

□ Procedure No.: PS/00051/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) on 11/14/2019 filed
claim before the Spanish Data Protection Agency. The claim is
directs against VOX ESPAÑA, with NIF G86867108 (hereinafter, the claimed). The
The reasons on which the claim is based are: that on 04-29-2019 he sent an email to
VOX with the intention of accounting for a series of irregularities and requesting the
party leave; Seeing that he did not receive a response on 05-11-2019, he sent a new
email reiterating the cancellation and communication for the deletion of all their
data, receiving acknowledgment of receipt on 05-16-2019 confirming the deletion of the
themselves; that same day he receives mail for his transfer to the department of
affiliates and on 10-15-2019 an email in your VOX account ***EMAIL.1
offering to be a proxy in the general election of 11/10/2019; that that charge
they only offer it to affiliates, so it follows that they still keep all their
data.

SECOND: Upon receipt of the claim, the Subdirector General for
Data Inspection proceeded to carry out the following actions:

On 12/12/2019, the claim presented was transferred to the entity for its analysis and
communication to the claimant of the decision adopted in this regard. Likewise, it
required so that within a month it would send to the Agency determined
information:

- Copy of the communications, of the adopted decision that has been sent to the

claimant regarding the transfer of this claim, and proof that

the claimant has received communication of that decision.

- Report on the causes that have motivated the incidence that has originated the claim.

- Report on the measures adopted to prevent the occurrence of similar incidents.

- Any other that you consider relevant.

On 12/20/2019, the respondent stated that at the time of becoming aware of the request for withdrawal of the former affiliate, it was proceeded as it was answered by mail and that according to your file was effective on 05/16/2019.

Subsequently, on 01/02/2020 a certificate of representative of the aforementioned party was provided politician manifesting himself in the same sense.

THIRD: On 02/11/2020, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/12

FOURTH: On 03/24/2020, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the person claimed for the alleged infringement of article 6.1.a), typified in article 83.5.a) of the RGPD.

FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this The resolution has not presented a written statement of allegations, for which reason the indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f) establishes that in the event of not making allegations within the period established on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

SIXTH: Once the initiation agreement was notified, the respondent did not present a written allegations within the legal period established for it, so it is applicable what indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f) establishes that in the event of not making allegations within the period established on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

SEVENTH: Of the actions carried out in this procedure, they have been accredited the following:

PROVEN FACTS

FIRST: On 11/14/2019 there is an entry in the AEPD written by the claimant stating that on 04-29-2019 he sent an email to VOX with the intention of give an account of a series of irregularities and ask to be removed from the party; that not receive any response, on 05-11-2019 he sends a new email reiterating the cancellation and, likewise, communicating for deletion of all your personal data, receiving acknowledgment of receipt on 05-16-2019 confirming the deletion of the data; that same day he receives mail for his transfer to the department of affiliates; that he 10-15-2019 receives an email offering to be a proxy in the elections of 11/10/2019, when said position is offered only to affiliates for that it follows that they still keep all their personal data; That this

This fact constitutes an infringement in accordance with the RGPD.

SECOND: It is recorded that the claimant on 05/11/2019 sent an email to VOX

pointing out:

“I hereby reiterate that you immediately process my dismissal from the party. Already

An email was sent to them (04-29-2019) accompanied by a letter signed by

me to do so and my account has been charged a fee (which has already

been returned).

On the other hand, I take this opportunity to communicate my EXPRESS WISH to make

use of my RIGHT TO SUPPRESS my data, NOT GIVING CONSENT

ANY to the VOX political party for any treatment (this includes

communications by any means). All this according to art. 15 of Law 3/2018

on Data Protection and guarantee of digital rights.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/12

Likewise, it is given a period of 10 days to issue a certificate, written or

analogous document that thus expresses that ALL my data has been eliminated,

according to art. 19 of Regulation (EU) 2016/679 of the European Parliament and the

Council on the protection of natural persons with regard to

treatment of personal data.

Once this period has elapsed without a response having been obtained, the

processing of the corresponding complaint to the Spanish Agency for the Protection of

Data.

Those VOX charges in the province of Castellón are also warned

that, after the deletion of my data, they continue to use my telephone number, email
email or any of my data for any type of communication because
obtained the same through the VOX National Headquarters (affiliation form), without
prejudice to the responsibilities that these persons may incur by way of
both administrative and criminal.

Application file signed by me is attached.

THIRD: There is an email sent by the DPD of VOX on 05/16/2019
responding to the claimant and indicating:

“Good morning, we proceed to the deletion of your personal data.

Receive a cordial greeting”

FOURTH: The claimant received an email on 05/16/2019, the purpose of which was
“REITERATING WITHDRAWAL FROM THE PARTY AND THE RIGHT TO DELETE DATA”,
noting the following:

“I am forwarding your message to the Affiliate Management Department.

(...)”

FIFTH: On 10/15/2019, VOX sent the claimant an email with the
following message:

(...)

Again we have General elections. On this occasion, we already have colleagues in
the Congress and in the Senate. We have the possibility to enter again with more
strength.

Vox is making a great effort to enter the institutions and improve Spain

To avoid the problems of previous elections when counting votes,
unfairly annulled votes and missing ballots, we need your help.

EVERY VOTE COUNTS.

In this sense, we want you to participate as an electoral representative of VOX and

defends the votes that will take us to more Institutions where we will fight for a Spain better. It is not necessary to be a member and it is compatible with being a candidate. It's very simple, go to our proxy website and fill in the form:

Register as proxy

Once sent you will receive an SMS on your mobile to confirm your request.

Subsequently, you will receive in your email inbox a message that will guarantee that your data has arrived correctly and the campaign coordinators www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

4/12

They will contact you to give you the accreditation and explain your role in the electoral process.

(...)

SIXTH: On 01/02/2020, the Secretary General of VOX sent a letter certifying that the claimant ceased to hold the status of affiliate to said political party from the 05/16/2019.

FOUNDATIONS OF LAW

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.

Yo

Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the

procedures of a sanctioning nature”, provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators of the procedure so provide.

2. The initiation agreement must contain at least:

a) Identification of the person or persons allegedly responsible.

b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what result of the instruction.

c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.

d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.

e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in If you do not make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility

imputed.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/12

3. Exceptionally, when at the time of issuing the initiation agreement

there are not sufficient elements for the initial qualification of the facts that motivate

the initiation of the procedure, the aforementioned qualification may be carried out in a phase

later by drawing up a List of Charges, which must be notified to

the interested".

In application of the previous precept and taking into account that no

formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

III

The facts denounced materialize in the treatment of the data of

personal nature by the person claimed after the request for withdrawal by the

affected; low that was confirmed by the claimed and after the same and

her confirmation the claimant received an email on 10/15/2019 in which she

offered to be a proxy in the general elections of 11/10/2019, of which

deduces that your personal data was still kept and continued to be

processed by the claimant.

Article 58 of the RGPD, Powers, states:

"two. Each supervisory authority will have all of the following powers

corrections listed below:

(...)

i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

(...)"

Article 5, Principles relating to processing, of the GDPR states that:

"1. The personal data will be:

a) treated lawfully, loyally and transparently with the interested party (<<lawfulness, loyalty and transparency

(...)

d) accurate and, if necessary, updated; all measures will be taken

reasonable for the personal data to be erased or rectified without delay

that are inaccurate with respect to the purposes for which they are processed

("accuracy");

(...)

2. The data controller will be responsible for compliance with the

provided in section 1 and able to demonstrate it (proactive responsibility)"

On the other hand, article 6, Legality of the treatment, of the RGPD establishes that:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/12

"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;

(...)"

And article 4 of the RGPD, Definitions, in section 11, states that:

"11) «consent of the interested party»: any manifestation of free will,

specific, informed and unequivocal by which the interested party accepts, either through

a statement or a clear affirmative action, the processing of personal data that

concern him".

Also article 17 of the RGPD, Right of suppression ("the right to

oblivion"), states:

"1. The interested party shall have the right to obtain without undue delay from the

responsible for the treatment the deletion of the personal data that concerns him, the

which will be obliged to delete personal data without undue delay when

any of the following circumstances occur:

a) the personal data is no longer necessary in relation to the purposes for

those that were collected or otherwise treated;

b) the interested party withdraws the consent on which the treatment of

in accordance with Article 6(1)(a) or Article 9(2)(a) and

it is not based on another legal basis;

c) the interested party opposes the treatment in accordance with article 21, paragraph 1,

and other legitimate reasons for the treatment do not prevail, or the interested party

object to processing pursuant to Article 21(2);

d) the personal data has been illicitly processed;

e) the personal data must be deleted for the fulfillment of a

legal obligation established in the Law of the Union or of the Member States that

applies to the data controller;

f) the personal data has been obtained in relation to the offer of services

of the information society referred to in article 8, paragraph 1.

2. When you have made the personal data public and are obliged, by virtue of

of the provisions of section 1, to delete said data, the person in charge of the

treatment, taking into account the available technology and the cost of its application,

will take reasonable measures, including technical measures, with a view to informing the

Responsible for processing the personal data of the interested party's request for

deletion of any link to such personal data, or any copy or replica of

the same.

3. Sections 1 and 2 will not apply when the treatment is necessary:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/12

a) to exercise the right to freedom of expression and information;

b) for the fulfillment of a legal obligation that requires the treatment of

data imposed by the law of the Union or of the Member States that is applied

to the person in charge of the treatment, or for the fulfillment of a mission carried out in

public interest or in the exercise of public powers vested in the controller;

c) for reasons of public interest in the field of public health of

in accordance with article 9, paragraph 2, letters h) and i), and paragraph 3;

d) for archival purposes in the public interest, scientific research purposes or

historical or statistical purposes, in accordance with article 89, paragraph 1, in the

to the extent that the right indicated in paragraph 1 could make it impossible or

seriously impede the achievement of the objectives of said treatment, or

e) for the formulation, exercise or defense of claims”.

On the other hand, article 6, Treatment based on the consent of the affected, of the new Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD), indicates that:

"1. In accordance with the provisions of article 4.11 of the Regulation (EU) 2016/679, consent of the affected party is understood to be any manifestation of will free, specific, informed and unequivocal by which he accepts, either through a declaration or a clear affirmative action, the treatment of personal data that concern.

2. When the data processing is intended to be based on consent of the affected party for a plurality of purposes, it will be necessary to state specific and unequivocal that said consent is granted for all of them.

3. The execution of the contract may not be subject to the affected party consenting to the processing of personal data for purposes unrelated to the maintenance, development or control of the contractual relationship”.

IV

The infraction that is attributed to the claimed one is typified in the article 83.5 a) of the RGPD, which considers that the infringement of “the basic principles for processing, including the conditions for consent under the articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned Article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

The LOPDGDD in its article 71, Violations, states that: "They constitute

infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law”.

And in its article 72, it considers for prescription purposes, which are: "Infringements considered very serious:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/12

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly 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.

(...)

v

The documentation provided to the file shows that the respondent has violated article 6.1.a) of the RGPD, since it has carried out an illegal treatment of the data of the claimant when sending her an email 10/15/2019 without authorization or consent, having previously requested his withdrawal from the party and having confirmed this by email sent by the claimed party to the affected. In this case, there is no other reason for legitimizing the treatment with

after the request for cancellation of your data and the response that they had been cancelled.

The Secretary General of the political organization in writing sent to

This management center has certified that the claimant ceased to hold the status of affiliate to said political party since 05/16/2019.

The Contentious-Administrative Chamber of the National High Court, in similar assumptions has considered that when the owner of the data denies the consent in the processing of your data corresponds the burden of proof to who affirms its existence, and the data controller must collect and keep the necessary documentation to prove the consent of the holder. A) Yes, the SAN of 05/31/2006 (Rec. 539/2004), Fourth Law Basis.

It should be noted that respect for the principle of legality of the data requires that accredited evidence that the owner of the data consented to the processing of the data of personal character and display a reasonable diligence essential to prove that end. Failure to act in this way would result in emptying the content of the principle of legality.

SAW

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/12

In order to establish the administrative fine to be imposed, observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which point out:

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. 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 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 to be

try

b) as well as the number of interested parties 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,

what extent;

- 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.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"two. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

- a) The continuing nature of the offence.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/12

- b) The link between the activity of the offender and the performance of treatments
- 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 after the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

h) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those 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 for the infringement typified in article 83.5.a) of the RGPD

for which the defendant is held responsible, in an initial assessment, it is estimated

concurrent the following factors:

data.

The merely local scope of the treatment carried out by the entity

claimed.

Only one person has been affected by the offending conduct.

Although the damage to the claimant exists, it can be considered that it is not

significant.

The respondent entity does not record that it has adopted measures to prevent the

produce similar incidents.

There is no evidence that the entity had acted maliciously, although

the performance reveals serious lack of diligence.

The link between the activity of the offender and the performance of treatment of

Personal data.

The claimed entity is a nationally established political party.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE VOX ESPAÑA, with NIF G86867108, for an infringement of the article 6.1.a) of the RGPD, typified in article 83.5.a) of the RGPD and considered to effects of prescription in article 72.b) of the LOPDGDD as very serious, a fine of €1,500 (one thousand five hundred euros).

SECOND: NOTIFY this resolution to VOX ESPAÑA, with NIF G86867108.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/12

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the

payment will be until the 5th of the second following month or immediately after.

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

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 LOPDGDD, 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

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

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/12

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es