 Procedure No.: PS/00264/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and with

based on the following

BACKGROUND

FIRST: Dated 01/09/2019 has entry in the Spanish Protection Agency

Data (AEPD) the claim made by D. A.A.A. (hereinafter the

claimant) against ***SINDICATO.1, with NIF ***NIF.1 (hereinafter, the respondent).

The claim is based on the alleged disclosure of personal data made by

the one claimed through an email sent to the affiliates of the

union of the locality of ***LOCALIDAD.1. The claimant explains that he has been

union delegate of the ***SINDICATO.1 of that locality until December 2018. In

that condition, and after a meeting of the local affiliates, he sent a WhatsApp to the

provincial secretary of the union -D. B.B.B.- in which he communicated that all the

members were going to leave the union due to their laziness. On 12/26/2018 the

provincial secretary, D. B.B.B., sends an email to all the members of the town

email from the address “***EMAIL.1” in which you incorporate personal information

that concerns the claimant.

SECOND: The claimant has provided a copy of the email sent on 12/26/2018 by

the provincial secretary of the ***SINDICATO.1 from the address <***EMAIL.1> to the

affiliates of ***LOCALIDAD.1 -nine recipients among which is not included the

claimant - in which the following comments are made:

That since the complainant became part of the management of the union,

the disagreements given that "he tries to make union action serve

preferably to attend to their private affairs to the detriment of the interest

general".

As an example, he says: "You have to be called to order on several occasions by

breaching the Union's code of ethics by taking union hours on weekends without

union activity. “It is processed by the legal service of the Union and demands

wins a court ruling by getting the INSS to grant him a disability

total permanent pension with monthly remuneration of more than 1,100 euros, and that the

can be made compatible with a position and full salary of Second-hand Agent

activity in the local police. “You are hired as a teacher at the training center

of ***UNION.1 in ***LOCATION.2”. “With the issue of the negotiation of the RPT

of the Ayuto ***LOCALIDAD.1 you are told that you cannot charge the same as police

in second activity than an Operative Agent, a fact that he does not accept.” (The underlined

is from the AEPD)

Provide a copy of the following WhatsApp exchanged with the person claimed on dates

Previous:

From the one sent by the claimant to the claimant on 12/17/2018 at 9:21 p.m.

From the message sent by the claimed party to the claimant on the same date, at 9:45 p.m.

hours, in which he communicates that the affiliates "will be adequately informed by

the provincial leadership of the union of the developed union action and of the interests

particulars that some have tried to assert…”

THIRD: On 03/17/2020 the Director of the Spanish Protection Agency

of Data agrees to initiate a sanctioning procedure against the person claimed for the alleged

infringement of article 5.1.f), in relation to article 6.1, both of the RGPD, typified in article 83.5.a) of the RGPD.

The start agreement was notified to the claimed party electronically, being the date of made available on 06/02/2020 and the date of acceptance of the notice on 06/03/2020.

The effects of the suspension of administrative deadlines agreed by the Covid 19 health crisis. Royal Decree 463/2020, “declaring the state of alarm system for the management of the health crisis caused by Covid 19”, published in the BOE on 03/14/2020, established in its third Additional Provision, “Suspension administrative deadlines”:

"1. Terms are suspended and the deadlines for the processing of the procedures of public sector entities. The calculation of the deadlines will resume at the moment in which this Royal Decree loses its validity or, in its case, the extensions thereof.

2. The suspension of terms and the interruption of terms will apply to the entire sector public defined in Law 39/2015, of October 1, on Administrative Procedure Common of Public Administrations.”

This suspension was lifted on 06/01/2020. Royal Decree 537/2020, published in the BOE on 05/23/2020, established in article 9: "Administrative deadlines suspended by virtue of Royal Decree 463/2020, of March 14. With effects from on June 1, 2020, the computation of the administrative deadlines that would have been suspended will be resumed, or restarted, if so provided for in a rule with range of law approved during the validity of the state of alarm and its extensions.

Consequently, regarding the calculation of the maximum term of the sanctioning procedure that concerns us – that according to article 64.2 LOPDGDD is nine months- the initial term was 06/01/2020 and the final term is the

03/01/2021.

FIFTH: On 06/16/2020, the electronic offices of the AEPD have access to

allegations of the defendant to the initiation agreement in which he requests the file of the

sanctioning procedure PS/264/2019. In defense of his claim, he adduces the

Next:

Regarding the facts, it underlines that "it has acted at all times under the tutelage and

under the Statutes of the Union and in the internal and private sphere" of the union.

It states that the provincial secretary of ***LOCALITY.3 of ***SINDICATO.1 has

attributed by the Statutes "the powers to inform the union sections and

its affiliates of those activities that the union has promoted in the interest

union, individually or collectively, in matters of legal services, ... as well as

carry out the appropriate communications, internal or external, in defense of the Union".

That the provincial secretary of ***SINDICATO.1, in use of his union powers

and in the internal and private sphere of the union, he sent the communication to nine affiliates

"Having knowledge of some false statements made by the complainant with

the spirit of harming the union ***SINDICATO.1 in an Assembly in

*** LOCATION.1, in the sense that the Union had not carried out any

activity in defense of the affiliates of ***LOCALIDAD.1".

The respondent affirms that the demonstrations that the provincial secretary of the ***SINDI-

CATO.1 did in the exercise of his union office were a reminder of the action

trade union carried out; that are not collected or kept in any file of the syndicate.

and, he adds: “they were already known since 2016, not only by the union section and the

***LOCATION.1, because the complainant himself, who

members of the ***SYNDICATO.1 of

was part of the union section (....), he had also made it public, but of

the entire City Council because a negotiation procedure was processed by the Mayor for this purpose.

with the participation of the trade unions for the creation of a new job of

local police second activity for the complainant for reasons of illness

Taking into account his judicial sentence that was included in the administrative file,

and they were generic references of a judicial sentence without data and content without des-

ensure any pathology, already known by all and that was obtained and communicated by the

union to the union section of ***LOCALIDAD.1, through the Legal Services

of the Union (....)”; “and give classes as a professor for the Union and be in second activity.

ity is not something private but public”. (The underlining is from the AEPD)

The respondent invokes the following legal arguments: He begins by transcribing the

Articles 1 and 2 (referring to the object and the subjective scope of application) of the Law

Organic 15/1999, of December 13, Protection of personal data

(LOPD). It mentions article 120 of the Spanish Constitution and refers to the

STS 1191/2008, of December 22, according to which - explains the defendant - advertising

It can only be limited in accordance with the provisions of the law when it involves the

impairment of a fundamental right or a constitutionally protected good,

especially when knowledge of the private data contained

in the sentence may give rise to the disclosure of aspects of privacy that

must be subject to protection, provided that the disclosure is not protected

for the right to free public information typical of a democratic society.

Next, it adds that “Based on the objective fact that the complainant is not

member of the Association I represent and that the published Judgment has the

names of the people involved with roofs, to point out that the publication of the

content of a sentence per se does not imply the infringement of the privacy of the

persons nor does it automatically cause a violation of the right to honor of the person

was involved in the process.

He cites in support of such an assertion “the criteria that the Supreme Court takes into account

to assess whether or not a conduct is susceptible to reproach”, “must be

always to the specific case”: “(…) it is necessary to weigh, in attention to the

concurrent circumstances (v. gr., STS October 16, 2008 (RJ 2008, 5699), rec.

73/2003), the legitimate interest of the person who communicates a judicial resolution (v. gr., STS 28

July 1995 (RJ 1995, 5737, rec. 1321/1992), which may consist of interest

which obtains a favorable result in a lawsuit to make its result known to

their relatives and those who may have a relationship with the object of the lawsuit related to the

fact that this communication is not disproportionate due to the subjective scope

that it spreads or by the way in which it occurs and is justified taking into account the

nature and purpose of the process in question and the set of circumstances,

including the character of plaintiff or defendant who gives publicity to the sentence

has held in a process (...)>>

It also invokes that in the agreement to initiate the sanctioning procedure that has

been notified violates the principle of presumption of innocence, since, it says, according to

settled jurisprudence, the burden of proof of the commission of the infringement

corresponds to the Administration and not to the company and the "principle of legality in its

typicity aspect, recognized in article 25.1" of the C.E.

The respondent proposed in his pleadings brief to the initial agreement that due to the

AEPD will carry out the following test procedures:

(i) That the City Council of ***LOCALIDAD.1, Resource Service be requested

Human the following documentation:

"-Resolution of the Mayor of the City Council of ***LOCALIDAD.1 of the year 2016, by the

that the complainant is granted a transfer to a new local police job in

second activity for a second activity due to illness and where

expressly includes in said procedure his acknowledgment of incapacity

permanent total derived from the judicial sentence.

-Act or certification of the negotiation process by which it is agreed to create and value in the

Municipal RPT said job of second activity of D. AAA.

-If there was communication from the INSS to the City Council of ***LOCALIDAD.1 informing of the

recognition of total permanent disability to D. A.A.A. and if he communicated it

also to the City Council."

(ii) As witness evidence "That a statement be requested from:

1.- D. C.C.C., with email: ***EMAIL.2 and telephone number, ***TELEFONO.1, affiliated with

union ***SINDICATO.1 and who held the position of union delegate of ***SINDICATO.1

in the Town Hall of ***LOCALIDAD.1, so that it can say if it is true that they had

knowledge of the members of ***SINDICATO.1 in ***LOCALIDAD.1 in 2016

by the trade union section, trade union and the complainant himself, D. [the complainant] that

had won a court judgment and had been granted permanent disability

total with a benefit of more than 1000 euros, and that with it he was going to be able to

occupy and reconcile a local police job in second activity for

cause of illness..

2.- Mr. D.D.D., former Chief of the Local Police of the City Council of ***LOCATION.1, with

email: ***EMAIL.3 and telephone number: ***TELEFONO.2, so that it can say if it is true that

The local police and the City Council had been aware of it since 2016

of ***LOCALIDAD.1, that D. [the claimant] had won a judicial sentence and

had been awarded total permanent disability with a benefit of more than

1,000 euros, and that with this he would be able to occupy and reconcile a job as

local police in second activity due to illness..”

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679, of 27

April, on the protection of natural persons with regard to data processing

data and the free movement of these data and by which the Directive is repealed

95/46/CE (RGPD), recognizes each control authority and, as established in the

Articles 47 and 48.1 of Organic Law 3/2018, of December 5, on the protection of

data and guarantees of digital rights (LOPDGDD), the Director of the Agency

Spanish Data Protection is competent to resolve this procedure.

II

Article 9 of the RGPD, under the heading “Treatment of special categories of data

personal”, provides:

"1. The processing of personal data that reveals ethnic origin is prohibited.

or racial background, political opinions, religious or philosophical convictions, or affiliation

union and the processing of genetic data, biometric data aimed at identifying

unambiguously to a natural person, data relating to health or data relating to

sexual life or sexual orientation of a natural person.

2. Section 1 shall not apply when one of the circumstances

following:

(…)

d) the treatment is carried out, within the scope of its legitimate activities and with the

due guarantees, by a foundation, an association or any other organization without

for profit, whose purpose is political, philosophical, religious or trade union, provided that

the treatment refers exclusively to current or former members of such

organizations or persons who maintain regular contact with them in relation to

for their purposes and provided that the personal data is not communicated outside of them without

the consent of the interested parties;

(…)".

Article 6.1 of the RGPD under the heading "Legality of the treatment" establishes:

"1. The treatment will only be lawful if at least one of the following is met

conditions:

(...)

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the person in charge of the treatment or by a third party, provided that on said

interests do not override the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

interested is a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

carried out by public authorities in the exercise of their functions."

In turn, article 5 of the RGPD deals with the principles that govern the treatment

of personal data, including those of "integrity and confidentiality":

"1. The personal data will be:

(…)

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing or against

its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational (<<integrity and confidentiality>>)"

And article 5.2. RGPD adds that "The data controller will be responsible

compliance with the provisions of section 1 and capable of demonstrating it

(<<proactive responsibility>>)"

III

The agreement to initiate the sanctioning procedure attributed to the defendant a presumed

infringement of article 5.1.f) in relation to article 6.1.f), both of the RGPD,

typified in article 83.5.a) of the RGPD and qualified by the LOPDGDD in its article

72.1.a), for the purposes of prescription, of very serious infringement.

The allegedly infringing conduct attributed to the defendant in the initial agreement is

specified in the communication that the provincial head of the union made to nine people,

recipients of the email sent on 12/26/2019, all of them members of the

union in the town of ***LOCALIDAD.1, referring to the fact that the claimant received

a pension from the INSS, to the type of pension and its amount. The initial agreement estimated

that the processing of these data was not covered by the legal basis of article

6.1.f) GDPR.

Although the initial agreement underlined the importance of the "terms of the debate

that underlies the communication sent by the Provincial Head of the ***SINDICATO.1 and that

reflect the previous WhatsApp exchanged between him and the claimant", it was not reached

transcribe in it the text of the WhatsApp, of which the claimant had provided a

copy with your claim. Of these messages via WhatsApp are worthy of mention,

especially, those exchanged between the complainant and the provincial head of the union

on date 12/17/2018 that we reproduce:

□

□

□

"17/12/18 21:21- A.A.A.: Good evening. Tell you that in assembly

zed by all the affiliates of *** LOCALIDAD.1 and after exposure of mail and

wassaps where it is verified that in the rpt, union aid has been zero patate-

ro (not answering, or simply saying that it is not going to go ahead), it has been decided

put in the hands of the delegates the decision to change the union to be

these elections, urging many of them to change now. I inform you to know

foundation, the topic is wrong, we've already warned you, and if all the delegates leave

We're leaving, I'm sorry, mate, what is sown is harvested...".

"12/17/2018 21:45- E.E.E.: Good evening, members of ***LOCALIDAD.1

they will be adequately informed by the provincial direction of the action

developed trade union and of the particular interests that some have claimed

do assert And you precisely few complaints. (...) The door is open for you”

“12/17/2018 21:55 – E.E.E.: You can leave now...or you will be expelled for dis-

loyal to union...”

On the other hand, it seems advisable to reproduce what the complainant stated in his

complaint regarding the email that the provincial head of the union sent

to the nine affiliates of the locality and that gave rise to his claim:

“On 12/26/2018 at 6:44 p.m. he sends an email to all the affiliates (not to me),

*** LOCATION.1, reporting a series of barbarities and lies about me,

but also, it informs about my personal situation, that is, that I am currently

receiving a pension for permanent disability, stating the amount as well,

and that I am teaching in the union as well (attached email). The secretary who

is the one who sends the email, knows about my condition because the one who led the trial is the

lawyer who handles the legal issues of the union and, furthermore, this gentleman had a

copy of the sentence. Note that none of the affiliates knew about my situation

personal, and this gentleman has damaged me notably, because now I have to put up with

constant ridicule and contempt from friends and members of this union.”

According to what was stated by the claimant, the provincial head of the ***UNITION.1

had informed other affiliates of his "personal situation", concept, that of his

personal situation, which the claimant specifies, exclusively, in the information

referring to the fact that he receives a pension for total permanent disability; to its amount and

who teaches at the union.

It is noteworthy that the claimant does not mention in his complaint a relevant fact

that concerns him and to which the message sent by the provincial chief to the

members of the local ***UNION.1: that the claimant performed a

secondary activity position in the Local Police that was compatible with the pension

due to total permanent disability. The email sent by the provincial chief

claimed to the nine members of the ***SINDICATO.1 He said that he had obtained

that "the INSS grants him a total permanent disability with remunerative pension

monthly of more than 1,100 euros, and that can be made compatible with a position and salary

Full Second Activity Agent in the Local Police".

For its part, the defendant union, in its allegations to the initial agreement, has

underlined the framework in which the provincial head of the union addressed the

local affiliates by email and sent them the controversial message.

In this regard, it says that the claimant had made "some false statements (...)

with the intention of harming the union ***SINDICATO.1 in an Assembly in

*** LOCATION.1, in the sense that the Union had not carried out any

activity in defense of the affiliates of ***LOCALIDAD.1".

If we stick to the WhatsApp messages dated 12/17/2018 exchanged

between the claimant, then a union delegate in the locality, and the boss

provincial, one of the reproaches that the former addresses to the latter is precisely

that the union had not carried out any activity in defense of the members in the

negotiation of the RPT.

The respondent also states in his pleadings to the initial agreement that both the

union section as the affiliates of the local ***SINDICATO.1 knew from

in 2016 that the claimant received a pension from the INSS that was compatible with

a secondary activity local police post. He claims that these events were

known because the complainant, who was part of the union section, had

made public, and was also known in the City Council because it was "processed by the

Mayor for this purpose a negotiation procedure with the participation of the unions of

creation of a new local police job second activity for the

complainant for reasons of illness taking into account his court ruling that

was included in the administrative file.

In order to corroborate such statements, the respondent requested that they take

carry out tests that would consist, on the one hand, of requesting the City Council of

*** LOCALITY.1 to inform this Agency if the INSS had informed him that

total permanent disability had been recognized in favor of the respondent and if, at his

time, the City Council had communicated this fact to the INSS; in collecting from the aforementioned

City Council the copy of a resolution of the mayor, of the year 2016, by which

granted the claimant a pass to a second-rate local police job

activity and the minutes of the negotiating process by which it was agreed to create in the RPT

municipal a job of these characteristics. On the other hand, in a test

testimonial for the two proposed witnesses to say whether the members of the

***SINDICATO.1 of the locality were aware “by the union section, and by the

complainant himself” since 2016 “that he had won a court ruling and

had been awarded total permanent disability with a benefit of more than

1,000 euros, and that with this he was going to be able to occupy and reconcile a position of

local police work in second activity due to illness”. Witnesses that

on the other hand, are of highly dubious impartiality given that both are

members of ***UNION.1 in the locality, union from which the claimant was

union delegate, but of which he is no longer a member.

In short, there are divergent versions regarding the knowledge that members who

they received the email from the provincial head of the ***UNION.1 they had about

whether or not the claimant was receiving a total permanent disability pension. While

the claimant denies it the respondent affirms that it was a circumstance for all

known within the union section and even in the City Council.

However, at this point it is appropriate to assess other aspects of the issue that

affect the legal assessment of the facts and lead to a result different from the

which was maintained in the agreement to initiate the disciplinary proceedings.

It is noteworthy that the complainant, in the comments he makes in his complaint

about the message that the provincial head of the ***SINDICATO.1 sent to nine affiliates,

message that constitutes the object of your claim, does not allude to a fact that

directly concerns; that is, that he performs a job as a police officer

second activity location. The claimant has also not denied that he was

performing that job or who would have performed it, after

have obtained the total permanent disability pension.

This data, the performance of a job as a second-rate local police

activity, cannot and should not be separated from the other data concerning the

claimant whose treatment determined that this Agency proceed to the

opening of the agreement to start the sanctioning file that concerns us. Namely, that

the claimant received a pension from the INSS and the type of pension received.

We estimate that the compatibility between the performance of a job of that

nature and receipt of a total permanent disability pension is a

matter of undeniable labor relevance and, therefore, we understand that it also has

enormous relevance in the framework of trade union relations in which the provincial chief

of the ***SINDICATO.1 comments on the claimant's situation to other affiliates.

It seems appropriate to mention Law 17/2017, of December 13, on the coordination of local police of the Valencian Community, in force when the events occurred that we examine, which regulates the special administrative situation of second activity for the civil servants of the Local Police forces of the Community Valenciana (articles 85 to 89). Its predecessor, Law 6/1999, of April 19, on Local Police and Coordination of the Local Police of the Valencian Community also contemplated the administrative situation of the second activity in its articles 40 and following.

Likewise, the STS, Sala de lo Social, of 04/26/2017 (appeal 3050/2017), issued in a Doctrine Unification procedure, which confirms that are incompatible with the receipt of a pension for permanent incapacity for work total and the performance of a local police job in a situation administrative second activity.

The STS, through several of its Legal Foundations, collects the considerations that we reproduce:

“(...) the starting point (...) must be -perforce- the ordinary regime in the dynamics of the right to benefits in the IPT, which -by definition- has as its basic principle the absolute incompatibility between the provision due to it and the performance of the same profession for which disability is proclaimed, since it must not be forgotten that the IPT pension is satisfied precisely to compensate for the loss of income from the performance of the worker's usual profession, so -says the authoritative doctrine- «between this and that there is an incompatibility essential".

(...)

This entails its compatibility with the exercise of an activity other than the usual

for which he does have ability or physical capacity, but not his compatibility with the de-

paid performance (assumed with excessive effort, or with abnormal performance)

badly low, or with one and another thing at the same time) of the same usual profession respectively

who has been declared invalid”

(...)

and based on such normative insufficiency, the Supreme Court, rather than close and specify

sensing the «legal definition», has opted for the negative concretion of the term, in the good

understood to focus the issue on what does not deserve the consideration of profession

usual. Thus, it has been categorically admitted that the habitual profession is not identified

ble with the «professional group» [STS 02/28/05 rcud 1591/04]; but neither is it

with the «job» or «professional category» [SSTS 04/27/05 may rcud

998/04; 03/25/09 rcud 3402/07; and 10/26/16 rcud 1267/15]. Affirmations perhaps revised-

bles -we will see to what extent- when article 194.2 LGSS/TR comes into force

2015 in the future version [«...the profession exercised by the interested party or by the group pro-

professional, in which it was framed, before the event causing the

permanent disability...»].

(...), the use of the preceding approaches to the case in hand, by force has

to go through the professional consideration that the «second activity» should deserve.

ity", or what is the same, if the exercise of such functions integrates the profession of "Police

local authority", and this can only be done after ruling on its legal nature,

which is only achievable after studying its legal regime, which -as

is logical - it can only be done in accordance with the specifically applicable regulations

to the claimant in the proceedings, that of the Valencian Community, which is basically integrated

cally by Law 6/1999, of April 19 [DOCV no. 3482, of 04/27/99] and develops

by Decree 19/2003, of March 4 [DOCV no. 4455, of 03/07/03], which re-

regulates the “Framework Standard on the Structure, Organization and Functioning of the

post of local Police of the Valencian Community».

(...)

Indeed, its legal regime of the same is contained in the arts. 40 to 44

Law 13/2001 and in arts. 24 to 29 of Decree 19/2003, in which the “second activity

dad” of the local Police:

a).- It is defined as a “special administrative situation that corresponds to the

rios of the local Police Forces of the Valencian Community for reasons of age

or due to illness” [art. 40 Law; art. 24 Regulation]

(...) If, based on what has been said, the local police officer who has moved on to the second activity continues to

maintaining the same professional quality as Police, even limiting its functions to those

less burdensome among all those that correspond to its category, and at the same time

maintains his correlative income as an active local Police, it is an obligatory consequence

from this, understand that he persists in the exercise of the same profession and that the man-

maintenance of their remuneration is incompatible -by definition and in the applicable legislation

at the date of the causal event- with an IPT pension that has an income nature

substitute for lost wages.”

IV

So that the treatment of the personal data of the claimant carried out by the

claimed could be based on the legal basis contemplated in article 6.1.f) RGPD

should comply with the assumptions that make up that provision.

The first of them, that the treatment was necessary to satisfy an interest

legitimate pursued by the data controller; which I transfer to the assumption that

We are concerned implies that the processing of personal data carried out through the

email dated 12/26/2018 from the provincial head of the union to pursue the exercise

of the right to freedom of association. Second, that "the interests pursued

do not prevail over the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data".

As stated in the agreement to initiate the disciplinary proceedings, determine whether the

treatment that the claimed made of the data of the claimant through the mail

email that he sent to nine members of a locality in his province -in which

states that the claimant, a local union delegate, receives a pension of

total permanent disability of more than 1,100 euros per month - is or is not adjusted to

Law requires making a weighing judgment on the interests and rights at stake

to derive from it whether or not it should prevail over the right to freedom of association

the complainant's right to privacy.

Recital 47 of the RGPD says, regarding legitimate interest as a legal basis

of the processing of personal data of third parties:

"The legitimate interest of a data controller, including that of a data controller

that personal data, or that of a third party, may be communicated may constitute a

legal basis for the treatment, provided that the interests or interests do not prevail.

rights and freedoms of the data subject, taking into account reasonable expectations

of the interested parties based on their relationship with the person in charge. Such legitimate interest

could occur, for example, when there is a relevant and appropriate relationship between the
data subject and controller, such as in situations where the data subject is a customer or
is at the service of the person in charge. In any case, the existence of a legitimate interest
would require careful evaluation, even if a stakeholder can reasonably anticipate
reasonable, at the time and in the context of the collection of personal data, which
processing may occur for that purpose. In particular, the interests and rights
interests of the interested party could prevail over the interests of the person in charge
of treatment when proceeding to the treatment of personal data in
circumstances in which the data subject does not reasonably expect that a
further treatment. Since it is up to the legislator to establish by law the basis
law for the processing of personal data by public authorities,
this legal basis should not apply to processing carried out by authorities
public in the performance of their duties. The processing of personal data
strictly necessary for the prevention of fraud also constitutes an interest
of the data controller in question. Data processing
personal information for direct marketing purposes may be considered made by
legitimate interest." (The underlining is from the AEPD)

The weighing judgment also requires examining the necessity and suitability or
relevance of the data that were processed by the provincial head of the union
regarding the purpose pursued, the exercise of the right to freedom of association.
For this, it is essential to take into consideration the scenario that preceded the
electronic message sent by the claimed party that caused the opening of this
sanction file. A scenario of disagreements within the union
***SINDICATO.1 between the claimant, at the time union delegate, and the aforementioned boss
province that is perfectly illustrated with the messages that between the two
exchanged, in which the claimant announces to the provincial chief the departure of the

union of all the members of the locality and complains of lack of interest in the

affiliates.

In this context, it does not seem contrary to the principle of necessity or proportionality

the treatment carried out by the claimed data concerning the claimant,

regardless of whether or not they were previously known to the affiliates

communication recipients.

The data regarding the claimant's perception of an INSS pension and the type of

pension received -total permanent disability- is relevant and significant in the

trade union context in which the events unfolded. Relevance that is

evident insofar as this datum was treated connected or linked to another affirmation: that such

pension was compatible with the performance of a job as a police officer

second activity location.

On the other hand, it cannot be ignored that the claimant held a position -

union delegate- in the claimed union; that the recipients of the communication

are the members of the union in said locality and that, furthermore, the union claims to have

intervened in the negotiation of the RPT with the City Council so that a

second activity job in the Local Police. The existing relationship between

the ***UNION.1 and the claimant; the performance by the claimant of the position of

union delegate and the labor importance of the data concerning the claimant

that were treated, are reasons to think that the claimant should have had a

more than reasonable expectation that such data processing could occur.

In view of the foregoing, it can be concluded that the processing of data concerning the

claim made by the union ***SINDICATO.1 on the occasion of the mail

email that the provincial chief sent to the affiliates of the locality in which he was

union delegate, was intimately connected with union activity and with the

interests that are their own. Likewise, it is estimated that, considering the particular

circumstances that occur in the person of the owner of the data and the context in which

that the disputed communication took place, cannot be considered prevalent, in

this case in particular, your right to privacy against the legitimate interests

of the claimed. Consequently, there is no evidence in the behavior of the defendant

violation of the personal data protection regulations for which

The filing of sanctioning file PS/264/2019 proceeds.

Therefore, in view of the preceding exposition,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: Agree on the FILE of the sanctioning procedure PS/264/2019,

open to ***SINDICATO.1, with NIF ***NIF.1.

SECOND: NOTIFY this resolution to the respondent.

THIRD: 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 article 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 month from

counting 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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