

□ File No.: PS/00432/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 09/27/2019

before the Spanish Agency for Data Protection. The claim is directed against

GENERAL COUNCIL OF THE JUDICIAL POWER (CGPJ), NIF S2804008G (hereinafter, the reclaimed). The grounds on which the claim is based are:

Resolutions are published on the web (www.poderjudicial.es) with the personal data without anonymizing them, carried out by the Commissions that have resolved the issues. Are published resumes, minutes and agendas.

To prove the facts, attach the file called: "1_CGPJ_Ejemplos_datos_personales.pdf EXAMPLES OF VIOLATION OF THE RGPD BY THE CGPJ (145 pages). In

He notes that: "All URLs in these examples have been obtained by searching the Google and the personal data contained in them are accessible by anyone.

A-Distinguish three types of problems detected regarding unprotected data:

- 1) Court documents that can be verified through a CSV and whose address access website can then be ported and accessed without having the aforementioned CSV.
- 2) Minutes and orders of the day, with data on magistrates, particularly their medical discharges. cases, and whistleblowers.
- 3) Curriculum vitae of magistrates with particularly sensitive contact details.

B-Indicates that your data remains accessible on the occasion of the presentation of an appeal. so before the Commission (...) of the CGPJ and that "other websites have a copy of them (p.e. Google cache and docplayer.es)."

In the file that you provide together with your complaint called: "2_CGPJ_Eliminar_datos_perso-
nales.pdf MY PERSONAL DATA TO ELIMINATE" refers specifically to the content in
in which your data appears and that requests their deletion, including carrying out procedures
so that the documents copied to the GOOGLE cache and docplayer.es do not contain
gain any data. To do this, provide a notarial certificate of 09/25/2019 of 13 pages. In it is ac-
yields to an address in poderjudicial.es, obtaining the agreement of the CGPJ (Order of the day)
of *** DATE.1) in which your data referring to the filing of an appeal for reversal appears
XX/XXXX, and in the following point another resource other than another person, being the document
18 page pdf.

SECOND: The claim was transferred to the respondent on 10/7/2019. Dated 11/11/2019
response is received, providing various documentation that gave rise to the date

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/13

02/25/2020, file E/9313/2019, the proceedings will be archived, as it is understood that the
claim.

THIRD: The agreement was appealed by the claimant on 03/02/2020, which is resolved in
RR/00179/2020, dated 11/10/2020, estimating the appeal, and agreeing to the admission to
limit of the claim.

The foundation of law 4 indicated:

"In the present case, together with the appeal for reconsideration, relevant documentation has been provided.

for the purposes of what was stated when proving the non-compliance by the defendant in re-

to what was agreed by means of the Agreement of the GENERAL SECRETARIAT OF THE CGPJ of the
day 11/8/2019, in relation to the exercise of the claimant's right to delete data-

tea. In said agreement, in its third point, the estimation of the right of suppression was established.

sion in relation to URL 1(**URL.1), as well as in accordance with article 17.2 of the

RGPD, the adoption of reasonable measures with a view to informing those responsible that it is-

have processing the personal data of the interested party's request for deletion of any en-

link to that personal data or any replica thereof (URL 5, URL 6 and URL 7).

After filing the appeal and carrying out the checks on the effective attention

of the right of deletion requested and agreed by the claimed party, it is verified that said

personal data has not been deleted. “

FOURTH: On 03/08/2021, GOOGLE is consulted with the data of the claimant and

obtains a document (in expediten called 8 03.pdf) that is the order of the day of the Co-

mission (...) of the CGPJ, of **DATE.1, in docplayer.es in which, with 18 pages, there are

personal data, also those of the claimant as matters within said order

of the day This is the name and surname of the claimant who is appealing against a

archive of previous actions in a claim referred to the regulations for the protection of

court data.

FIFTH: On 04/19/2021 the director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE to GENERAL COUNCIL OF THE POWER

JUDICIAL-CJPJ- with NIF S2804008G, for alleged violations of articles 32 and

5.1.f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 04/27/2016

on the protection of natural persons with regard to data processing

personal information and the free circulation of these data (hereinafter, RGPD), as indicated

articles 83.4. a) and 83.5.a) of the GDPR.

For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, of the Administrative Procedure

Common Nistrative of Public Administrations, (hereinafter, LPACAP), the sanction

that could correspond would be a warning.”

SIXTH: On 05/12/2021, the respondent states:

1) Upon receipt of the claimant's claim in October 2019, they were unpublished from the website

Miscellaneous: Agreements of the Commission (...) of the CGPJ, Agendas of the Plenary or Commission discipline and various CVs, moving the URLs to GOOGLE so that they would be removed from the cache of your search engine.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/13

2) Upon receipt of the initiation agreement, they have noticed a “material error in unpublishing”, and dated 04/29/2021, they deleted from the website poderjudicial.es, the agenda of the Commission session (...) of ***DATE.1, with transfer to GOOGLE of the URL. “It can be verified that currently no results are offered”.

Likewise, they required docplayer.es to eliminate personal data in one of the documents published on the website of poderjudicial.es and reproduced on docplayer.es.

Understanding that the content had been downloaded from the website "poderjudicial.es" and having document has been removed from our servers, they were asked to also deleted from its portal and Google was requested to remove its indexes and versions stored because the managers of the docplayer.es portal are the competent ones to carry it out. The request was answered by "docplayer.es" on 04/30, and it was thus confirmed by email' (It was attached copy of email received from “DocPlayer robot@docplayer.net”).

SEVENTH: On 12/2/2021, a testing period begins, considering the reproduction of the claim filed, its documentation, the documents obtained and generated during the phase of admission to processing of the claim, which are part of the procedure E/09212/2020, and the documents connected with it derived from the resource of replacement, and the allegations and documentation against the start agreement.

In addition, in order to verify that the claimant's data does not appear in search engines and in the web, dated 12/2/2021, GOOGLE and the website of the claimed party are accessed, and attached the results in a file called "access 2 12 21 search engine" that reflects the searches by the name of the claimant, with the URL and in the minutes of the Commission (...) of the CGPJ that they can be consulted on the website of poderjudicial.es, not appearing anywhere.

Once the verification is done, it is observed in "access 2 12 21 search engine", which appear on the website of the claimed, "CGPJ transparency portal" "CGPJ activity" "Agreements adopted by the plenary and Commissions" "Agreements of the Commission (...)" (same in which the of the claimant) resolutions with personal data on recognition of (...) knowledge of co-official languages, or of (...), and considering the question connected with the claim, it was decided to request information from the claimant on the reason for said open exhibition, criteria used and anonymization rules.

Although the issue was not addressed within the period granted (sent on 12/2/2021), it is received Respondent's response "Date and time of registration on 12/21/2021 13:30:55 (Schedule peninsular) Presentation date: 12/21/2021 13:29:20 (Peninsular time)", crossing with the issuance of the proposal sent to the respondent that same day, which states: "Date of made available: 12/21/2021 13:14:06 Acceptance date: 12/21/2021 13:18:57".

In the brief, the respondent provided:

-Collaboration framework agreement signed with Transparency International Spain of 07/02/2014, which contemplates, among other matters, for the sake of the obligations generated by Law 19/2013 of 9/12 on transparency, on access to public information and Good Governance (LT), publicity in a clear and understandable way about "activities of the Council" "orders of the day and agreements of the Plenary and by the different legal Commissions (it is personal data will be anonymized).

C/ Jorge Juan, 6

28001 – Madrid

-Copy of the document entitled "ANONYMIZATION OF COMMISSION AGREEMENTS (...)",

on the criteria used in the anonymization of agendas and the agreements of the

Commission (...) with a view to its publication on the web transparency portal

poderjudicial.es" (pages 25 to 28/41) four pages. There is a 5 Technical Office, to

anonymize complaints regarding Data Protection.

-Indicates that regarding the publication of (...), the Technical Office has issued a report on the

publication on the web of the curricular data of the candidates for appointment positions

discretionary on 11/15/2018. The report it provides refers to the legal basis for the

processing of personal data consisting of recording and dissemination through the website of

Appearances at public hearing of candidates for discretionary appointment positions

in court positions. This is related to regulation 1/2010 of 02/25, provision

of discretionary appointment positions in judicial bodies, in its article 16, BOE

03/05/2010, called "Agreement of 02/25/2010, of the Plenary Session of the CGPJ, approving

Regulation 1/2010, which regulates the provision of discretionary appointment positions in

the judicial bodies", which in its article 10.2 and 11 establishes for the provision of the

Presidencies of Superior Courts of Justice and Presidencies of Hearings

Provincial in those Autonomous Communities that enjoy Special Civil Law or

Foral, as well as its own official language, will be valued as (...) specialization in these

Special or Foral Civil Rights and knowledge of the language of the Community."

EIGHTH: On 12/21/2021, a resolution proposal was issued for the literal:

" FIRST

: That by the Director of the Spanish Agency for Data Protection

sanction CGPJ, with NIF S2804008G, for an infringement of article 32 of the RGPD and another

of article 5.1.f) of the RGPD, typified respectively in articles 83.4.a) and 83.5.a) of the RGPD, and classified as serious and very serious for prescription purposes in articles 73) f) and 72.1.a) of Organic Law 3/2018, of 5/12, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), with warning.

SECOND: That the Director of the Spanish Data Protection Agency proceed to impose on the CGPJ, within the term determined, the adoption of the measures necessary to adapt to the personal data protection regulations the operations of treatment that it carries out, with the scope expressed in the Fundamentals of Rights of this motion for a resolution.”

On 01/04/2022, the defendant in allegations, states that on 12/15/2021 he sent the response to the tests requested and have not been valued in the proposal sent. Go back to send the same documentation.

In addition, it adds:

1) As an allegation for the infringement of article 32 of the RGPD, in terms of compliance of active advertising, the CGPJ has established a broad criterion of relevance of the information on the exercise of its powers for the purpose of guaranteeing transparency and the control of its performance as a governing body of the Judiciary. In particular, acts adopted by the Commission (...) in relation to judicial personnel, they cannot be classified as mere acts of internal management, since their position is not comparable to the rest of the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/13

public officials, being holders of a state power. Therefore, the vicissitudes of his legal status with respect to which the governing body of the Power

Judiciary have a transcendence that goes beyond the purely internal organizational level and is projects ad extra, to the extent that they affect the holders of jurisdictional power.

The decisions of the Commission (...) on income in the judicial career, provision of vacancies, specialties, administrative situations, licenses, compatibilities, career ladder acknowledgments of services and retirements, commissions of service, have transcendence public when projected on the system of dedication and continuity of service of the members of the judiciary. Therefore, its publication is justified for the purpose of the contents of the acts dictated in the exercise of the functions of constitutional government and legally attributed to the CGPJ is subject to public scrutiny and publicity of the acts that affect the professional status of judges and magistrates. This also contributes to maintain a fundamental value the legitimacy of the exercise of the Judicial Power, such as the confidence of citizens in the administration of Justice. The advertising of certain acts with incidence in the relation of the service of judges and magistrates is limited without

However, due to the right to Data Protection, in accordance with the criteria of the article 15 of law 19/2013 that are reflected in the anonymization agreement of the Commission agreements (...).

2) Different incidences of the Judicial Statute are expressly subject to a mandate normative of publicity in the regulation 2/2011 of the judicial career. Exposes a series of administrative situations that have to be published in the BOE, some contemplated in the LOPJ. It also refers that the statutory list of judges and magistrates identified in from certain personal and professional data is public by mandate of the LOPJ - Article 300- which provides for the approval every three years of the judicial career ladder, published in the BOE, which will include personal and professional data that is established by regulation, being the regulatory development of this precept the carried out by article 351 of regulation 2/2011 of the judicial career in which tenor literal it is contained that in accordance with article 300 of the LOPJ in the ranking

will include the years, months and days of service in the judicial career, and in the category that is show off The position of the members of the judicial career in terms of the degree of publicity of the incidents in their professional statute is different from that of the rest of the civil servants so the requirements of article 32 of the RGPD projected on the members of the judicial career not attentive to the publicity of the acts that affect the Judicial Statute, that must conform to this Statute.

3) Faced with the approach contained in the proposal that the publicity of the acts of the Commission (...) have no legal basis, it should be stressed that, in general, considers that the processing of personal data of members of the judicial career in connection with the acts of the Commission (...) that affect the regime of dedication and continuity of the service of the holders of jurisdictional power, consisting of the active publicity of the orders of the day and the agreements of this commission, are based Legally sufficient in article 6. c) and 6.b) of the RGPD, in connection with article 5 of the law 19/2013, interpreted in light of the relevance of one of the Government functions of the Judicial power exercised by the Council.

4) On the motion for a resolution that focuses on advertising certain events typical personnel file management, acknowledgment of (...) and requests for recognition of (...), without prejudice to the general requirement of transparency of acts of the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/13

Council that is projected on the statutory regime of the members of the judicial career for the reasons stated, reiterates that as (...) preferential in competitions for organs jurisdictions in certain Autonomous Communities, it is fundamental and the

official knowledge of other languages circumstance that are valued in article 341 of the LOPJ and that develops in regulation 2/2011 of the judicial career in terms of recognition of (...) for the purposes of transfer competitions, and that its publication is expected in article 73.4 of said regulation.

Regarding the personal data related to the (...), regulated act that is included as data that is part of the judicial career ladder that is published periodically in the BOE by mandate of article 300 of the LOPJ, in relation to the Article 351 of the regulations of the judicial career, for which it is considered that the record of the recognition of these (...) does not imply a breach of data security. well They are public by imperative of law.

5) Regarding the violation of article 32 of the RGPD, for not correctly deleting the data of the claimant, at first, the unpublishing was agreed, but he incurred a material error, without asking Google to delete the data in docuplayer. before such circumstance the violation of article 32 cannot be classified as substantial to the effects of considering as it is done in the proposal, considering it a serious infringement typified in 73.f) of the LOPDGDD in relation to article 83.4.a) of the RGPD. manifest that a substantial violation is not the same as a formal violation, since the former are considered very serious and serious, and the latter are considered mild. The concept of substantial violation, apart from being an indeterminate legal concept, must be considered as opposed to what would be a violation of a formal nature.

Relating it to what is contained in article 74 of the LOPDGDD, "it should be considered that in this case, we are faced with a violation of a formal and non-substantial nature in cases of late or defective or incomplete compliance with some of the principles essential contained in the RGPD, as in the present case. "We are therefore faced with a defective or incomplete compliance with article 32 but not in the event of a violation substantial, so it would not be appropriate to consider the actions of this body as serious of the

73 f), but as slight of 74.”

6) Regarding the infringement of article 5.1.f) of the RGPD, it is a general principle

that many of its determinations are specified in other precepts of the

RGPD, this is the case with this one that is developed in article 32 of the RGPD. Therefore, in this

case, the principle of specialty must govern, applying only the most serious infraction.

concrete, as we find ourselves before a normative contest of infractions, and it is not appropriate to qualify

the same fact, the publication of personal data of the interested party as a very

serious for violating the principle of integrity of 5.1 f) and as a serious infraction for contravening

security and integrity requirements established in article 32 of the RGPD.

NINTH: Of the actions carried out in this procedure and the

documentation in the file, the following have been accredited:

PROVEN FACTS

1) The claimant on 09/27/2019, filed a claim against the CGPJ before the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/13

Spanish Agency for Data Protection, for exposing on the web www.poderjudicial.es

documents with personal data without anonymizing openly to anyone. The claim-

mation was transferred to the person in charge on 10/7/2019, responding on 11/11/2019 and contributing di-

versa documentation, filing the claim considering that it had been corrected.

2) The claimant appeals for reconsideration on 03/02/2020 and provides a copy of the response obtained

on the occasion of the transfer of his claim from the AEPD, in the case of the Cabinet Agreement

Net Data Protection Technician “exercise the right to delete data”, file

11/2019, dated 11/8/2019. It lists URLs that contain various documents.

tos in which the data of the claimant appears, and indicates on the URL1 URL 1(**URL.1), that appears on the CGPJ website, transparency, Commission Agreement (...), order of ***FE-CHA.1, the URL 5 that responds to a Google search with name and surname, which is the order of URL 1 and UR6 the same document in docplayer.es. they were going to be deleted. In the RR indicated "In said agreement, the estimate of the de-right of deletion in relation to the URL 1 (**URL.1), as well as in accordance with the article 17.2 of the RGPD, the adoption of reasonable measures with a view to informing those responsible that are treating the personal data of the interested party's request for deletion of any-link to such personal data or any replica thereof (URL 5, URL 6 and URL 7). After filing the appeal and carrying out the checks on the effective attention to the right of deletion requested and agreed by the claimed party is verified that said personal data has not been deleted", estimating the appeal on 11/10/2020

3) On 03/08/2021, the data of the claimant, name and surnames and a document is obtained that is the agenda of the Commission (...) of the CGPJ, of ***DATE.1, in docplayer.es in which, with 18 pages, personal data appears, also those of the claimant as matters within said agenda. It's about the name and surnames of the claimant who appeals against a file of actions previous in a claim referred to the data protection regulations in Courts.

4) The resolutions of the Commission (...) of the Judiciary are published openly on the portal of transparency of the CGPJ, containing data of a personal nature in its minutes. The claimed, after the initial agreement deindexed the claimant's data from its website, transferring the URL to GOOGLE, and asked the manager of "docplayer.es" to be excluded, verifying that by entering the URL or the name and surnames, they do not appear as results the data of the claimant referred to the aforementioned agenda of the Commission (...) of ***DATE.1.

FOUNDATIONS OF LAW

Yo

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

II

The defendant is charged with the violation of article 32 of the RGPD; which indicates:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/13

"1. Taking into account the state of the art, the application costs, and the nature, the scope, context and purposes of the treatment, as well as risks of probability and severity variables for the rights and freedoms of natural persons, the controller and the processor. party of the treatment will apply appropriate technical and organizational measures to guarantee a level of security appropriate to the risk, which, where appropriate, includes, among others:

- a) pseudonymization and encryption of personal data;
- b) the ability to guarantee confidentiality, integrity, availability and resilience (...) treatment systems and services;
- c) the ability to restore the availability and access to personal data in a fast in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of the effectiveness of the measures technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken

the risks presented by the data processing, in particular as a consequence of the

accidental or unlawful destruction, loss or alteration of transmitted personal data, con-
stored or otherwise processed, or unauthorized communication or access to said data.
cough.

[...]"

4. The person in charge and the person in charge of the treatment will take measures to guarantee that
any person acting under the authority of the person in charge or the person in charge and having
access to personal data can only process said data following instructions from the person in charge.
saber, unless it is obliged to do so by virtue of the Law of the Union or of the States
members."

Recital 74 of the RGPD indicates: "The responsibility of the res-
ponsible for the treatment for any treatment of personal data carried out by him-
me or on your own. In particular, the person responsible must be obliged to apply measures
timely and effective and must be able to demonstrate compliance of the processing activities
compliance with this Regulation, including the effectiveness of the measures. These measures of
must take into account the nature, scope, context and purposes of the treatment as well as
the risk to the rights and freedoms of natural persons." It is a pure approach
determination of measures exclusively based on the risk, in which there is no pre-
the specific security measures to be applied end.

For its part, Consideration (78) of the RGPD indicates that "the protection of the rights and liberties
freedoms of individuals with respect to the processing of personal data requires the
adoption of appropriate technical and organizational measures in order to ensure compliance
compliance with the requirements of this Regulation", including "adopt internal policies and
apply measures that comply in particular with the principles of data protection from the
by default", measures that "could consist, among others, of minimizing the traffic
processing of personal data, pseudonymize personal data as soon as possible, transfer
parity to the functions and the processing of personal data, allowing interested parties

supervise data processing and the data controller create and improve elements

security cough”.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/13

To this end, according to the LT, the minimum institutional content that must be offered as a active publicity, it would be:

“information whose knowledge is relevant to guarantee the transparency of its activity.

ity related to the operation and control of public action.” Art 5.1 LT.

“The limits to the right of access to public information will be applicable, where applicable.

provided for in article 14 and, especially, that derived from the protection of personal data.

ter personal, regulated in article 15. In this regard, when the information contained

specially protected data, advertising will only be carried out after dissociation of

the same.” Art 5.3 LT

Not included in the active advertising section, on the other hand, the right

of access to public information, article 12 and following:

-“All persons have the right to access public information, in the terms set forth in

seen in article 105.b) of the Spanish Constitution, developed by this Law.” Article 12

LT

-“Public information is understood as the contents or documents, whatever their

format or support, which are in the possession of any of the subjects included in the scope of

application of this title and that have been made or acquired in the exercise of their functions.

tions.”

Likewise, in the “anonymization regulations” of the respondent, there was that of the data of the de-

advertiser on data protection issues.

In the orders of the day and agreements of the Commission (...) it was verified that there are some agreements and resolutions in which personal data is anonymized, and other publications under the governing regulations of the entity, related to the LOPJ, which are not are the object of analysis in this procedure.

In this case, it is proven that on the website poderjudicial.es, it was published and exposed openly, in the Agreements of the Commission (...) of the CGPJ, the data of the claimant who filed a claim against the claimed party, because their data is displayed on said website, at docplayer.es and on Google. In the transfer of the claim, initially the claimed responds to the 11/8/2019, which was going to suppress these data, verifying in replacement and after the agreement of commencement that was not carried out until the initiation agreement had been received.

In accordance with the RGPD, it is mandatory to have the technical and organizational measures established to protect the integrity, authenticity or confidentiality of the personal data processed, through a prior design of the data processing itself, which considers re really an effective application of data protection principles, considering when they may yield to other legitimate interests or regulatory compliance, which without doubt increases the protection of the rights and freedoms of its holders. In addition to dispute of the measures, they must be executed correctly and not less important, verify that the effective fulfillment of what was agreed has been carried out, but the mere establishment would fulfill and empty the obligation.

In this case, a verification of what was agreed and resolved on 11/8/2019 was lacking, proving

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

that article 32 of the RGPD has been infringed by the claimed party.

III

The other infringement charged is that of article 5.1.f) of the RGPD, which states:

“Personal data will be:

“processed in such a way as to guarantee adequate security of the personal data”

them, including protection against unauthorized or unlawful processing and against their loss,

accidental destruction or damage, through the application of technical or organizational measures

appropriate (“integrity and confidentiality”).”

The LOPDGDD, states in its article 5:

"1. Those responsible and in charge of data processing as well as all persons

that intervene in any phase of this will be subject to the duty of confidentiality to the

referred to in article 5.1.f) of Regulation (EU) 2016/679”

In response to the allegations presented by the respondent, and taking into account that the object

The purpose of this sanctioning procedure is to analyze the deletion of personal data

referenced in the body of this resolution and that, in relation to this treatment, it cannot

concluded that the principle of confidentiality has been violated, the filing of the

violation of article 5.1.f) of the RGPD.

IV

Data protection infringements are typified in sections 4, 5 and

6 of article 83 of the RGPD. It is a typification by reference, fully admitted by our

another Constitutional Court. Opinion 757/2017 of 10/26 of the Council of State, on the

draft of the LOPDGDD) specifies that the RGPD "typifies, no matter how much it does so in the sense of

generic do the behaviors constituting infringement.”

The RGPD is a directly applicable legal norm, which has been developed by the LO-

PDGDD, only in what the first one allows. In this sense, also article 71 of

the LOPDGDD makes a reference to them when stating that "They constitute infractions

the acts and behaviors referred to in sections 4, 5 and 6 of article 83 of the Regulation-
ment (EU) 2016/679, as well as those that are contrary to this organic law

In this sense, the article referring to the infraction of article 32 imputed, indicates:

“The infractions of the following dispositions will be sanctioned, in accordance with the section
do 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a
company, of an amount equivalent to a maximum of 2% of the total turnover
annual global of the previous financial year, opting for the highest amount:

a) The obligations of the person in charge and the person in charge in accordance with articles 8, 11, 25 to 39,
42 and 43;”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/13

Regarding the qualification of behaviors, the LOPDGDD specifies three degrees

The infringement of article 32 is qualified in article 73 of the LOPDGDD, which indicates:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679, it is considered

They are serious and will prescribe after two years the infractions that suppose a substantive violation.

of the articles mentioned therein and, in particular, the following:

f) The lack of adoption of those technical and organizational measures that result
appropriate to guarantee a level of security appropriate to the risk of the treatment, in
the terms required by article 32.1 of Regulation (EU) 2016/679.

Regarding the allegation that the infringement should be considered minor, since it is not a
substantial but formal infringement of the duty established in the implementation of the measures,
must indicate that the implementation of the measures in your case must be complete and
global in all its phases, including execution and verification, not merely nominal. By

On the other hand, it was not until receiving the initial agreement that he proceeded, as he told delete from the website poderjudicial.es, the agenda of the Commission (...) of ***DATE.1, with transfer to GOOGLE of the URL and to docuplayer.es. In addition, as such, its typification is It is included in the aforementioned articles of the RGPD and LOPDGDD indicated.

v

Article 58.2 of the RGPD provides: "Each control authority will have all the si- following corrective powers indicated below:

b) address a warning to any data controller or processor when the operations treatment rations have violated the provisions of this Regulation;

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

Article 83.7 of the RGPD indicates:

"Without prejudice to the corrective powers of the control authorities under article 58, paragraph 2, each Member State may establish rules on whether it is possible, and in what measure, impose administrative fines on authorities and public bodies established in that Member State."

The Spanish legal system has chosen not to penalize public entities with a fine.

public, as indicated in article 77.1. a) and 2. 4. 5. and 6. of the LOPDDGG: "1. The regimen established in this article will be applicable to the treatments that are res- responsible or in charge:

a) The constitutional bodies or those with constitutional relevance and the institutions of the autonomous communities analogous to them.

2. When those responsible or in charge listed in section 1 commit any one of the infractions referred to in articles 72 to 74 of this organic law, the competent data protection authority will issue a resolution sanctioning the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/13

themselves with warning. The resolution will also establish the appropriate measures adopt to stop the behavior or correct the effects of the infraction that had occurred. task.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which hierarchically dependent, where appropriate, and those affected who had the condition of interest sad, in your case.

4. The data protection authority must be informed of the resolutions that gan in relation to the measures and actions referred to in the preceding sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of the autonomous communities the actions carried out and the resolutions issued under the ro of this article.

6. When the competent authority is the Spanish Agency for Data Protection, this will publish on its website with due separation the resolutions referring to the entities from section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional data protection authority,

It will be, in terms of the publicity of these resolutions, to what its regulations have specific”.

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: SANCTION with a warning, in accordance with article 77.2 of the

LOPDGDD, to GENERAL COUNCIL OF THE JUDICIAL POWER (CGPJ), with NIF S2804008G,
for an infringement of article 32 of the RGD, in accordance with article 83.4.a)
considered serious, for the purposes of prescription of the infraction in article 73.f)
of the LOPDGDD.

SECOND: FILE the infringement of article 5.1.f) of the RGD attributed to the COUNCIL
GENERAL OF THE JUDICIAL POWER (CGPJ)

THIRD: NOTIFY this resolution to the GENERAL COUNCIL OF POWER
JUDICIAL (CGPJ).

FOURTH:

in accordance with the provisions of article 77.5 of the LOPDGDD.

COMMUNICATE this resolution to the OMBUDSMAN, of

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

It 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
RGPD, 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 Agency

Spanish Data Protection Authority within a month from the day following the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/13

notification of this resolution or directly contentious-administrative appeal before the

Contentious-administrative Chamber of the National High Court, in accordance with the provisions
in article 25 and in section 5 of the fourth additional provision of Law 29/1998, of

13/07, regulating the Contentious-administrative Jurisdiction, within a period of two months to

count 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, it may be precautionary suspension of the firm decision in administrative proceedings if the interested party expresses its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned LPACAP. You will also need to transfer

to the Agency the documentation that accredits the effective filing of the appeal

contentious-administrative. If the Agency was not aware of the filing of the

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

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-171221

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es