

□ Procedure No.: PS/00299/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated August 20, 2020

filed a claim with the Spanish Data Protection Agency.

The claim is directed against GRUPO ANIMALISTA ***GRUPO.1 with CIF

G93559862 (hereinafter, the claimed one).

The reasons on which the claim is based are that on August 17, 2020 in the network
social Facebook, has been published and disseminated by the claimed personal data
including photos, false accusations and very serious disqualifications towards his person;
thus undermining their personal and family integrity, their privacy, honor, dignity,
own image and reputation, violating these fundamental rights contained in
the Spanish Constitution itself and in the Organic Law on Data Protection (LOPD).

Along with the claim, it provides an image of the Facebook publication.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), with reference number E/07948/2020, transfer of
said claim to the claimant on December 16, 2020, so that he could proceed with his
analysis and report to this Agency within a month, of the actions carried out
carried out to adapt to the requirements set forth in the data protection regulations.

On December 20, 2020, the respondent responds to the aforementioned request
stating that you cannot provide the necessary documentation to present your
allegations because the registration computer application does not allow it.

THIRD: On July 5, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 6 of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: On July 21, 2021, the allegations of the respondent are received in which shows the following:

“The claimant signed an animal adoption contract with the Grupo Animalista

***GROUP.1, providing only and exclusively the data expressed below.

uation:

☐ Name and surnames.

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☐ ID number

☐ Address.

Phones.

☐

☐ Email address.

The claimant did not provide information on her job, nor on the company for the that provides its services, nor its telephone number or address. Neither did he provide a photograph, nor in short, absolutely no - other data than those listed in the previous section.

The only information published on XXX's FACEBOOK social network page has been the public profile photo that the complainant has on said network, together with a character public -guitarist XXXXXXXX, openly, available for viewing of the world in-

intero and possibly with the express intention that it be seen by the entire public by to pose next to the character, of which surely -nor of his heirs- has authorization- tion to advertise. Therefore, no data has been disclosed that the affected party herself had not previously disclosed voluntarily.

In the adaptation contract, my principal (XXX) duly informed the adopter (today claimant) of all the rights that assist and protect him in accordance with the LOPD and by the GDPR. In proof of my affirmations, I enclose as a document number one, copy of the aforementioned contract.”

FIFTH: On July 23, 2021, a resolution proposal was formulated, proposing to direct a warning against the defendant, for the violation of article 6 of the RGPD, typified in article 83.5.a) of the RGPD

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: On the social network Facebook, they have been published and disseminated by the defendant, the personal data of the claimant, among which are an image of her.

SECOND: The respondent presents arguments to the initial agreement stating that the published image, although it was not provided by the claimant, is of a public, since it is the one that appears in the claimant's public profile on Facebook.

The respondent, in her defense, also alleges that the claimant signed a contract of adoption of an animal with the Animalista Group of ***LOCALIDAD.1, on the 9th of August 2020, in which he was duly informed of all the rights that he assist and protect in accordance with the LOPD 15/1999 of December 15.

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FOUNDATIONS OF LAW

I

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

II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, in its article 4.11 defines the consent of the interested party as "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data that concerns you".

In this sense, article 6.1 of the RGPD establishes that "in accordance with the provided in article 4.11 of Regulation (EU) 2016/679, it is understood as consent of the affected party, any manifestation of free will, specific, informed and unequivocal by which it accepts, either by means of a declaration or a clear affirmative action, the processing of personal data that concerns you".

III

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

Article 58.2 of the RGPD provides the following:

"2 Each supervisory authority shall have all of the following corrective powers

listed below:

(...)

b) send a warning to any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation;"

(...)

"d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;"

"i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case;"

Article 83.5.a) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for

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the largest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;"

In turn, article 72.1 b) of the LOPDGDD, under the heading "Infringements considered very serious provides:

“They are considered very serious and will prescribe after 3 years the remaining infractions that entail a substantial violation of the articles mentioned in article 83.5 of Regulation (EU) 2016/679 and, in particular, the following:

to)

The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679.”

IV

In this case, the disclosure by the respondent of data is denounced.

of the claimant, as well as photographs where his image appears, despite not have your consent.

In relation to the use of photographic content, it is appropriate to mention the STS XXX, of

***DATE.1, indicating the following:

"... that, in the account opened in a social network on the Internet, the owner of the profile has “uploaded” a photograph of yourself that is accessible to the general public, you do not authorize a third party to reproduce it in a means of communication without the consent of the owner because such action cannot be considered a natural consequence of the character accessible data and images of a public profile on a social network on the Internet.

The purpose of an account opened in a social network on the Internet is the communication of its owner with third parties and the possibility that these third parties may have access to the content of that account and interact with its owner, but not that the image of the holder of that account in a communication medium.

[...] The consent of the owner of the image so that the public in general, or a certain number of people, can see your photo in a blog or in an account open on the website of a social network does not imply authorization to make use of that photograph and publish or disclose it in a different way”.

Therefore, this Agency, after verifying that the respondent has published and

disseminated personal data including a photograph of the claimant, concludes in accordance with the legal argumentation indicated in the fundamentals of law above, that data processing has been carried out without legitimacy, since it does not the contrary has been proven by the respondent, and therefore it is considered that incurred in an infringement of article 6 of the RGD.

A warning is directed against this infraction, in accordance with article 58.2.b) of the RGD, considering that the administrative fine that could be levied in accordance with the provisions of article 83.5.a) of the RGD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to the

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processing of personal data, since there is no record of the commission of any infringement above regarding data protection.

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: ADDRESS GRUPO ANIMALISTA ***GRUPO.1, with CIF G93559862, by an infringement of article 6 of the RGD, typified in article 83.5 of the RGD, a warning.

SECOND: REQUEST ANIMALIST GROUP ***GRUPO.1, with CIF G93559862, under the provisions of article 58.2 d) of the RGD, proceed to the withdrawal of the photograph and other personal data of the claimant processed by the claimed party without the legitimacy required according to article 6 of the RGD, as well as the contribution of

means of evidence accrediting compliance with the requirements.

Said measures must be adopted within a period of one month computed from the date in which this sanctioning resolution is notified, and the means must be provided proof of compliance.

THIRD: NOTIFY this resolution to ANIMALIST GROUP ***GRUPO.1.

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-](https://sedeagpd.gob.es/sede-electronica-web/)

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

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contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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