, it indicates that only reports generated by the

HEALTH SERVICE OF THE PRINCIPALITY OF ASTURIAS (responsible for healthcare

healthcare) in January 2017, not all, since the information generated by nurses and

assistants of the geriatric centers has been denied me in practice, "despite the

approving resolution issued by resolution R 2990/2016”, referring to the aforementioned guardianship

of rights TD/001652/2016.

SECOND: On 10/31/2018, a resolution was issued agreeing to the INADMISSION of the

claim in file E/08309/2018, being appealed in replacement by the

claimant, RR 841/2018, expressing, among other reasons:

-Reiterates the issue of incorporating health reports into the file

administrative , the validity of the report of 06/30/2015.

-It highlights "the violation of the right to cancel health data in power of ERA", which was apparently granted to me when they returned most- that not all-the medical reports, "once the reasons for their possession by the acquired contract ""since my father had passed away". "Precisely this report in discord is one of those that has not been returned to me, nor has the report that rectify it

". Neither the report of 06/30/2015, nor the one amended in January 2016 (01/12/2016) had been delivered to him, and that he had not received a response from the transfer of your letter from the DPD to the Ministry

-Refers to aspects not referred to in the claim such as "the right of rectification that we have required when my father was alive" has not been granted to us.

It provided among others:

- Copy of the health report of 06/30/2015 and the clinical report of 01/12/2016 that manifests, rectifies it, and mixing the references to which it provides a copy of the HC of the "Sabugo Health Center".

-Copy of the letter of 08/23/2018 addressed to the respondent in relation to the instruction of the RP file of which a copy had been delivered

On XX/02/2019, it is resolved:

"FIRST: DISMISS the motion for reconsideration filed against the Resolution of this Agency issued on October 31, 2018

SECOND: URGE the General Subdirectorate for Data Inspection to analyze the claim made by the appellant in relation to the neglect of her right of access, giving it the corresponding procedure."

THIRD: Said resolution motivated the opening of file E/02410/2019.

In accordance with the mechanism prior to the admission for processing of the claims that are formulated before the AEPD, provided for in article 65.4 of Organic Law 3/2018, of 5/12, of

Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), which consists of transferring them to the Protection Delegates of Data designated by those responsible or in charge of the treatment, or to these when not

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appointed them, and with the purpose indicated in the aforementioned article, on 03/4 and 05/31/2019, your claim was transferred to the MINISTRY OF SERVICES AND SOCIAL RIGHTS OF THE PRINCIPALITY OF ASTURIAS (hereinafter, the CLAIMANT) to proceed with its analysis and provide a response within a month.

On 06/18/2019, the respondent states:

- a) He acknowledged the erroneous incorporation in the six intercalated pages in the file RP that did not correspond to the documentation related to it, accepting the mistake and justifying it as a result of the enormous documentation that formed part of it -a total of 750 pages-. In ANNEX II, provide a copy of said pages.
- b) Regarding the incorporation of the documents of the HC "which is part of the administrative file", they consider that it has not breached the regulations, and that it can be due to the fact that the claimant "does not agree with the content of the documentation of the file of patrimonial responsibility or with what the internal reports of the same".

Provides in ANNEX I, a copy of the document index of the RP XX/2017 file referenced and numbered up to 186, and documentation in number of pages that are added for each document from that moment, referenced to the procedure described. According to claimed, are a total of 636 pages. No date of each procedure is attached.

c) Provide a copy of the record of appearance of the claimant's representative on 04/05/2018 for hearing, view and copy of the file, with a copy of the document that precedes the claim, informing you of the possibility of the hearing process.

d) Provides a copy of the document addressed to the claimant dated 06/10/2019, given that "she has received official letter from the AEPD...in relation to the claim of 09/14/2018...", "it is communicated information in relation to data protection expdte RP XX/2017". The writing gives answer to points:

-On three folios as well as their reverses that are not interested in the file and appear in it.

- Points b and c, referring to the "clinical report" and the "health report", about what did not give Permission to use for purposes other than providing you benefit through assistance health, answers are contained in its second and third sections, indicating the origins of the documents, and that "the clinical report" was provided as "report mandatory "within the RP procedure, forming part of said file. In relation to the health report, also explains the origin, and points out that he did not allegations after the hearing process, being resolved on 10/28/2018.

On date ***DATE.2, after analyzing the documentation that was in the file E/02410/2019, a resolution was issued by the Director of the AEPD, agreeing to file the claim.

On date *** DATE.3, the claimant files an appeal for reversal, RR 603/2019 against the resolution relapsed in file E/02410/2019, in which it shows its disagreement with the contested decision, arguing the following:

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That he has not received any communication from the respondent, failing to comply with the

That the requested right of access has not been complied with.

That the claimed party be required to process the right of access to the

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That the claimed entity does not have a Data Protection Officer,

breaching the provisions of art. 37 of the RGPD, (new element that was not introduced in the resolution that resolves the file.)

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provided in art. 65.4 of the LOPDGDD.

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documentation related to the appeal filed.

That the initiation of a sanctioning procedure be agreed.

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And, finally, that the existence of an indemnity be declared in his favor, by virtue of
of the provisions of art. 82 of the RGPD for the moral damage derived from the repeated
violations of law, since the Ministry, suspected of having infringed the
regulations in relation to the care provided to his father and the social protocols and/or
that should have been followed, has never given complete information on
these extremes.

The RR is resolved on 06/11/2020, and is contained in FACTS:

“EIGHTH: According to the records in this Agency, there is evidence

rights protection file TD/01652/2016, which ended with the resolution dated 20

December 2016, by which it was agreed to UPGRADE the claim made... and urge

the entity MINISTRY OF SOCIAL WELFARE AND HOUSING so that it could send to the claimant certification providing full access to medical history required and other documentation containing data relating to the health of his father, or deny motivated and substantiated the requested access, being able to incur in its defect in one of the offenses provided for in article 44 of the already repealed Law Organic 15/1999, of December XX, on the Protection of Personal Data.

The RR resolves:

“PARTIALLY UPRESIDING the motion for reconsideration filed by...against the resolution of this Agency issued on date *** DATE.2, in relation to the neglect of the exercise of the right of access to his father's medical history, rejecting the rest of the claims made by the appellant, and agree to admit the claim for processing filed against the MINISTRY OF SERVICES AND SOCIAL RIGHTS OF THE PRINCIPALITY OF ASTURIAS.”

“On date ***DATE.1, the Managing Director of the RESIDENTIAL ESTABLISHMENT informed the claimant in writing that the required clinical history and documentation referring to the health of his father, -which appeared in the CPRM Center ***GERIÁTRICO.1 in ***LOCALIDAD.1-, was available for withdrawal at the administrative dependencies of said Center. “

On 03/01/2017, the AEPD required ERA, MINISTRY OF SOCIAL WELFARE AND HOUSING, to send the claimant a certification complying with the resolution dated 12/20/2016. No response was obtained.

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On 03/02/2017, also associated with that TD 1652/2016, a document from the claimant about inconsistencies in the documentation received regarding their integration and scarcity, "giving the feeling that it is information reworked from the original", "the information responds to 6% of the total time spent in the two establishments of the ERA, with 12% of the time spent in the ***GERIÁTRIC.1 CRPM and 0% in the CRP ***GERIATRIC.2". Accompanying a letter dated 02/27/2017, addressed to ERA with the title "Written errata on omitted and defective clinical documentation" of his father "delivery of the records of the ERA TD 1652/2016" in which he asks to vary a note of a date.

FOURTH: The admission to process of the RR initiates the procedure TD 00099/2020, resolved on 10/5/2020:

"ESTIMATE the claim made ... and urge the MINISTRY OF SERVICES AND SOCIAL RIGHTS OF THE PRINCIPALITY OF ASTURIAS with NIF S3333001J, so that, Within ten business days following notification of this resolution, send to the complaining party a certification stating that the right has been met of access exercised by it or deny it with reasons, indicating the reasons why it does not proceed to respond to your request. The actions carried out as a result of this Resolution must be communicated to this Agency within the same period. breach of this resolution could lead to the commission of the offense considered in article 72.1.m) of the LOPDGDD, which will be sanctioned, in accordance with art. 58.2 of the GDPR." As there was no response from the respondent, two requests were made, on 11/30/2020, and 01/04/2021, indicating:

"Once the term granted for the required actions to be carried out has elapsed, in said resolution without this Agency having been aware of them and having received in writing from the complaining party requesting compliance with the resolution of the Director of the Spanish Data Protection Agency, the MINISTRY OF

SERVICES AND SOCIAL RIGHTS OF THE PRINCIPALITY OF ASTURIAS so that:

1.- Within five business days, send the claimant a certification of the

compliance with the referenced resolution in the terms described therein.

2.- Within ten business days, notify this Agency of the measures adopted in

compliance with the requirement made in the previous point.

You are informed that, failing that, it could lead to the commission of the offense considered

in article 72.1.m) of Organic Law 3/2018, of 5/12, on Data Protection

Personal and guarantee of digital rights, which will be sanctioned in accordance with art.

58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation)."

No response was obtained.

FIFTH: On 08/24/2021, the Director of the AEPD agreed:

"INITIATE PUNISHMENT PROCEDURE against the MINISTRY OF SERVICES AND

SOCIAL RIGHTS OF THE PRINCIPALITY OF ASTURIAS, with NIF S3333001J, by the

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alleged infringement of article 83.6 of the RGPD, with an established limitation period

in article 72.1.m) of the LOPDGDD for three years as it is considered very serious."

"For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, of the Procedure

Common Administrative of Public Administrations (hereinafter, LPACAP), the

sanction that could correspond would be a warning."

No claims are received.

SIXTH: On 10/5/2021, a written document from the claimant is recorded:

"To complete the documentation of the file, the document is attached (appeal of

raised) cited in my complaint, with which the administration denounced had been urged to rectify the document that they have been using illegally.”

It is a letter addressed to the Ministry of Social Welfare and Housing, dated entry to the Principality on 01/19/2016, appeal against the resolution of 12/15/2015, of the Managing Director of the ERA who agrees to the forced transfer of her father to the center intergenerational in Oviedo.

SEVENTH: On 12/27/2021, a letter is received from the claimant in which with the title: “allegations are referred to the letter of 12/30/2020 of the offending administration present in the referred file”, contains the following:

- With reference to TD/00099/2020, to which "on 12/3/2021 he had access", continues without fulfilling the right of access to assistance documentation by the ERA staff, since they have not even received a response in this regard.

“Among the documentation of the TD, there is a letter dated 12/30/2020 signed by the

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responsible for the ERA data, folio 699 and 700, that "they have not sent me, which says that by virtue of the applicable regulations the minimum term for the suppression of a clinical report in the history", reference 29729/2020, indicates that “the answer has nothing to do with the object of the file TD/99/2020 initiated by violation of compliance with the right of access and not of deletion”, “I reiterate the request for the sanctioning file to be initiated carried out on 04/16/2021, folios 707 and 708 of the proceedings).

EIGHTH: On 03/28/2022, a resolution proposal was issued for the literal:

"That by the Director of the Spanish Agency for Data Protection is sanctioned with warning to the MINISTRY OF SOCIAL RIGHTS AND WELFARE OF THE PRINCIPALITY OF ASTURIAS, with NIF S3333001J, for an infringement of article 83.6 of the RGPD, typified in article 72.1.m) of the LOPDGDD. The measure that the

claimed as determined in article 58.2.c) of the RGPD is to attend to the right after the reiterated requirements of this AEPD.”

No claims were received.

PROVEN FACTS

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1) The claimant files a claim with the AEPD on 09/17/2018, considering that with the data of her father, of whom she was a guardian, who died on 10/2/2016, the data protection regulations by the ERA (ESTABLISHMENTS

RESIDENTIAL HOMES FOR THE ELDERLY OF ASTURIAS, attached to the MINISTRY OF SOCIAL RIGHTS AND WELFARE OF THE PRINCIPALITY OF ASTURIAS

The claimant considers in her claim that, on the one hand, various clinical and

Your father's health reports have been incorporated into two administrative procedures: the

RP XX/2017, of patrimonial responsibility for abnormal operation of the

Administration requested by her, in relation to her father's stay in residences, and

a previous one, XX/982, in which, although the year is not specified, the claimant stated

who accessed his documents in October 2015.

2) The second aspect that the claimant considers in her claim is that she exercised the right to “return all medical reports to the ERA” verifying that the AEPD

resolved as a right of access not addressed his claim, in the guardianship procedure

of rights TD/001652/2016, resolution R/2990/2016 of 12/20/2016, estimating its

request and requiring will facilitate "full access to the required medical history and other

documentation containing data relating to the health of his father, or deny reasoned and

substantiated the requested access”, now also stating the claimant in

09/17/2018, that despite the fact that on ***DATE.1, the respondent sent the answer, missing

documents. In addition, it asserts that the data has not been canceled because it was incorporated into the administrative records reviewed.

On 03/01/2017, the AEPD required ERA, MINISTRY OF SOCIAL WELFARE AND

HOUSING, to send the claimant a certification complying with the

resolution dated 12/20/2016. No response was obtained.

On 03/02/2017, also associated with that TD 1652, a document from the

claimant about inconsistencies in the documentation received regarding their integration and

scarcity, and missing documents.

3) The claim was not admitted for processing on 10/31/2018, although it was appealed in

replacement, agreeing on date XX/02/2019:

“FIRST: DISMISS the motion for reconsideration filed against the Resolution of this

Agency issued on 10/31/2018.

SECOND: URGE the General Subdirectorate for Data Inspection to analyze the

claim made by the appellant in relation to the neglect of her right to

access, giving it the corresponding procedure”. With this, the file E/02410/2019 was opened

in which the claim is transferred to the claimed one and the file is agreed on ***DATE.2

of the claim, which is appealed in an appeal for reconsideration, RR 603/2019, on ***DATE.3 and

that resolves on 06/11/2020: "PARTIALLY ESTIMATE the appeal for

filed by...against the resolution of this Agency issued on ***DATE.2, in

in relation to the neglect of the exercise of the right of access to the medical history of your

father, dismissing the rest of the claims made by the appellant, and agreeing on the

admission to processing of the claim filed against the MINISTRY OF SERVICES AND

SOCIAL RIGHTS OF THE PRINCIPALITY OF ASTURIAS.”

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4) The admission to process of RR 603/2019 gives rise to the procedure TD 00099/2020, resolved on 10/5/2020, which resolves:

UPGRADE the claim made ... and urge the MINISTRY OF SERVICES AND SOCIAL RIGHTS OF THE PRINCIPALITY OF ASTURIAS with NIF S3333001J, so that, Within ten business days following notification of this resolution, send to the complaining party a certification stating that the right has been met of access exercised by it or deny it with reasons, indicating the reasons why it does not proceed to respond to your request. The actions carried out as a result of this Resolution must be communicated to this Agency within the same period. breach of this resolution could lead to the commission of the offense considered in article 72.1.m) of the LOPDGDD, which will be sanctioned, in accordance with art. 58.2 of the GDPR.”

As there was no response from the respondent, two requests were made, on 11/30/2020, and on 01/04/2021, for compliance with the resolution, warning of the legal consequences of the lack of response. The defendant did not meet the requirements.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in Articles XX and 48.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of 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 procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

Personal data and those related to health are defined in article 4.1 and 4.15 of the RGPD,

What:

"1) personal data: any information about an identified or identifiable natural person

("the interested"); An identifiable natural person shall be deemed to be any person whose identity

can be determined, directly or indirectly, in particular by means of an identifier, such as

for example a name, an identification number, location data, an identifier

online or one or more elements of the physical, physiological, genetic,

psychological, economic, cultural or social of said person;

15) personal data relating to the physical or mental health of a natural person, including the

provision of health care services, which reveal information about your health status

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Health;"

Although the subject of the contribution of documents of the HC to administrative files of

patrimonial responsibility is not an object related to the imputed infraction, since in

the successive resources and files were not admitted for processing or questioned, it must be indicated

that the RGPD and the LOPDGDD qualify data related to health as special data.

protected, establishing a uniquely rigorous regime for obtaining, custody and possible assignment due to the consequences that its improper use would have for the people

The consequences are considered so harmful that their treatment is prohibited unless we do not apply an exception of those contained in article 9.2. a-j), being one of them the: "f) the treatment is necessary for the formulation, exercise or defense of claims or when the courts act in the exercise of their judicial function", although once lifted the general prohibition of treatment, there must be some assumption that gives legality to the treatment. In other words, in addition to the case provided for in article 9.2 f) it must be applicable to some legal basis of article 6.1 of the RGPD. In this case, the claimant requested a procedure of patrimonial responsibility in which it indicates that what is produced is the incorporation of data from the HC, with which it does not agree.

The incorporation of HC to a file of patrimonial claim supposes a treatment of personal data, in accordance with the provisions of article 4.2 RGPD, which it considers as such: any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, suppression or destruction.

Regarding the data of the HC, Law 41/2002, of 11/14, basic regulation of the autonomy of the patient and rights and obligations regarding information and clinical documentation, (LAP) points out:

- Article 14.2: "Each center will archive the medical records of its patients, whoever be it the paper, audiovisual, computer or other type of support in which they are recorded, that its safety, its correct conservation and the recovery of the information".

-Article 17.1: "Health centers are obliged to keep the documentation clinic in conditions that guarantee its correct maintenance and safety, although necessarily in the original support, for the due assistance to the patient during the time appropriate to each case and, at least, five years from the date of discharge of each healthcare process.

Therefore, the HC data is not subject to "return", as it contains data from assistance and health benefits, nor can claim ownership or ownership of the HC as such. Therefore, the termination of the contractual relationship cannot imply the disappearance from the legal world of some reports that contain effects derived from the assistance benefits for the parties that are documented in said reports.

III

The defendant is charged with the infringement of article 83.6 of the RGPD, which states:

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"Failure to comply with the resolutions of the control authority in accordance with article 58, section 2, will be sanctioned in accordance with section 2 of this article with fines administrative fees of EUR 20,000,000 maximum or, in the case of a company, a amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount."

The LOPGDD states in its article 71: "Acts and behaviors to the referred to in paragraphs 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

Article 58.2 of the RGPD, indicates, among others, the following powers of the authority of

control:

“c) order the person in charge or in charge of the treatment to attend to the requests for exercise of the rights of the interested party under this Regulation;”

The unfulfilled resolutions of article 58.2 of the RGPD, are precisely those that resolved the legal guardianship TD/01652/2016 of 12/20/2016 and TD/00099/2020 of 5/10/2020, expressly indicating in both the warning of the consequences of the breach of resolution.

The infraction of said article is reflected in terms of its typification for the purposes of prescription, in article 72.1 m) of the LOPDGDD with the literal in context:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

...

[...]"

“m) Failure to comply with the resolutions issued by the data protection authority competent in the exercise of the powers conferred by article 58.2 of the Regulation (EU) 2016/679.”

The absence of a response is accredited in compliance with what is required to the one claimed on compliance with the resolution of protection of rights occurred up to two times.

IV

Article 58.2 of the RGPD indicates as powers of the control authority:

“c) order the person in charge or in charge of the treatment to attend to the requests for exercise of the rights of the interested party under this Regulation;”

Article 83.7 of the RGPD adds:

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“Without prejudice to the corrective powers of the control authorities under article 58, paragraph 2, each Member State may establish rules on whether it is possible, and in what measure, impose administrative fines on authorities and public bodies established in that Member State.”

The Spanish legal system has chosen not to fine entities public, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDGG:

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

“c) The General Administration of the State, the Administrations of the communities autonomous and the entities that make up the Local Administration.”

"two. When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this organic law, the competent data protection authority will issue a resolution sanctioning the same with warning. The resolution will also establish the measures that appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected. would have committed

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which depends hierarchically, where appropriate, and those affected who had the status of interested, if any."

3. Without prejudice to what is established in the previous section, the data protection authority data will also propose the initiation of disciplinary actions when there are indications enough for it. In this case, the procedure and the sanctions to be applied will be the established in the legislation on the disciplinary or sanctioning regime resulting from

app.

Likewise, when the infractions are attributable to authorities and managers, and proves the existence of technical reports or recommendations for treatment that are not had been duly attended to, in the resolution in which the sanction is imposed, will include a reprimand with the name of the responsible position and order the publication in the corresponding Official State or Autonomous Gazette.

4. The data protection authority must be notified of the resolutions that fall in relation to the measures and actions referred to in the sections previous.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of the autonomous communities the actions carried out and the resolutions issued to the protection of this article.

6. When the competent authority is the Spanish Agency for Data Protection, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the responsible or in charge of the treatment that had committed the infraction.”

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Therefore, in accordance with the applicable legislation and having assessed the graduation criteria of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: SANCTION with warning the MINISTRY OF SOCIAL RIGHTS

AND WELFARE OF THE PRINCIPALITY OF ASTURIAS, with CIF S3333001J, for an infraction

of article 58.2 of the RGPD, typified in article 83.6 of the RGPD, and in article 72.1 m)

of the LOPDGDD.

SECOND: By virtue of article 58.2.c) of the RGPD that authorizes to "order the person in charge

or in charge of the treatment that attends the requests of exercise of the rights of the

interested in virtue of the present Regulation;" is required so that within fifteen

days address the right object of this claim.

Failure to comply with the provisions could give rise to the exercise of sanctioning power

in accordance with the provisions of article 83.6 of the RGPD.

THIRD: NOTIFY this resolution to the COUNCIL OF RIGHTS

SOCIAL AND WELFARE OF THE PRINCIPALITY OF ASTURIAS.

FOURTH: COMMUNICATE this resolution to the Ombudsman, in accordance with

what is established in article 77.5 of the LOPDGDD.

FIFTH: 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 period of one month from the day

following the notification of this resolution or directly contentious appeal

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

in accordance with the provisions of article 25 and section 5 of the fourth additional provision

of Law 29/1998, of July XX, regulating the Contentious-administrative Jurisdiction,

within two months from the day following the notification of this act,

according to the provisions of 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, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

You must also transfer to the Agency the documentation that proves the filing

effectiveness 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 suspension

precautionary

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Sea Spain Marti

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