

938-0419

Procedure No.: PS/00131/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00131/2019, instructed by the Spanish Agency for Data Protection, to D. A.A.A., with NIF ***NIF.1 (hereinafter "the person claimed"), for alleged infringement of Regulation (EU) 2016/679, of Parliament European and Council, of 04/27/2016, regarding the Protection of Natural Persons regarding the Processing of Personal Data and the Free Circulation of this Data (RGPD), and based on the following,

BACKGROUND

FIRST: On 10/05/18, by the Director of the Spanish Agency for Data Protection, the Subdirector General for Data Inspection is urged to carry out actions ex officio to the company that owns the website www.datalex.es, in order to determine whether the processing of personal data carried out complies with the provisions of current regulations in relation to the processing of data of a personal nature.

SECOND: On 10/08/18, the entity that manages the domain of the website indicated, CORPORATE SOLUTIONS IP, S.L. (SCIP), to inform this Agency on the owner of the datalex.es domain.

THIRD: On 10/20/18, the SCIP entity sends in writing to this AEPD, indicating that the domain data datalex.es, which they have are: ID: AMM-280849" is: A.A.A.; ***NIF.1 ***EMAIL.1; with address: ***ADDRESS.1. Discharge date: 12/05/16 and Expiration Date: 12/05/19. Registrar Agent: SCIP.

FOURTH: On 10/31/18, the requested person is required, so that, in the within ten business days, inform the AEPD about: "the treatment that is carried out

with the data obtained from the existing form on the website

www.datalex.es, of which it is the owner; the channels you use to advertise the services offered on said page, indicating in each of the cases, the origin of the data of the recipients of the information; specification of the procedure by the that is provided to the people who provide their data in the aforementioned form the information referred to in art. 13 of the RGPD and specification of the use of Cookies on the aforementioned page, indicating the procedure by which it is provided information about them”.

FIFTH: According to the Certificate issued by the State Post and Telegraph Company,

***ADDRESS 1; with

S.A., said request was sent to the address:

recipient: D. A.A.A., being delivered on 11/20/18 at 18:39, by the employee 221108, and having Ms. B.B.B. as recipient. ***NIF.2.

SIXTH: Dated 04/02/19, not having received any type of information from of the claimed person, the Director of the Spanish Data Protection Agency agreed to initiate sanctioning proceedings against the defendant, by virtue of the powers established in art. 58.2 of the RGPD and in articles 47, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD), for the infringement of article 83.5.e) of the RGPD and

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considered very serious in 72.1.m and ñ) of the LOPDGDD for prescription purposes, setting an initial penalty of 3,000 euros (three thousand euros).

SEVENTH: Once the agreement to initiate sanctioning proceedings has been notified, the defendant,

In a document dated 04/17/19, it made, in summary, the following allegations:

I.- Because the website www.datalex.es, being owned by me, has never has offered any type of service, nor collected data from third parties or its own, it has not been necessary to notify the AEPD, as no treatment has been carried out of data.

II.- It is a non-operative page, being used as tests for the creation new icons, contact form tests, network adhesion social etc

III.- Datalex, is not an existing company, nor registered in any registry public, since as I reiterate, it is a future society, currently non-existent.

IV.- At no time have data been collected or services offered to third parties, because it is an offline page, being the contact form non-collection of third-party data, withdrawn and not available on the web.

V.- Cookies are not used, neither their own nor those of third parties, because access to the itself, is not operational, except on an occasional basis and for periods of time minimum, to visualize how a certain plugin would look.

VI.- The Legal Notice used is a template written by me, in the form as they say generic, not for the use of this website, adapted to the new RGPD and modified in accordance with the new stipulations made by your AGPD.

VII.- Reiterate that the nature of the website is not economic, not having collected any third party data, and not having informed the AEPD, due to the fact that it is solely for personal learning, it does not having a profit motive, nor having been indexed, nor having any type of information.

IX.- The notification made on 10/31/18 has not been received by me.

person, totally ignoring that information, being my character as apprentice in this matter, collect everything necessary, for in the future when the company described exists, provide them with all the information necessary to comply with the provisions of the RGPD, as well as in the current LOPDDGG.

EIGHTH: On 05/13/19, the test practice period began, remembering: a).- to consider reproduced for evidentiary purposes the complaint filed by the complainant and her documentation, the documents obtained and generated that are part of file E/6948/2019 and b).- consider reproduced for purposes evidence, the allegations to the initiation agreement of PS/131/2019, presented.

NINTH: On 06/11/19, the proposed resolution is notified, consisting of that, by the Director of the Spanish Agency for Data Protection, proceed sanction the defendant with a warning, arguing essentially that:

"In the month of October 2018 it is observed that on the website www.datalex.es, They offer adaptation services to the LOPD and the RGPD after registering the data and includes an informative legend in the "Legal Notice" option, but does not

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offers no further information on this. Website owner required to inform this Agency, it ignores the request and is not until he receives the initiation of the sanctioning file, with a sanction of 3,000 euros, when you send this Agency information clarifying the facts.

It has also been verified that, on 05/16/19, the investigated web page no longer exists, appearing in its place the message, "This domain has been registered by through the registrar agent MrDomain.com".

All of the above may suppose an inflation to the RGPD, by not having provided this Agency, in the period granted for it, the documents and information that is they required. Information that was sent to this Agency when the

owner of the website the initiation of the sanctioning file. Failure to this obligation involves the commission of the offense typified in art. 83.5.e) of GDPR. However, noting that the owner of the aforementioned website is a person physical, it meets the provisions of recital 148 of the RGD for this proposal".

TENTH: Once notified of the resolution proposal, the person claimed DOES NOT present any type of allegations to it, within the period granted for this purpose.

Of the actions carried out in this procedure, of the information and documentation presented, the following points have been accredited:

PROVEN FACTS

1º On 10/05/18, the General Subdirectorate for Data Inspection of the AEPD, notes that the website www.datalex.es offers adaptation services to the LOPD and the RGD, and includes an informative legend in the "Legal Notice" option, but it does not offer any additional information. It is a generic legend, where no the owner's identification data is filled in, so they start ex officio actions in this AEPD to determine if the processing of data personal information that the company that owns the website makes when collecting them in the form that appears, whether or not it complies with the provisions of current regulations.

2nd On 10/08/18, the entity that manages the domain of the page is required website indicated, CORPORATE SOLUTIONS IP, S.L. (SCIP); to report to this Agency on the owner of the datalex.es domain.

3º On 10/20/18, the SCIP entity informs that the owner of the domain datalex.es correspond to D.A.A.A. ***NIF.1 (individual).

4º On 10/31/18, the owner of the page is required to, within ten days, inform this Agency of the treatment that is carried out with the personal data that obtains from the existing form on the web page and that specifies the use made

of Cookies.

5º The aforementioned requirement was notified on 11/20/18, at the Address:

***ADDRESS 1; address provided by the SCIP entity, signing the acknowledgment of receipt

Ms. B.B.B.. ***NIF.2, according to the Post Office certificate.

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6º As this Agency does not receive any type of information, within the period granted

To this end, on 04/02/19, a sanctioning procedure was initiated against the owner of the website indicated by inflation of art. 83.5.e) of the GDPR

7th When the claimed party is notified, at the address indicated above, of the

initiation of disciplinary proceedings, the latter, dated 02/17/19, sends a letter to this

Agency alleging, in essence, that: “datalex” is not a commercial company; No is registered anywhere; that said web page is a test page

where no personal data or of any kind is collected, not using cookies.

8º On 05/16/18 it is verified that the website www.datalex.es no longer exists

and that instead a message appears, “This domain has been registered through of the registrar agent MrDomain.com”.

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 art. 47 of the LOPDGDD, the Director of the Agency Spanish Data Protection is competent to resolve this procedure.

II

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the

investigative and corrective powers that the supervisory authority may provide to the effect, mentioning in point 1.d), that of: "notifying the person in charge or in charge of the treatment of alleged infringements of these Regulations" and in 2.i), that of: "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 case."

The joint assessment of the documentary evidence in the procedure brings to knowledge of the AEPD a vision of the actions of the requested person, who has reflected in the facts declared proven.

In the present case, although the owner of the website, datalex.es, was required to inform this Agency about the treatment that was carried out with the data information that he allegedly obtained from the existing form on said page and that specified the use made of cookies, it ignored said requirement, for which a sanctioning procedure was initiated for inflation of art. 83.5.e) of the GDPR.

However, upon being notified of the initiation of sanction proceedings, the person claimed sent a letter to this Agency informing of the characteristics of the page, alleging in essence that said web page did not belong to any company trade; was not registered anywhere and that it was a test page to name of a natural person.

In addition, during the sanctioning procedure it has been verified on several occasions that the website in question, www.datalex.es, no longer exists and that instead

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The message appears: "This domain has been registered through the agent registrar MrDomain.com".

III

All of the above could entail a violation of the RGPD, by not having provided this Agency, in the period granted for it, the documents and information that is they required. Information that was sent to this Agency when the owner of the website the initiation of the sanctioning file. Failure to this obligation involves the commission of the offense typified in art. 83.5.e) of GDPR.

However, noting that the owner of the aforementioned website is a natural person and that the website in question no longer exists as of today, it complies with the provisions in recital 148 of the RGPD, where it indicates that: "In order to reinforce the application of the rules of this Regulation, any infraction of this must be punished with sanctions, including administrative fines, in addition to measures measures imposed by the supervisory authority under this Regulation, or in place of these. In the case of a minor offence, or if the fine that is likely to be imposed would constitute a disproportionate burden on a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance. The imposition of sanctions, including administrative fines, must be subject to guarantees sufficient procedural requirements in accordance with the general principles of Union Law and of the Charter, including the right to effective judicial protection and to a process with all the guarantees", the following is issued

In view of the aforementioned precepts and others of general application, the Director of the Agency

Spanish Data Protection RESOLVES:

HE REMEMBERS:

NOTICE: to D. A.A.A. for the infringement of art. 83.5.e) RGPD, by not having provided

to this Agency, in the period granted for it, the documents and information

that were required, being punishable in accordance with art. 58.2 GDPR.

NOTIFY: this Agreement to D.A.A.A..

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

LOPDPGDD, 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

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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.

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Director of the Spanish Data Protection Agency