

☐ Procedure No.: PS/00173/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated March 24, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against D. B.B.B., with NIF ***NIF.1 (hereinafter, the claimed).

The Ourense Provincial Prosecutor's Office transfers to this Agency the Proceedings of

Criminal Investigation 91/20, dated March 16, 2021, submitting testimony

of the same, whose analysis reveals the possible fraudulent use

of the personal data of the claimant (who has a severe disability

intellectual property that has resulted in total incapacitation), by the claimed party,

since this, in his declarations of withholdings and payments on account of the IRPF of the

financial year 2018, charged the claimant with monetary compensation from

alleged agricultural and business activities that were not carried out or

remunerated to it, in order to justify unreal billings.

And, among other things, it provides the following documentation:

☐ Criminal Investigation Proceedings 91/20, among others, the result of the

Consultation of tax data and withholdings and income on account of the IRPF of the
fiscal year 2018.

☐ Resolution of the Disability Assessment Team with recognition of

Absolute Permanent Disability of the claimant.

☐ Optional Technical Opinion dated June 31, 2011.

☐ Cognitive assessment issued by the "AS Burgas" Assistance Center in Ourense.

□ Decree of Conclusion and Archive of the Prosecutor's Office, understanding that the facts did not are constitutive of a crime in the criminal sphere because it is a conduct atypical, indicating that a tax violation could arise from them, as well as an infringement of the data protection regulations due to treatment of data without consent.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant and the facts and documents of which he has had knowledge of this Agency:

It is proven, as stated in the Decree of Conclusion and Archive of the Provincial Prosecutor's Office of Ourense, with procedure number 91/2020, dated March 11, March 2021: "that the respondent was untrue in his declaration of withholdings and income on account of personal income tax (model 190) for the year 2018 when allocating to the claimant monetary withholdings amounting to ***AMOUNT.1 euros from www.aepd.es

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2/5

agricultural and business activities that were not carried out or paid for by the same" that the respondent used the claimant's data to carry out the Declaration of withholdings and payments on account of personal income tax (model 190) for the year 2018, without legitimation for it.

THIRD: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights, the Director of the Spanish Agency for Data Protection agrees on the 15th of April 2021 the admission for processing of this claim.

FOURTH: On June 17, 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 6.1 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: Once notified of the initiation agreement, the respondent, by means of a letter dated 6 July of this year, made, in summary, the following allegations:

"That I am registered with the AEAT in an agricultural activity, specifically

I dedicate myself to the buying and selling of chestnuts. So that in the 2018 financial year I have bought from D. A.A.A., a number of chestnuts making the bills corresponding, for this, he has provided me with his identification data.

The only relationship I have had with this person has been simply for the economic activity and your data have only been used to carry out invoices. In order to meet my tax obligations, they have also been incorporated said data in the taxes that correspond to me to present.

I enclose for your verification the invoices referring to the 2018 financial year"

SIXTH: On July 21, 2021, the respondent was notified of the opening of the period of evidence, taking into account all the previous actions, as well as the documents provided by the claimant.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts.

PROVEN FACTS

1st. The Ourense Provincial Prosecutor's Office transfers to this Agency the Proceedings of Criminal Investigation 91/20, dated March 16, 2021, submitting testimony of the same, whose analysis reveals the possible fraudulent use of the personal data of the claimant (who has a severe disability intellectual property that has resulted in total incapacitation), by the claimed party, since this, in his declarations of withholdings and payments on account of the IRPF of the

financial year 2018, charged the claimant with monetary compensation from alleged agricultural and business activities that were not carried out or remunerated to it, in order to justify unreal billings.

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3/5

2nd. The respondent provides, on July 6, 2021, that he is registered with the AEAT in an agricultural activity, specifically dedicated to the sale of chestnuts.

Thus, in fiscal year 2018, he bought from the claimant a quantity of chestnuts making the corresponding invoices, for this, he provided his data identifiers.

3rd. The claimed party attaches the invoices referring to the 2018 financial year.

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGDPD 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

Law 39/2015, of Common Administrative Procedure of the Administrations (LPACAP) establishes in its article 89.1 that "the termination of the procedure, with filing of the actions, without the need to formulate of the proposed resolution, when in the instruction of the procedure it is stated

I declare that any of the following circumstances exist:

a) The non-existence of the facts that could constitute the infraction”.

III

The defendant is imputed the commission of an infraction for violation of Article 6 of the RGPD, “Legality of the treatment”, which indicates in its section 1 the cases in which the processing of third party data is considered lawful:

“one. The treatment will only be lawful if at least one of the following is met terms:

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;

(...)”

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,

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4/5

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:

"one. 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 particular the following:

(...)

b) 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."

IV

In the case at hand, after a detailed study of the documents operating in this proceeding, and the claims of the respondent, we must indicate that the person claimed is registered with the AEAT in an agricultural activity, specifically dedicated to the sale of chestnuts. So in the exercise 2018 bought from the claimant, a quantity of chestnuts making the invoices corresponding, for this, he provided his identification data, so said treatment would be protected by article 6.1 b) of the RGPD.

Therefore, the file of this sanctioning procedure proceeds.

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

FIRST: FILE sanctioning procedure PS/00173/2021, instructed Mr.

B.B.B., with NIF ***NIF.1, for having proven that the claimant formalized invoices for buy and sell.

SECOND: NOTIFY this resolution to B.B.B., with NIF ***NIF.1.

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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5/5

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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