

□ Procedure No.: PS/00066/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Mrs. A.A.A. (hereinafter, the claimant), dated 09/28/2019, filed
claim before the Spanish Data Protection Agency against Don B.B.B., with
NIF ***NIF.1 (hereinafter, the claimed).

The reasons on which he bases his claim are that "he was accepted as a person
to a voluntary bankruptcy, XXX/2019, and "The claimed party has sent
emails to various addresses of officials and positions of the work center of the
claimant, ***AGENCY.1, and has filed on ***DATE.2 a brief on behalf
of it through the electronic headquarters," to email addresses

"of

Councilors, personnel section, treasury area and even to the citizen's mailbox,
to which various officials have access revealing all the information of the process
court of its voluntary competition and requiring the City Council to adopt all the
precise measures so that the affected party does not receive any remuneration without the request
of the bankruptcy administration." The claimant requested the City Council to
2***DATE.4 delivery of a copy of the aforementioned documents.

The claimant has filed various complaints and reports before the College of
Lawyers of ***LOCALIDAD.2, Police, and in the Court his recusal. Provide copies.

It ends by indicating that "as a consequence of this harassment suffered, it has caused
medical sick leave." Provide a copy of medical leave ***DATE.1 estimated duration 34 days.

It also provides the following documentation:

1) -Copy of edict of 06/20/2019 of the court of 1st instance number 3 of

*** LOCATION.1, (hereinafter the Court) in compliance with the provisions of the article 23 of the Bankruptcy Law 22/2003 of 9/07, in which it is announced:

- In relation to the bankruptcy proceedings of the claimant, XXX/2019,

declared by order of ***DATE.5, the name and surname data are listed and

full address and location of the claimant.

- “That it retains powers of administration and disposition of its assets

subject to the intervention of the insolvency administrator who is appointed” (the claimed, including your data).

- “That the creditors of the bankrupt must direct the administration

insolvency the existence of their credits in the form and with the data expressed in the

art 85 of the L.C. For these purposes, it is reported that the designated bankruptcy administration

has been D. B.B.B., with professional address at ***ADDRESS.1, telephone ... and mail

***EMAIL.1- The deadline for this communication is one month from

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the last publication of the announcements that have been ordered to be published in the Official Gazette of the State.”

- “That the creditors and interested parties who wish to appear in the proceeding

They must do so through an Attorney and the assistance of a Lawyer (article 184.3 LC).”

SECOND: On 10/3/2019, the claimant provides further information by providing:

1) A written copy of the documentation delivered by the personnel section of the

***BODY.1 on 10/2/2019 "REPORT OF THE PERSONNEL SECTION OF THE

CITY COUNCIL" of two pages, with the following details:

a. It is reported on a page, that through the electronic headquarters of the City Council

***DATE.2, registration number that identifies, has a written entry in the terms

give us an email, stating as interested Mrs. "A.A.A." Y

as a representative, identifies the claimed party, attaching the order of the court of first instance

stantia number 3 of ***LOCALIDAD.1 for which he is appointed bankruptcy administrator

and stating the conversation held by C.C.C.", "attaching a copy of the

documents received in this City Council to which this section has had access

of personal".

b. The other page contains a reproduction copy of the document received on ***FE-

CHA.3, in the personnel section, email address personal@ORGA-

NISMO.1 and with a copy to hacienda@ORGANISMO.1, treasury@ORGANISMO.1 and bu-

zonciudadadano@ORGANISMO.1, addressed to the Mayor, Chief of Staff, Chief of Service

treasury, and chief treasury service. The origin of the mail indicates ***EMAIL.2 and

contains 5 attachments. In the subject there is "insolvency proceedings" name and surname

two of the claimant".

It is reported in the mail that the claimant "has suspended the powers of

administration and management of its assets, the exclusive exercise corresponding to the ad-

insolvency minister appointed by the court and must immediately take

measures necessary to prevent the bankrupt company from receiving on account of its remuneration

salaries or any other rights that any person may have in that City Council.

any quantity or commercial economic patrimonial right", pointing out as documents

Associated items in the mail:

a-declaration of insolvency and modification documents.

b- credential of the insolvency administrator of the trial court of

06/20/2019.

c- BOE publication.

d- RPC publication.

2) Copy of the letter from the bankruptcy administrator addressed to the mayor, in which he states:

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“as a continuation of our email today”...” and the telephonic conversation

phonic with C.C.C., of the personnel legal office”, also identifies the claimant

with the social security number. The literal of the writing is the same as that of the mail

electronically, and attach the documentation outlined in a) to d) and the email of ***DATE.3.

3)

In another letter also with entry of 3/10, the claimant provides the aforementioned

documents, consisting of:

a) Order of the Court, of correction of omission and defect noticed in the

***DATE.4 in which it corrects that of Y/YY/ definitively determining

Y/YY, dated

states that: “the bankrupt is suspended in his faculties of administration and

position on its assets, the exercise of these being subject to the intervention

of the insolvency administrators by means of authorization or conformity until the

conclusion of the contest”, it is also omitted that it was missing that “the liquidation phase is opened-
tion”.

In the lower part of the order, it is indicated “The dissemination of the text of this resolution

tion to parties not interested in the process in which it has been issued may only carry

carried out prior dissociation of the personal data that they contain.

they saw and with full respect for the right to privacy, the rights of people that require a special duty of protection or the guarantee of anonymity of the victims or harmed where appropriate. The personal data included in this resolution does not may be transferred or communicated for purposes contrary to the law.”

a) Copy of the aforementioned order, dated ***DATE.5, on the request for insolvency voluntary for insolvency of the claimant in which it is contained that:

“It is ordered to announce the declaration of the contest in the Official Gazette of the State for the urgent procedure and in the bankruptcy public registry”, makes an appeal creditors to inform the bankruptcy administration

existence of their credits and the existence of the process is notified to the Tax Agency the General Treasury of the Social Security”. In point 7 “Appeal to creditors it is indicated that “agreeing as publicity for this declaration the publication free publication in the BOE of an extract of the declaration, collecting the data essential for the identification of the bankrupt, the patrimonial regime in the that its faculties remain, the competent court, the number of cars, the number of the procedure, the date of declaration, the term for the communication of credits and full identification of the bankruptcy administration”

b) Copy of BOE of ***DATE.6 of the court of first instance and instruc-

***LOCALIDAD.1 that publishes the edict stating the number of the procedure ment and data of the claimant with her address, which has been declared insolvent volunteer by order of ***DATE.5 and the data of the bankruptcy administrator.

THIRD: In view of the facts, on 01/30/2019 the claim was transferred to the claimed to analyze the claim and within a maximum period of one month, from receipt, send:

1.

The decision adopted regarding the claim.

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

two.

claim.

Report on the measures adopted to prevent incidents from occurring

3.

similar, dates of implementation and controls carried out to verify their effectiveness.

Four.

Any other that you consider relevant.

FOURTH: On 12/4/2019, a new document is received from the claimant in which

provides record of declaration of preliminary proceedings of the court instruction number one

of ***LOCALITY.1 made on ***DATE.7 for the complaint filed by the

facts. It is a statement given by the claimant before the instructor, the

***DATE.7, at the National Police station, stating a series of

manifestations for the denounced facts. The instructor pointed out that it is in

in relation to the preliminary proceedings RRRR/2019, trial court one of

***LOCATION.1.

FIFTH: On 12/18/2019, a response was received from the respondent, stating:

1) Your treatment responds to the legal obligations established in the law

bankruptcy, considering that the processing of personal data of the

claimant is carried out within a judicial proceeding whose exercise is

jurisdiction of the aforementioned judicial body. The debtor had all the powers of disposition and administration of his patrimony suspended and, he could not dispose autonomously of any amount of money that was not delivered by the bankruptcy administration, or by the court. Sending the message and documentation attached to the Hon. ***ORGANISM.1, was made to several email accounts of the City Council itself, due to the urgent need to prevent the debtor from harm the interests of the creditors, and the obligation of the administration bankruptcy to pay creditors with the money obtained from the compensation salaries paid by the City Council, reducing the money allocated to the payment of their credits, for the refusal, reluctance, and obstruction carried out by the complainant to the bankruptcy administration, preventing knowledge of the competent body to direct the communication from the court, and/or the responsible person to contact.

As evidence, I attach briefs presented in the judicial proceeding:

E1. Brief of 08/28/19, addressed to the Court "recalling the obligation of the debtor to appear before the court and before the bankruptcy administration, as well as the collaborate and inform in everything necessary or convenient for the interest of the contest informs the court, how he knows in a letter that he sent on August 23, 2019 and accompanying documents, which the bankrupt refuses to provide to the administration. bankruptcy tion the necessary funds for the interest of the bankruptcy."

In point 3 "it is indicated that, for the fulfillment of the obligations, it has been tendered, requested and required to the bankrupt to inform and deliver various information information and documentation in relation to their relations with the Association for Helping the Family Indebtedness, the monetary dispositions what do you do of your bank accounts? carias etc., however, the bankrupt has not complied, preventing the work of the bankruptcy administration".

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E2, written on 09/26/19, addressed to the Court requesting that the bankrupt to proceed to the delivery and deposit of the vehicle to avoid harming the mass bankruptcy and creditors.

E3. Written communication of 10/18/19, reiterating to the court that it take notice of the refusal of the bankrupt to provide the information and documentation requested, to in order to be reminded of the obligation to collaborate with the administration of the contest, requiring it for the delivery of all the information and documentation necessary to the good end of the contest, and for the fulfillment of the obligations of the same with all two your creditors, warning you of the consequences in case of default, and warning him of the sanctions that could be imposed.

1) It adds that the claim presented was, immediately after the briefs presented in court denouncing the lack of collaboration of the complainant, and also, just after claiming in court the relationship/ existing relationship between the debtor, the ***ASOCIATION.1 and the Lawyer Ms. D.D.D., and that both the complainant and the AEF Association and its Lawyer, tried by all the media "get rid" of the current bankruptcy administration, in the procedure Notarized Extrajudicial Payment Agreement (AEP) for which he was appointed

The

Attached document E6, which deals with an email received, from the AEF Association, stating at the bottom of the copy of the email the literal AEF EXPERTS BANKRUPTCY.

the direction

***ASOCIACION.1@gmail.com, to ***EMAIL.1, on 10/14/2019, and refers to the

bankrupt: "She told us that you keep calling her. I think it's left

verified that we are your Lawyers... I spoke with the lawyer of the court last

Friday and we agree that the moment you resign we will withdraw

application for removal from office.

ships from

mail

2) It ends by indicating that "he is a professional natural person who has double

condition economist and lawyer with office located in a small office of the

city of ***LOCALIDAD.2, without having any worker or collaborator on behalf

someone else's, or their own, at their expense.

As a consequence of the person in charge working only as an administrator

insolvency proceedings, the means available to it are very limited in terms of the capacity

capacity to carry out greater or more extensive actions than those currently carried out

in the processing of personal data.

And finally, its economic and financial capacity is at the same level as

the one indicated with respect to the professional tasks performed."

SIXTH: On 02/17/2020, the Director of the Spanish Agency for the Protection of

Data agrees to accept the claim for processing.

SEVENTH: On 04/16/2020, the PUBLIC REGISTRY is accessed on the web

BANKRUPTCY,

<https://www.publicidadconcursal.es/concursal-web/>, appearing as

entry:

Welcome to the Public Bankruptcy Registry

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The Public Bankruptcy Registry is configured as a tool available of the various creditors of the bankrupt and also of the Administration of Justice, that facilitates the communication of the resolutions adopted by the Mercantile Courts. edge to the different public registries, knowledge of other insolvency situations them with which it can maintain connection and of the negotiation files of the extrajudicial payment agreements.

All this contributes to the improvement of legal certainty with regard to insolvency proceedings or their preventive procedures and greater agility procedural.

Through this Portal, grouped under the insolvent debtor, it is made available decision of the creditors the different procedural, bankruptcy and/or extrajudicial agreements ordered by date of publication.

The content of the Public Bankruptcy Registry is structured in three sections, as established in article 198 of the Bankruptcy Law.

The first section will give the publicity corresponding to the proposed resolutions. dismissal issued during the bankruptcy process and to which publicity must be given according to the law. This section also includes those resolutions that or- decided by the Judge under the provisions of article 23.2 of the Bankruptcy Law.

The second section contains the registry resolutions noted in the dismissed public records, including those that declare the guilt of the bankrupt and those that appoint or disqualify the insolvency administrators.

The third section, relating to out-of-court settlements, contains the information precise information on the initiation and completion of the procedures to achieve the

extrajudicial payment agreements regulated in Title X of the Bankruptcy Law, as well as such as the forecasts of edictal publicity of the process of judicial homologation of the refinancing agreements of the fourth additional provision of the Bankruptcy Law.

The Public Bankruptcy Registry depends on the Ministry of Justice, which finds amend its management to the College of Property, Mercantile and Property Registrars.

Movable Property of Spain.

With regard to the operation of the Public Bankruptcy Registry, they are the Courts, Attorneys, Mercantile Registrars, Notaries and other public registries.

cos those who provide the information of the different contests and files of extrajudicial agreement that must be incorporated into the Public Bankruptcy Registry.”

Both Entering the NIF of the claimant and the name and surnames appear the same. If name and surnames are entered, the NIF is seen; and if the NIF is entered names and surnames appear. It is consigned as informative literal

"CAVEAT:

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It is noted that the data and documents that are processed and published on this portal, have been published directly by the Commercial Courts, Attorneys, Commercial Registrars, Notaries, Bankruptcy Administrators, Chambers of Commerce and by the public registries of persons in which the entries are made provided for in the Bankruptcy Law.

The College of Property, Mercantile and Movable Property Registrars of Spain provides its technological services for the correct management of the portal, not

providing or modifying data or documents at any time, therefore, DO NOT CAN GUARANTEE THE INTEGRITY OF THE INFORMATION PUBLISHED since this depends on the fulfillment of the obligations of third parties outside the College of Registrars.

For all of the above, in case of finding any discrepancy in the published information, or no information was found that was legal or regulations should be published, please contact the person who sent or should have sent the information to the Public Bankruptcy Registry (if applicable, to the Courts of the Mercantile, Attorneys, Mercantile Registrars, Notaries and the registries seats of people in which the seats provided for in the Law are made Bankruptcy).

Clicking on the name opens a new informative tab showing, the mark in “debtor” and:

“We inform you that the personal data that is processed and published in this portal, have been published directly by the Commercial Courts, the Commercial Registrars, Notaries, Bankruptcy Administrators, Chambers of Commerce and by the public registries in which the planned entries are made in the Bankruptcy Law, being the person in charge of the Public Bankruptcy Registry the Ministry of Justice. Likewise, we inform you that the College of Registrars of the Property, Mercantile and Movable Assets of Spain acts as the person in charge of the treatment of the Ministry of Justice in the terms provided in the policy of privacy of the portal, mainly providing its technological services for the correct management of the portal, not providing or modifying data or documents in it portal at any time, being the purpose and use of the data incorporated into the Public Bankruptcy Registry those provided for in the Bankruptcy Law and other regulations applicable, without being used for a different purpose.

For all of the above, in case of finding any discrepancy in the published information, please contact in the first place the person who sent the information published in the Public Bankruptcy Registry (if applicable, to the Courts of the Mercantile, the Mercantile Registrars, the Notaries and the public registries in which the entries provided for in the Bankruptcy Law are made).

Below "list of publications" appearing two, in section III called "out of court settlements"

In a figure such as resolution type "appointment bankruptcy mediator" and the file number. In the other also the "adoption or not of the extrajudicial agreement of payments" (can be downloaded in pdf)".

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If you click on "insolvency mediator appointment" the personal data will appear of the claimant, the data of the insolvency mediator, including the email

***EMAIL.1. The screen shows the date of last update Thursday 02/28/2019. It can download in pdf.

In "Agreement or not of extrajudicial payment agreement" the data is reproduced of the claimant, showing the date of resolution 02/11/2019, adoption of the agreement "is not adopted" and in the operative part: "An agreement has not been reached extrajudicial payment and proceeds to the closing of the notarial deed. The mediator named insolvency will decide, where appropriate, the application for the insolvency creditors." The screen shows the date of last update Thursday 05/09/2019. I know you can download in pdf.

It is incorporated into the procedure with literal 04/16/20 accesses two pdfs.

EIGHTH: On 04/20/2020, a query is made in the application that manages sanctions and the claimed appears without prior records.

NINTH: On 06/08/2020 the director agreed:

“INITIATE PUNISHMENT PROCEDURE of WARNING to B.B.B., with NIF ***NIF.1, for the alleged infringement of 5.1.a) of the RGPD, in accordance with the articles 83.5 a) and 58.2.b) of the RGPD.”

TENTH: The notification to the respondent resulted in "unsuccessful" as far as I know I include in the Official State Gazette, single edictal board of 07/16/2020. I don't know receive claims.

ELEVEN: On 01/20/2021, the claimant submits a document in this AEPD in who provides a copy of a letter from the City Council that he addressed to the Court, dated 11/23/2020, in which it answers the request for a “report on the existence of the mail sent by the claimed to the platform of the local Corporation about the claimant” specifying the content and the number of users who had access to the Documentation submitted.

On 02/10/2021, the claimant requests information on the procedure by adding the request for “The cancellation of said information in the Hon. ***ORGANISM.1, administration of which I am an employee and to date there is still all the information available to the users indicated in the town hall report and in the administration." He does not provide a copy of the document that presumes that he has requested the aforementioned cancellation before the Town Hall.

TWELFTH: On January 28, 2021, the Director of the Spanish Agency for Data Protection, considering that the content of the referred matter reported to the preliminary proceedings is connected with the affectation to the right of the claimed to the

intimacy due to facts related to this procedure; appreciating

sufficient indications that there could be identity between the subjects, and the presumed administrative infraction that motivated the initiation of the sanctioning procedure, and the

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subjects and the subject matter of the Preliminary Proceedings initiated, agreed to suspend of this procedure.

THIRTEENTH: Dated July 12, 2021, has entry in this Agency

writ from Investigating Court 1 of ***LOCALITY.1, preliminary proceedings

SSSS/2019, and signed on June 29, 2021, in which it reports that the resolution

relapse is firm. Accompanying the order TTT / 2021 of 06/7/2021 that resolves the appeal

in the Provincial Court of ***LOCALIDAD.2 in which it is indicated they were instructed

proceedings against the defendant for the alleged crime of coercion and discovery and

revelation of secrets, and, on January 5, 2021, the dismissal was agreed

provisional of what has been done.

An appeal was filed by the reform claimant, dismissed by order of 11

January 2021, admitting the subsidiary appeal.

The order states in the first legal basis that: "the appellant understands that the

claimed disclosed personal information about you indiscriminately in the

***ORGANISM.1 in which he works, which has caused him damage (...)."

In the SECOND legal foundation it is indicated: "the appeal cannot prosper and

This is due to the correct arguments that are given by the instructor both in the order of

dismissal as the one that resolves the appeal for reform.

The Chamber starts that the accusation has been circumscribed, and this is stated by the accusation in his appeal for reform, to the crime of discovery and disclosure of secrets, thus abandoning the other behaviors that from the beginning of the procedure were imputed to the defendant...”

“The respondent did not reveal that the complainant was in bankruptcy proceedings or disclosed it, but as bankruptcy administrator addressed the payer of the claimant, the City Council, so that he knew the limitations to the availability that the claimant had due to the contest, in addition to requesting the information that the claimant bankrupt did not facilitate (statement of the investigated).

On the other hand, he shares the Court's assessment of the trial judge in the sense that the bankruptcy situation cannot be classified as secret.

Precisely one of the consequences of the bankruptcy declaration is the necessary publicity for the call to the procedure of the creditors and for that reason produced and is produced in accordance with articles 21.1.5 and 23 of the Bankruptcy Law, the publication in the BOE of an extract containing the identification of the bankrupt, the patrimonial regime in which their faculties remain, the competent court, etc.

When this information has been published in the BOE, it is clear that it is not a secret

On the other hand, there is evidence that the challenge of the defendant has been attempted and must be in that area in which, in your case, your performance is analyzed, since it does not exist in this criminal jurisdiction any indication of the commission of a crime”

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FOURTEENTH: On July 19, 2021, the Director of the Spanish Agency

Data Protection agrees to lift the suspension of this procedure

sanctioning party, notifying the defendant of this Agreement.

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: The claimant renders services in the ***ORGANISM.1.

SECOND: The claimant pleaded, by order of ***DATE.5, of the Court of 1st

instance, no. 3 of ***LOCALITY.1, in voluntary bankruptcy proceeding

XXX/2019, and in an edict of ***DATE.6 the person claimed is designated as administrator

insolvency practitioner, including, among others, your email address: ***EMAIL.2. Initially it

declared that he retained the powers of administration and disposition of his assets.

but subject to the intervention of the bankruptcy administration, although

order of ***DATE.4 of the same Court, the scope of the condition of the

bankrupt in the sense that:

"It is suspended in its powers of administration and disposition over its

heritage, the exercise of these being subject to the intervention of the

bankruptcy administrators by authorization or consent until the conclusion

of the contest", it also omits that it was missing that "the liquidation phase opens".

THIRD: The ***BODY.1 informed the claimant and she contributed in her claim-

tion, a letter from the City Council, in which it is appreciated that it receives, on September 12,

December 2019, at the email address domain ***ORGANISMO.1, a co-

electronic address of origin ***EMAIL.2 to the addresses of personal@, hacienda-

da@, treasury@ and mailboxcitizen@ with five attachments.

In the matter there is "bankruptcy creditors" name and surname of the claimant, category

labor registry, social security number, NIF and other jobs of the aforementioned addresses.

, identifying himself as the insolvency administrator and is informed that "he has suspension

given the faculties of administration and management of its patrimony, corresponding to the exclusive exercise to the insolvency administrator appointed by the court and must all immediately take the necessary measures to prevent the bankrupt from receiving on account of their salary payments or any other rights they have in that City Hall any amount or economic, commercial, financial patrimonial right certain, or commercial, without the express request of this bankruptcy administration. I communicated them The only thing is that, for the official purposes of the judicial procedure, we will present this same written by the SARA electronic network”, attaching as associated documents in the mail:

a-declaration of insolvency and modification documents.

b- credential of the insolvency administrator of the court of instruction of June 20, 2019.

c- BOE publication.

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d- Publication of the Public Bankruptcy Registry (RPC).

FOURTH: Similar document, signed on September 12, 2019, in the electronic office of the ***ORGANISM.1 addressed to the Mayor, was presented by the respondent, “as continuation to today’s email” explaining the facts, and including the data of the

claimant In the letter, he informs him of the account where the payment must continue to be made.

payment of wages, and that if they carry out embargoes or withholdings they suspend them, communicate reporting these circumstances to the bankruptcy administration or to the Court of ***LOCALI-

DAD.1. There is no legal reference in the document that covers addressing said ad-

ministry and communicate the aforementioned situation.

FIFTH: The claimant appeared before the lawyer of the administration of Justice of the Court of First Instance 3 of ***LOCATION.1 on ***DATE.8, to put in your awareness of the dissemination to non-interested parties of the bidding process, affecting their privacy. He also reported the facts to the police on ***DATE.1.

SIXTH: The Investigating Court 1 of ***LOCALITY.1, informs that the resolution relapse is firm; accompanying the order TTT/2021 of June 7, 2021, which resolves the appeal in the Provincial Court of ***LOCALIDAD.2 in which it is indicated that instructed proceedings against the defendant for the alleged crime of coercion and discovery and disclosure of secrets, and, dated January 5, 2021, it was agreed provisional dismissal of the proceedings.

An appeal was filed by the reform claimant, dismissed by order of 11 January 2021, admitting the subsidiary appeal.

The order states in the first legal basis that: "the appellant understands that the claimed disclosed personal information about you indiscriminately in the ***ORGANISM.1 in which he works, which has caused him damage (...)."

In the SECOND legal foundation it is indicated: "the appeal cannot prosper and This is due to the correct arguments that are given by the instructor both in the order of dismissal as the one that resolves the appeal for reform.

The Chamber starts that the accusation has been circumscribed, and this is stated by the accusation in his appeal for reform, to the crime of discovery and disclosure of secrets, thus abandoning the other behaviors that from the beginning of the procedure were imputed to the defendant..."

"The respondent did not reveal that the complainant was in bankruptcy proceedings or disclosed it, but as bankruptcy administrator addressed the payer of the claimant, the City Council, so that he knew the limitations to the availability

that the claimant had due to the contest, in addition to requesting the information that the claimant bankrupt did not facilitate (statement of the investigated).

On the other hand, he shares the Court's assessment of the trial judge in the sense that the bankruptcy situation cannot be classified as secret.

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Precisely one of the consequences of the bankruptcy declaration is the necessary publicity for the call to the procedure of the creditors and for that reason produced and is produced in accordance with articles 21.1.5 and 23 of the Bankruptcy Law, the publication in the BOE of an extract containing the identification of the bankrupt, the patrimonial regime in which their faculties remain, the competent court, etc.

When this information has been published in the BOE, it is clear that it is not a secret

On the other hand, there is evidence that the challenge of the defendant has been attempted and must be in that area in which, in your case, your performance is analyzed, since it does not exist in this criminal jurisdiction any indication of the commission of a crime.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation-General Data Protection Regulation, hereinafter RGPD), recognizes each Authority-Control Authority, and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), the Director of the Spanish Agency Data Protection is competent to initiate and resolve this procedure.

Article 63.2 of the LOPDGDD determines that: «The procedures processed by the Spanish Data Protection Agency shall be governed by the provisions of the Regulations to (EU) 2016/679, in this organic law, by the regulatory provisions dictated in its development and, as long as they do not contradict them, on a subsidiary basis, by the general rules on administrative procedures.»

II

The facts consisting of communication by transmission to third parties of the claimant's data, associated with their status as an incursed person in a voluntary bankruptcy proceeding. They are considered as third parties, the public employees and officials who work and manage input writings of the City Council through the electronic headquarters, in the areas to which the emails dated September 12, 2019 (Treasury, Treasury, head of personal, citizen mailbox).

The RGPD indicates in its article 4.2 that it is data processing:

“any operation or set of operations performed on data personal information or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;”

Although the insolvency administrator may process the data of the natural person to whom management of the contest is entrusted, it must be carried out within the framework of the functions attributed in the bankruptcy law, and respecting the principles that govern the matter of

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Data Protection.

It must refer to the regulations in force at the time of the events, Law

22/2003, of July 9, bankruptcy (hereinafter LC), repealed, almost in its entirety

Except for some articles, by the sole transitory provision 1 of the Royal Decree

Legislative number 1/2020, of May 5, Consolidated Text of the Bankruptcy Law BOE, 7

May 2020.

The specific regime granted to the Public Bankruptcy Registry (hereinafter

RPC), which is contained in the Bankruptcy Law, allows establishing that through the same

the registration advertising contained therein, only refers to the appropriate data and

necessary to prove the legal-procedural status of the person declared in

contest, which entails, consequently. be aware of your situation

patrimonial, guaranteeing the identity of purposes between the collection of the data and its

possible disclosure to third parties that imposes on whoever accesses said registry the obligation

that its claim to know can only have as its object, the legal situation

specifically for the purposes described.

The RPC is an organized set of data that ultimately refers to

people, and therefore, a database subject to the fundamental right to

Data Protection.

The RPC establishes nothing about the need to express any interest and less

qualified to access their seats, so much so, that their access is spoken of without further

and free of charge.

The personal data included in the RPC may only be used, and this is

extends to its possible assignments to third parties, that is, to its accessibility to third parties,

fully subject to the purposes that justify the existence of the institution

registry, which is to publicize the information of bankruptcy resolutions

referred to the debtor, and that its purpose is determined, explicit and legitimate.

The mandatory RPC assumes that the data entered does not depend on the

voluntariness of the bankrupt, then his consent has not been lacking.

In other words, the joint application of the Bankruptcy and Data Protection Law establishes

the regime in the transfer of data to third parties and that presupposes knowing; that these data

for the interested party enter the RPC and can be disclosed to third parties through

said database; and that this revelation seeks to achieve the same ends as

justified their collection, and that correspond to those of the institution

registration, being subject to the transfer of data to third parties limited to the content itself

of the RPC.

But it is that, in addition, the RPC intends to attend to the judgment of proportionality of the

effective publicity of the data, since these data turn out to be adequate, pertinent and

not excessive in relation to the scope and purposes pursued with obtaining them.

Then, certainly, article 23 of the bankruptcy law established:

"1. The publicity of the declaration of insolvency, as well as of the rest

notifications, communications and procedures of the procedure, it will be carried out

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preferably by telematic, computerized and electronic means, in the way that

determined by regulation, guaranteeing the security and integrity of the

communications.

The extract from the declaration of insolvency will be published, with the utmost urgency and

free of charge, in the "Official State Gazette", and will contain only the data essential for the identification of the bankrupt, including its Number of Fiscal Identification, the competent court, the number of cars and the Number of General identification of the procedure, the date of the declaration of insolvency order, the term established for the communication of the credits, the identity of the bankruptcy administrators, the postal address and the electronic address indicated so that the creditors, at their choice, carry out the communication of credits of in accordance with article 85, the system of suspension or intervention of faculties of the bankrupt and the electronic address of the Public Bankruptcy Registry where the they will publish the resolutions that bring cause of the contest.

2. In the same insolvency declaration order or in a subsequent resolution, the judge, ex officio or at the request of the interested party, may agree on any publicity that it considers essential for the effective dissemination of the acts of the contest.

3. The transfer of the offices with the edicts will be carried out preferably by telematics from the court to the corresponding advertising media.

Exceptionally, and if the provisions of the preceding paragraph were not possible, the official letters with the edicts will be delivered to the solicitor of the contest applicant, who must send them immediately to the corresponding advertising media.

If the applicant for the contest was a public Administration that acted represented and defended by its legal services, the transfer of the official letter will be carried out directly by the Court Clerk to the advertising media.

4. The other resolutions that, in accordance with this Law, must be published by means of edicts, they will be in the Public Bankruptcy Registry and on the bulletin board of the court.

5. The declaration of bankruptcy, as well as the rest of the resolutions

insolvency proceedings that, in accordance with the provisions of this Law, must be subject to publicity, will be inserted in the Public Bankruptcy Registry in accordance with the procedure that is established by law.

And article 24:

"1. If the debtor is a natural person, they will preferably be registered, for telematic means, in the Civil Registry the declaration of insolvency, with indication of its date, the intervention or, where appropriate, the suspension of its powers of administration and disposition, as well as the appointment of administrators bankruptcy...

4. If the debtor has assets or rights registered in public registries, they will register in the folio corresponding to each one of them the declaration of insolvency, indicating its date, the intervention or, where appropriate, the suspension of its powers of administration and disposition, as well as the appointment of the

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bankruptcy administrators.

Practiced the preventive annotation or the inscription will not be able to be annotated with respect to of those assets or rights plus embargoes or seizures subsequent to the declaration of insolvency than those agreed by the judge thereof, except as established in article 55.1.

5. The seats referred to in the previous sections will be made in by virtue of a warrant issued by the court clerk. In the commandment will state whether the corresponding resolution is firm or not. In any case, the

preventive annotations that must be extended in the public registries of persons or assets due to lack of finality of the resolution will expire four years from the date of the entry itself and will be canceled ex officio or at the request of any interested. The court clerk may order the extension thereof for four More years.

6. The transfer of the necessary documentation for the practice of the seats It will preferably be carried out electronically from the court to the records corresponding.

Exceptionally, and if the provisions of the preceding paragraph were not possible, the trades with the edicts will be delivered to the solicitor of the contest applicant, with the commandments necessary for the immediate practice of registration entries provided in this article.

If the applicant for the contest was a public Administration that acted represented and defended by its legal services, the ex officio transfer will be carried out directly by the court to the corresponding records.

7. Coordination mechanisms may be established by regulation between the various public registries in which, in accordance with the provisions of the previous sections, the auto de declaration and the other contest vicissitudes.

The preamble of Royal Decree 892/2013 of November 15, which regulates the RPC indicates "The publicity of insolvency proceedings is a necessary consequence of the universal nature of the effects of bankruptcy, which requires that the knowledge of your declaration and the details of its processing reaches everyone possible interested parties" That is why Law 22/2003, of 9/07, bankruptcy, has paid special attention to advertising the creditors' meeting, which must allow these to know not only the existence of a competition that affects them, but also

also that of all the resolutions that are approved throughout the bankruptcy process and the annotations that must be made in the legal public registries of people and goods.

Thus, in the data processing scenario, on the one hand, there is the data of the RPC, on the other, the actions of the judge who manages the voluntary competition, one of them is the designation of the insolvency administrator, deriving the present procedure for the facts derived from the use of data made by this person in the within the procedure, which is framed in functions and competences established in the rule that regulates the contest.

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In this case, the Judge decided, in contrast to the general rule in the event of voluntary bankruptcy (which is that the debtor will retain the powers of administration and disposal over their patrimony, being subject to the exercise of these to the intervention of the bankruptcy administrators, through their authorization or consent, art. 40.1 CL) that, in this specific case, the exercise by the debtor of the powers of administration and disposition on its patrimony, being replaced by the bankruptcy administrators, art. 40.2 CL.

That is, in the present case, the powers of administration and disposition of the bankrupt debtor on his assets are suspended, not merely intervened, being therefore the insolvency administrator who decides during the duration of the suspension as the powers of administration and disposition must be exercised

about your heritage. Therefore, the administrator in the exercise of said powers of administration, as if it were the debtor himself, can adopt the decisions that deems appropriate in favor of the contest (art. 43 LC) subject only to supervision by the contest judge (art. 35.4 LC). These powers of suspension refer of course to the powers of administration and disposition on rights and obligations that must be included in the competition (art. 40.6 LC).

On the other hand, the LC shows that in this specific case the administrators bankruptcy do not have an exhaustive list of powers that can or should carry out but its powers are described in the law by open wording.

Thus, in art. 40.2 LC corresponds to the bankruptcy administration to “replace” the powers of administration and disposition of crude over its assets. I don't know establishes a closed list of faculties, which is expressly confirmed by art. 33.1.b).12º LC (which refers to the necessary contest but which is applicable in this case since the judge inverted the general rule and began to consider that the debtor instead of having his powers of administration and disposition intervened, these should become suspended, and therefore, replaced by the administrator bankruptcy) since when referring to the expression "in particular", said powers that established in said 12th section cannot be considered exhaustive but merely illustrative or by way of example, corresponding therefore to the bankruptcy administrator (not the debtor -art. 44.3 LC) all those faculties necessary to continue the professional or business activity of the debtor insolvent (art. 44.3 LC), which is not interrupted (art. 44.1 LC). must be valued also, that by way of example, it would even be possible to request that the salary be deposited by the employer -in this case the City Council- into an account other than the of the debtor thus depriving him of said income if the administrator so decides bankruptcy in exercise of its powers of substitution (which it has not done) with the

sole limit of obtaining alimony by the bankrupt -if he were in a situation of need, and as long as there are enough goods in the workforce to meet their needs- (art. 47.1 LC), food that the bankrupt, in this case of suspension, you must request the judge (art. 47.1, second paragraph LC). Through publication in the BOE (for this specific case in the BOE of June 29 of 2019) of the bankruptcy situation, specifically, of the voluntary bankruptcy of the debtor bankrupt, it is also presumed for the Employer City Council that it has had knowledge of this, without the action of the bankruptcy administration adding anything to said advertising.

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The claimant informs the police, the court and the Spanish Data Protection Agency.

The Agency initiated sanctioning proceedings against the insolvency administrator for the processing of the claimant's data infringing the principle of legality and fairness, and may have violated article 5.1.a) of the RGPD.

Upon learning that the same facts were being prosecuted in court, he proceeded to suspend this sanctioning procedure.

Article 31.1 of Law 40/2015, on the Legal Regime of the Public Sector (RJSP)

which establishes: "Acts that have been criminal or administratively, in cases where the identity of the subject, fact and basis"

The non bis in idem principle is a constitutionalized principle and included indirectly in article 25 of our Constitution. It constitutes a manifestation of the principle of legality and is related to the effect of res judicata.

The non bis in idem principle is a guarantee principle of rights that prohibits the duplication of sanctions, that is, it prevents the same act from being sanctioned twice times when there is identity of subject, fact and legal basis. It prevents, therefore, that a person be punished twice for the same acts, for example, in the administrative and criminal jurisdiction.

Although this is not a principle explicitly included in our Constitution of 1978, from the first moments of life of the Magna Carta, the doctrine of the Constitutional Court enshrined the formulation of the principle. Specific, in its judgment 21/1981 of January 30, in which it declared its validity in the field of criminal law, proclaiming that it was a principle constitutionalized for understanding that it was implicit in the principle of legality contained in article 25 of the Constitution, which prevents a simultaneous typification of the same behavior, but with different sanctioning effects.

This principle requires the concurrence of two requirements for its application. For hand, a triple identity of subject, fact and legal basis. Secondly, the absence of a special relationship of subjection between the offending subject and the Public Administration in relation to the infringing act, because otherwise, if there is this special relationship, a compatibility of sanctions could be justified administrative and criminal.

Traditionally, the principle can be analyzed from two perspectives: one from material or substantive character, according to which it is prevented from imposing a double punishment for the same act and basis (prohibition of multiple punishment) and, the other, of procedural order, through which it is prohibited to submit to more than one process a

same subject for the same facts and grounds, after a final judicial decision,

Whether or not it is condemnatory, it is the negative effect of res judicata (prohibition of judgment).

multiple lie).

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The interpretive work carried out by the Constitutional Court has been significant

not only to give constitutional support to the principle, but has also contributed

buido in its dogmatic construction. Said Court has indicated that the non bis in

idem is implicit in various constitutional provisions. Also, it has

argued that it is an essential principle of any democratic system, which

assumes that no one can be tried and/or punished twice for the same act,

constituting a double restriction for the sentencer, on the one hand, one of character

procedural and, on the other, of a material or substantive nature. In addition, he specified that

for its concurrence, a coincidence of subjects, facts and foundations will be necessary.

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Regarding its constitutional basis, the Constitutional Court states that “[...]”

derives from personal dignity and respect for the essential rights that emanate from

human nature, a quality that is universally recognized. his transgression

constitutes, therefore, an abuse of the bases of the institutional framework, as well as of the

guarantees of a rational and fair procedure and investigation, enshrined in the

chapter on equal protection of the law in the exercise of rights.

Regarding the constitutional provisions that support the non bis in idem, the Tri-

bunal indicates that it would be implicit in the principles of legality and typicity, since

that these establish the limits that must be observed by the administrative authorities in the exercise of *jus puniendi*. Likewise, it would be strictly linked to the principle of proportionality, since it demands the establishment and rational application of sanctioning measures, proscribing their duplicity.

In short, the principle has broad constitutional recognition, although with an implicit and indirect character elaborated from the interpretation of diverse provisions contained in our Fundamental Charter and in international treaties that those who consecrate it. In this way, the requirement imposed by the Court is fulfilled.

Constitutional in order that it is one of those constitutional principles of the criminal order that can be extrapolated to the sanctioning administrative sphere, As for its foundation, it would be closely linked to the principles of legality.

character and typicity, prohibiting someone from being sentenced twice for the same fact and legal basis. It is a principle that seeks to limit the *ius puniendi* of the State, even reaching the point of constituting, for some, a general principle of Law (applicable to various areas) of an essential nature, which seeks to protect the dignity of human beings. In addition, the legal system must give each one what they provide.

tionally corresponds to it, so that a multiplicity of procedures and sanctions would affect the idea of "justice" pursued by the Law. In this way, it is a principle that, both for the criminal and sanctioning administrative spheres, presents the same content and characteristics, having an application as a general rule in the latter legal system.

When there is identity of the subject: if it is a natural person, there are no greater complexities since it is required that it be the same natural person (convicted or acquitted); regardless of the form (individual or joint and several) and the title of guilt used against her (fraud, negligence, breach of a duty of care, among others).

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Regarding the objective Identity, in fact, or factual: the effective configuration matters or practice of an action or omission capable of being pigeonholed in a description typical law. Indeed, not every fact or omission will constitute an illegal act, only those that import a condition to interests and legal assets of special importance stay for the law. The possibility that the same fact can give rise to discrepancies inks infractions with various procedures, the authority empowered to resolve the particular case should pay special attention to the relationship between these facts and the legal goods that are sought to protect, from which it will be able to determine if there is indeed an affectation at the beginning and, where appropriate, at the beginning of proportionality.

Finally: identity of punitive basis. In simple terms, this identity seeks to determine whether or not the concurrent rules protect the same legal right. In general, the norms do not establish in a categorical way the legal rights that, for which it will be necessary to verify if there is indeed a double protection. Therefore, it will be again the judge or the Administration who will have to seek, in the respective precepts, the legal right that is intended to be protected, in such a way that, if the goods affected are heterogeneous, there will be diversity of foundations while, if they are homogeneous, in their general statements, it will not proceed to double punishment, although the rules violated are different. Otherwise, the anti-legality of an illegal act could be totally or partially absorbed in the respective penalty or sanction in those cases in which there is a certain concurrence of legal interests.

despite the fact that their protection in both provisions are not identically analogous.

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On the other hand, it would result in the prevalence of criminal proceedings over administrative proceedings in the event that the facts constitute a crime and administrative infraction and in the need, in such a case, to paralyze the sanctioning administrative procedure until that the penalty be resolved. This rule is not really derived from the principle itself, but constitutes an instrument to guarantee it, enjoying a solid foundation constitutional,

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In the alleged object of this sanctioning procedure, it is initiated at understand that the respondent has not processed the claimant's data in accordance with the principles collected in article 5 of the RGPD, since it sent emails to various addresses of officials and positions of the claimant's workplace, presenting a document on her behalf through the electronic headquarters, to email addresses of Councilors, staff section, area of treasury and even the citizen's mailbox, to which various officials have access disclosing all the information of the judicial process of its voluntary contest and requiring the City Council to adopt all the necessary measures so that the affected does not receive any remuneration without the express request of the administration bankruptcy.

As has been pointed out, the same facts were denounced in court. The Provincial Court of ***LOCALIDAD.2 has ruled on the same facts filing the proceedings and indicating that the respondent did not reveal that the complainant was in a bankruptcy situation nor did he disclose it, but as an administrator

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bankruptcy went to the payer of the claimant, the City Council, so that knew the limitations to the availability that due to the contest had the claimant, in addition to requesting the information that the bankrupt party did not provide (statement of the investigated).

It adds that the bankruptcy situation cannot be classified as secret; one of the consequences of the declaration of insolvency is the publicity necessary for the call to the procedure of the creditors and for that reason it took place and it takes place, in accordance with articles 21.1.5 and 23 of the Bankruptcy Law, the publication in the BOE of an extract that contains the identification of the bankrupt, the patrimonial regime in the that their faculties remain, the competent court, etc.

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: FILE the sanctioning procedure instructed against Don B.B.B., by having filed the procedure in criminal proceedings for the same facts.

SECOND: NOTIFY this resolution to Don B.B.B..

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-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.

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Sea Spain Marti

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