

Procedure No.: PS/00102/2021

RESOLUTION

OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On March 22, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the association
HAZTEOIR.ORG with NIF G83068403 which is transcribed below:

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Procedure no.: PS/00102/2021

926-240120

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

BACKGROUND

FIRST: The Arcopoli association (hereinafter, Arcopoli) dated November 11
2019 filed a claim with the Spanish Data Protection Agency. The
claim is directed against the association HazteOir.Org with NIF G83068403 (in what
successively, HazteOír).

Arcopoli states that it is an association that defends the rights of people
LGTB, files a claim against HazteOír because it has published a brochure against
of sexual education actions in schools, which on the second page
includes images and the names of three people, which they understand to be contrary to
regulations on data protection.

Together with the claim they provide:

□

Booklet with the photographs and the names of the three people.

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

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2/8

As a result of the research actions carried out, it is found that the responsible for the treatment is HazteOír.

In addition, the following extremes are noted:

The background information is the following:

Admission file E/11775/2019.

On December 13, 2019, the claim was transferred to Hazte Oír requesting factual information.

On January 10, 2020, it is received in this Agency, with registration number,

001034/2020 brief of allegations sent by HazteOír stating that after knowing the facts, the immediate withdrawal from circulation of the brochures object of claim and to the edition and new publication of the same editing the image and deleting the reference to the names of the people whose information is highlighted in the complaint, always as a sign of good faith on the part of Make yourself heard and in the spirit of not bothering them.

Therefore, the data related to the image (the photograph in question) and the data identifiers (name and surname) related to the three people participating in sex education talks in schools have been modified in the new brochure published by HazteOír.

Requested by this Agency a copy of the modified brochure referred to in the letter of allegations to the transfer of the claim, dated July 20, 2020 is received in this Agency, with registration number 025514/2020, answer letter stating that for the new brochure they have adopted the measure of eliminating completely the photographs and the names that have motivated this claim.

Attach to the document, a copy of the new brochure in which the extremes are verified stated in your reply.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

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The defendant is accused of committing an infraction for violation of the Article 6 of the RGPD, "Legality of the treatment", which indicates in its section 1 the assumptions in which the processing of third party data is considered lawful:

II

"1. The treatment will only be lawful if at least one of the following is met conditions:

- a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

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3/8

(...)"

III

Sections b), d) and i) of article 58.2 of the RGD provide the following:

"2 Each supervisory authority shall have all of the following powers corrections listed below:

(...)

- b) sanction any person responsible or in charge of the treatment with warning when the processing 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 in accordance with article 83, in addition to or in
instead of the measures mentioned in this paragraph, depending on the circumstances
of each particular case;

The infringement is typified in Article 83.5 of the RGPD, which considers as such:

"5. Violations of the following provisions will be sanctioned, in accordance
with section 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
the largest amount:

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

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the
Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements
considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.)
2016/679 are considered very serious and the infractions that
suppose a substantial violation of the articles mentioned in it and, in
particularly the following:

(...)

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

The documentation in the file offers evidence that the
association HazteOír, violated article 6.1 of the RGPD, since the
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actions carried out, it follows that he processed the data without legitimacy to do so by publish photos and names of three people from the Arcopoli association.

In this sense, HazteOír recognizes the facts and has proceeded in the new brochure to completely eliminate the photographs and names that have motivated this penalty procedure.

In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGD:

v

As aggravating criteria:

- Basic personal identifiers are affected (names and photographs of three people) (article 83.2 g).

As mitigating criteria:

- The degree of cooperation with the supervisory authority in order to remedy to the infraction and mitigate the possible adverse effects of the infraction, (83.2 f).

The balance of the circumstances contemplated in article 83.2 of the RGD, with respect to the infraction committed by violating the provisions of article 6 allows to set a penalty of 5,000 euros, (five thousand euros).

Therefore, in accordance with the foregoing, by the Director of the Spanish Data Protection Agency.

HE REMEMBERS:

START: PUNISHMENT PROCEDURE for the HAZTEOIR.ORG ASSOCIATION

with NIF G83068403, for Violation of article 6 of the RGPD regarding the treatment of personal data, punishable in accordance with the provisions of art. 83.5 of the cited Regulation.

APPOINT: Mr. R.R.R. as Instructor, and Ms. S.S.S. as secretary, indicating that any- any of them may be challenged, where appropriate, in accordance with the provisions of art 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LR-JSP).

INCORPORATE: to the disciplinary file, for evidentiary purposes, the international claim put by the claimant and their documentation, the documents obtained and generated by the Subdirector General for Data Inspection during the investigation phase. nes, all of them part of this administrative file.

WHAT: for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be 5,000 euros (five thousand euros), without prejudice to what is result of the investigation of this file.

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28001 – Madrid

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5/8

NOTIFY: this agreement to start sanctioning proceedings to ASSOCIATION HAZTEOIR.ORG with NIF G83068403, granting a hearing period of ten days able to formulate the allegations and present the evidence that it considers convenient.

If within the stipulated period it does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in this procedure, equivalent in this case to 1,000 euros. with the app of this reduction, the sanction would be established at 4,000 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of the amount of the same, equivalent in this case to 1,000 euros. With the application of this reduction, the sanction would be established in 4,000 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 3,000 euros (three thousand euros).

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

If you choose to proceed with the voluntary payment of any of the amounts

indicated above, you must make it effective by depositing it in account no.

ES00 0000 0000 0000 0000 0000 opened on behalf of the Spanish Agency for

Data Protection at Banco CAIXABANK, S.A., indicating in the concept the

reference number of the procedure that appears in the heading of this

document and the reason for the reduction of the amount to which it is accepted.

Likewise, you must send proof of payment to the General Subdirectorate of

Inspection to proceed with the procedure in accordance with the quantity

entered.

The procedure will have a maximum duration of nine months from the

date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of

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6/8

performances; in accordance with the provisions of article 64 of the LOPDGDD. By

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency.>>

THIRD: Notification of the Start Agreement on April 6, 2021. On April 15

of 2021, HazteOír has proceeded to pay the penalty in the amount of 4,000 euros

making use of the reduction provided for in the Start Agreement, stating: "We have

applied the reduction for payment in the voluntary period, but not the recognition of

guilt (because we do not recognize it)"

FOURTH: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the Home 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: It is known that HazteOír has published a brochure against the actions of sexual education in schools, which on the second page includes images and the names of three people.

SECOND: HazteOír has immediately withdrawn the brochures from circulation object of claim and therefore, the data related to the image (the photograph in question) and the identification data (name and surnames) related to the three people participating in sex education talks in schools have been modified in the new brochure published by HazteOír.

THIRD: It is stated in the new brochure that they have adopted the measure of eliminating completely the photographs and the names that have motivated this claim.

FOURTH: It is recorded that the Start Agreement was notified on April 6, 2021, they proceeded on April 15, 2021 to the payment of the penalty in the amount of 4,000 euros using of the reduction foreseen in the Start Agreement, stating: "We have applied the reduction for payment in the voluntary period, but not the recognition of guilt (because we do not recognize it)"

FIFTH: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the Home Agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of www.aepd.es

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28001 – Madrid

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7/8

The Spanish Agency for Data Protection is competent to resolve this process.

II

Article 85 of Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations (hereinafter LPACAP), under the heading "Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature,

the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of

initiation of the procedure and its effectiveness will be conditioned to the withdrawal or

Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations."

In accordance with the above, the Director of the Spanish Agency for the Protection of

Data RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00102/2021, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to ASOCIACIÓN HAZTEOIR.ORG with

NIF G83068403.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative process as

prescribed by art. 114.1.c) of Law 39/2015, of October 1, on Procedure

Common Administrative of Public Administrations, interested parties may

file a contentious-administrative appeal before the Contentious Chamber

of the National High Court, in accordance with the provisions of article 25 and

in section 5 of the fourth additional provision of Law 29/1998, of July 13,

regulation of the Contentious-Administrative Jurisdiction, within a period of two months to

count from the day following the notification of this act, as provided in the

Article 46.1 of the aforementioned Law.

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