

□ Procedure No.: PS/00440/2020

RESOLUTION R/00072/2021 TERMINATION OF THE PROCEDURE FOR PAYMENT
VOLUNTEER

In sanctioning procedure PS/00440/2020, instructed by the Spanish Agency for
Data Protection to PATIO ANCESTRAL, S.L., given the complaint filed by
A.A.A., and based on the following,

BACKGROUND

FIRST: On January 25, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against PATIO ANCESTRAL,
SL (hereinafter, the claimed party), through the Agreement that is transcribed:

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Procedure No.: PS/00440/2020

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following:

FACTS

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated September 14,
2020 filed a claim with the Spanish Data Protection Agency. The
claim is directed against PATIO ANCESTRAL, S.L. with NIF B90006396 (in
later, the claimed one).

The reasons on which the claim is based are that the respondent first addressed
to the claimant (** POSITION.1 of the company Kaufenor XXI), to claim the payment
of alleged damages caused in the course of a rehabilitation work, and
subsequently issues a letter in the name of his father, and it is forwarded to his place of residence.
worked.

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Thus, inside said letter is the documentary based on the

that the defendant requires the payment of an amount, under the pretext of the alleged damages mentioned and caused by a construction company.

It provides diverse documentation, among which is a certified letter addressed to the domicile (...) of the claimant's father and claim for payment of the assumptions damage.

SECOND: In accordance with article 65.4 of the LOPGDD, which has provided for a mechanism prior to the admission to processing of the claims that are formulated before the AEPD, consisting of transferring them to the Data Protection Delegates designated by those responsible or in charge of the treatment, for the purposes foreseen in article 37 of the aforementioned rule, or to these when they were not designated, it was given transfer of the claim to the claimed entity so that it proceeded to its analysis and respond to the complaining party and to this Agency within a month.

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

In addition, the following extremes are noted:

On November 18, 2020, the respondent states:

The claimant, like her father, both have or have had the status of ***POSITION.1

of Mercantil Kaufenor XXI, S.L. This is the result of the note of the Central Mercantile Registry.

As a result of the incident that occurred at the construction site, and given that Mercantil

Kaufenor XXI, S.L. appears as Promoter of said construction work, the claimed,

addressed the aforementioned company through the claimant.

It is only before the return of the communication sent to the address of the

Mercantil, that is why they proceeded to try to collect data from some *** POSITION.2

of said Mercantile (...), and the search for his address was requested, finding

through a simple internet search, the address, where an envelope was sent

in September 2020, containing in turn another, the original addressed to the

claimant, duly sealed for delivery to it.

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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 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.

II

The defendant is imputed the commission of 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:

"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;

(...)"

III

Sections b), d) and i) of article 58.2 of the RGPD 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;"

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"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.”

IV

The documentation in the file offers evidence that the claimed, violated article 6 of the RGD, since they have processed the data of a third party that is not ***PUERTO.1 of KAUFENOR XXI S.L. from the year XXXX, and to its www.aepd.es

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Sometimes the letter they send to the father is not addressed to the company, but to the claimant.

However, and this is essential, the defendant does not prove legal standing to the processing of the data of the claimant's father.

v

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question as well as the number of stakeholders affected and the level of damage and damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that have applied under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to put remedying the breach and mitigating the possible adverse effects of the breach;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular if the person in charge or the person in charge notified the infringement and, in such case, to what extent;

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i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms certificates approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits realized or losses avoided, direct or indirectly, through infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

“two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatment of personal information.

- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection delegate.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party.”

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of fine to impose in the present case on the defendant as responsible for an infringement typified in article 83.5.a) of the RGPD, in an initial assessment, it is estimated concurrent the following factors:

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In the present case we are facing an intentional action (article 83.2 b) RGPD).

Basic identifiers are affected (name, surnames and addresses),

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according to art. 83.2g) GDPR.

This is why it is considered appropriate to adjust the sanction to be imposed on the claimed and set it at the amount of €5,000 for the infringement of article 6 of the RGPD.

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Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

HE REMEMBERS:

1.

START SANCTION PROCEDURE against PATIO ANCESTRAL, S.L., with NIF B90006396, for the alleged infringement of article 6 of the RGPD typified in Article 83.5.a) of the aforementioned RGPD.

1. APPOINT D.B.B.B. as instructor. and as secretary to Ms. C.C.C., indicating that any of them may be challenged, where appropriate, in accordance with what is established in articles 23 and 24 of Law 40/2015, of October 1, of Legal Regime of the Public Sector (LRJSP).

two.

INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and her documentation, the documents obtained and generated by the General Subdirectorate for Data Inspection.

3. THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1 bre, 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 results from the instruction.

4. NOTIFY this agreement to PATIO ANCESTRAL, S.L., with NIF B90006396, granting a hearing period of ten business days for formulate the allegations and present the evidence that it deems appropriate.

In your statement of allegations, you must provide your NIF and the number of the procedure. statement at the top of this document.

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

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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 the present procedure. With the application 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 its amount. With the application of this reduction, the sanction would be established at 4,000 euros and its payment will imply the termination of the process.

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.

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.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above, 5,000 euros or 3,000 euros, you must make it effective by your deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency 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 welcomes

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

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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

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: On February 3, 2021, the claimant has proceeded to pay the

SECOND

sanction in the amount of 3000 euros making use of the two reductions provided in the Startup Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation 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 art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

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

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility,

the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature, but 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 with each other.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation 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/00440/2020, of

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

SECOND: NOTIFY this resolution to PATIO ANCESTRAL, S.L.

In accordance with the provisions of article 50 of the LOPDGDD, 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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative 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

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