

Procedure No.: PS/00197/2019

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The Spanish Agency for Data Protection proceeded to open the
guardianship of law, TD/01105/2018, upon learning of the following facts:

Ms. A.A.A. (hereinafter, the claimant) dated May 3, 2018

filed a claim with the Spanish Data Protection Agency. The

claim is directed against HUMAN TO HUMAN COMMUNICATIONS, S.L. with NIF

B87811154 (hereinafter, the claimed one). The grounds on which the claim is based are

that on March 5, 2018, exercised the right of cancellation against the

claimed, without your request having received the legally established response.

The claimant requests the removal of her image from a video they have published

on the Youtube platform as part of a report of the claimed.

In addition, it states that: "... it is not lawful to use and display personal data

of other people without their consent, especially when this may cause (and

causes) serious economic and personal damage..."

SECOND: In view of the reported facts, in the preliminary proceedings phase, by

the Inspection Services of this Agency information is requested from the entity

claimed, knowing that:

In response to TD/01105/2018, dated June 1, 2018, the entity

Respondent submits allegations stating the following:

- That he responded to the claimant by phone.

- That it lacks files in which it can be found, including the

claimant.

- That in the report, what appears from the claimant is a screenshot of a

computer, of little more than a minute, where the account of

Instagram of “bymyheels”, which is a public account.

- And lastly, it adds that the alleged damages caused to the claimant,

according to her, it is an issue that falls outside the competence of the AEPD, for

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what you consider should be resolved before the courts of the jurisdiction

civil.

THIRD: The Director of the Spanish Agency for Data Protection, issued on 12

of July 2018 resolution of protection of right TD / 01105/2018, proceeding to

UPGRADE the claim made by the claimant and urge the claimed entity,

so that within a period of ten business days following the notification of this

resolution sends the claimant a certification stating that it has

attended the right of cancellation exercised by it or denied reasoned. The

Non-compliance with this Resolution could lead to the commission of the infraction

typified in article 83.5 e) of Regulation (EU) 2016/79, of April 27, 2016,

General Data Protection (hereinafter RGPD), which will be sanctioned

according to art. 58.2 of the GDPR. The actions carried out as a result of

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

FOURTH: It is recorded that, on September 3, 2018, the

claimed entity, compliance with the above-referenced resolution, according to certifies the practice of notification through electronic means, date of implementation available and accepted on September 3, 2018, according to section 2 article 43, of Law 39/2015, of October 1, on the Common Administrative Procedure of the Public administrations.

After the term granted for compliance with the aforementioned has elapsed Resolution, compliance is not recorded in this Agency.

FIFTH: According to the documentation in the file, it is accredited that the claimed entity has not sent the claimant a certification in which state that you have attended to the right of cancellation exercised by it or denied reasoned, despite the resolution of protection of law TD / 01105/2018 issued by the Director of the Spanish Data Protection Agency.

SIXTH: On June 4, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against HUMAN TO HUMAN COMMUNICATIONS, S.L. for the infringement of article 58.2 of the RGPD, typified in the 83.5 e) of the GDPR.

SEVENTH: Notification of the initiation agreement to HUMAN TO HUMAN COMMUNICATIONS, S.L., by means of a letter dated June 12, 2019, made allegations, stating that "to inform the AEPD that compliance has been full of the terms contained in the resolution of July 12, 2018 issued by the Director of the Spanish Data Protection Agency.

As soon as the notification of Resolution No. R/01336/2018 was received, and within the ten business days following notification of the same, this party proceeded, by means of communication dated July 19, 2018, to comply with the aforementioned resolution.

Attached as proof of the above:

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Document No. 1, copy of the communication of July 19, 2018, sent by burofax

(with acknowledgment of receipt and certificate of content) to the address ***EMAIL.1, designated by the complainant for notification purposes.

This burofax could not be delivered due to unknown.

On July 24, he proceeded to send, by letter and to the address of the complainant in the file, a copy of the communication dated July 19 of 2018.

Document No. 2 copy of the communication of July 24, 2018, sent by burofax

(with acknowledgment of receipt and certificate of content). This burofax could not be delivered. Reason not delivered, left notice.

On July 31, 2018, he sent a letter to the AEPD informing about the impossibility of notifying the claimant of compliance with said resolution, No

However, due to a material error, it was sent and delivered to the claimant in her own domicile on August 21, 2018 (document no. 3).

On September 4, a communication was sent to the Agency and to the claimant for burofax with acknowledgment of receipt and content certificate (documents 4 and 5).

Copy of proof of delivery of the burofax to the claimant. The delivery that took held on September 11 at 4:01 p.m.

EIGHTH: On June 26, 2019, the test practice period began, assuming reproduced for evidentiary purposes the allegations to the initial agreement of procedure PS/00197/2019 filed by

HUMAN TO HUMAN

COMMUNICATIONS, S.L. and the accompanying documentation.

PROVEN FACTS

FIRST: On May 3, 2018, the claimant filed a claim against the claimed one. The reasons on which the claim is based are that on March 5 of 2018, exercised the right of cancellation against the claimed one, without his request has received the legally established answer.

The claimant requests the removal of her image from a video they have published on the Youtube platform as part of a report of the claimed.

In addition, it states that: "... it is not lawful to use and display personal data of other people without their consent, especially when this may cause (and causes) serious economic and personal damage..."

On December 26, 2016, the reported entity replied to the request of the claimant, stating that "by mail, your request is not feasible, send you the recordings of your contract".

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SECOND: The Director of the Spanish Agency for Data Protection, issued on 12 of July 2018 resolution of protection of right TD / 01105/2018, proceeding to UPGRADE the claim made by the claimant and urge the claimed entity, so that within a period of ten business days following the notification of this resolution sends the claimant a certification stating that it has attended the right of cancellation exercised by it or denied reasoned. The

Non-compliance with this Resolution could lead to the commission of the infraction

typified in article 83.5 e) of Regulation (EU) 2016/79, of April 27, 2016,

General Data Protection (hereinafter RGPD), which will be sanctioned

according to art. 58.2 of the GDPR. The actions carried out as a result of

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

THIRD: It is recorded that, on September 3, 2018, the

claimed entity, compliance with the above-referenced resolution, according to

certifies the practice of notification through electronic means, date of implementation

available and accepted on September 3, 2018, according to section 2 article

43, of Law 39/2015, of October 1, on the Common Administrative Procedure of the

Public administrations.

FOURTH: On June 4, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against HUMAN TO HUMAN

COMMUNICATIONS, S.L. for the infringement of article 58.2 of the RGPD, typified in the

83.5 e) of the GDPR.

FIFTH: Notification of the initiation agreement to HUMAN TO HUMAN COMMUNICATIONS,

S.L., by means of a letter dated June 12, 2019, made allegations,

stating "informing the AEPD that compliance has been

full of the terms contained in the resolution of July 12, 2018 issued by

the Director of the Spanish Data Protection Agency.

As soon as the notification of Resolution No. R/01336/2018 was received, and within the

ten business days following notification of the same, this party proceeded, by

means of communication dated July 19, 2018, to comply with the aforementioned

resolution".

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

Article 89 of Law 39/2015, of the Common Administrative Procedure of Public Administrations (LPACAP) provides:

"1. The investigating body will resolve the completion of the procedure, with file

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of the actions, without it being necessary to formulate the proposal for resolution, when in the instruction procedure it is made clear that any of the following circumstances occur:

a) The non-existence of the facts that could constitute the infraction. (...) (The underlined is from the AEPD)

IV

As indicated in the Agreement to Start the sanctioning file that we occupies its opening wine motivated by not having accredited the claimed one. who fulfilled with the requirement derived from file TD/01105/2018.

The omission of this obligation violates the provisions of article 58.2 c) of the RGPD, which provides:

"c) order the person in charge or in charge of the treatment to attend to the requests to exercise the rights of the interested party under this

Regulation".

The infraction for which the entity responsible for the claimed is typified in article 83.5 e) of the RGD, "the breach of a resolution".

Now, as stated in Precedent Seven of this Resolution, the denounced entity has provided with its allegations to the Initiation Agreement a copy of the writings addressed to the claimant dated July 19, 24 and 31, 2018 and September of the same year, in which it is shown that it is an account public, so the information to which they have had access and on which made the report is public that the data that appears in the account is not being subjected to treatment by the claimed party, and they do not appear in any company file

Thus, in the absence of the factual budget of the infraction imputed to the claimed in the initial agreement, it is necessary to proceed to file these performances.

Considering the aforementioned precepts and others of general application, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: Agree on the completion of sanctioning procedure PS/00197/2019, with archive of the proceedings, in accordance with article 89.1.a) of Law 39/2015, of Common Administrative Procedure of the Public Administrations, before the inexistence of facts that could constitute the infraction typified in the article 83.5 e) of the RGD.

this resolution to HUMAN TO HUMAN

SECOND: NOTIFY

COMMUNICATIONS, S.L. with NIF B87811154

THIRD: In accordance with the provisions of article 50 of the Organic Law

3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights (hereinafter LOPDGDD), this Resolution will be made public once it has been notified to the interested parties.

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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 period of

month 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.

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Director of the Spanish Data Protection Agency

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