 Procedure No.: PS/00138/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following:

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated May 22, 2019

filed a claim with the Spanish Data Protection Agency. The

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

The claimant states that the website of the claimed party has published

a Judgment in which the names of the plaintiffs appear without anonymizing.

However, the names of the defendant clients of the

office.

SECOND: In view of the facts denounced in the claim and the

documents provided by the claimant and the facts and documents of which he has

had knowledge of this Agency, the Subdirectorate General for Data Inspection

proceeded to carry out preliminary investigation actions for the

clarification of the facts in question, by virtue of the investigative powers

granted to the control authorities in article 57.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter RGPD), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed

that the data controller is the claimed party.

In addition, the following extremes are noted:

On August 8, 2019, the claim was transferred to the respondent,

in the actions with reference E/06922/2019. Notification is made by mail

postal and appears with the status: "Returned to Origin due to surplus (not withdrawn at the Office)"

by the Postal Service dated August 22, 2019.

On February 3, 2020, the content of the URL ***URL.1 is checked where

there is a judgment of the Court of First Instance no.: 8 of ***LOCALIDAD.1

dated March 20, 2019, with Ms. C.C.C. as plaintiff, as

sued heirs of Doña D.D.D. and where it appears in the First section of the

Fact Background:

“It is antecedent to the action brought, the death of E.E.E. December 26

2002, the plaintiff being her daughter and the defendants being interested in the

estate of E.E.E.. At the time of his death, Don E.E.E. he was married to

D.D.D., with whom he had no offspring. On June 23, 2003, the plaintiff and

D.D.D., signed a deed of acceptance and adjudication of the assets of the

inheritance of don…”

On February 28, 2020, the respondent sends this Agency the following

information and demonstrations:

1. That his professional office is small and that he did not have

developed website until last year.

1. That the services of creation, design and implementation of the website, the

domain registrations and publishing at the URL ***URL.2, were contracted to

the company F.F.F., NIF: ***NIF.2, (webservi web solutions), on 02/21/2019.

Provide two copies of the invoice to the company webservi web solutions of

dates February 21, 2019 and May 3, 2019 for the services of

web development ***URL.2, domain registration ***URL.2, domain registration

***URL.2, among other concepts.

2. That on May 3, 2019 said company completes the work

contracted and puts the aforementioned platform into operation.

3. That the aforementioned company was committed to the execution of the works to

comply with all the provisions of the LOPDGDD and RGPD and were given

precise instructions to anonymize the personal data of the sentences

favorable to the interests of the clients of this office who climbed

said platform.

4. That they understand that most of them were anonymized, although they probably

neglected in the case of the complainants.

5. That due to the poor performance of the preparation work of the

website, has been in contact with specialized companies in the sector

to give immediate solution to the detected problems. has been contracted

company Tesa 46 Computer Services, S.L.

The budget of said company is provided on February 26, 2020

accepted by the accused, according to statements by the

reported, for the performance of the following tasks among others:

a) Add legal notice.

b) Add cookie banner.

c) Modify forms to force acceptance.

d) Modify possible sentences.

1. That from the date of hiring the services with the company Tesa 46

Servicios Informático, S.L., February 26, 2020, instructions have been given

to the new administrator of the web page so that it does not go up to the platform

no new sentence without the supervision of the defendant, to prevent

produce similar incidents.

2. That they have decided to completely remove the review of the

Judgment of the Court of First Instance No. 8 of ***LOCATION.1.

3. That they understand that the published judgment has not caused any disturbance to

Mrs. C.C.C. since it does not contain any data that affects your right to honor,

personal privacy and own image, except for their own name.

4. That on the website of the Ministry of Justice there is currently the option of

access the original sentences with all the personal data in view.

That this possibility is accessible to everyone and without the need to have

any digital certificate through the portal of the Electronic Judicial Headquarters

***URL.3. that there is the ***URL.4 tool in which you can get

any sentence without anonymization of any court that does not depend on

any of the autonomous communities with the jurisdiction of Justice

transferred.

On March 13, 2020, the respondent sends this Agency the following

information and demonstrations:

1. That there is no paper contract and the formalization of the contractual relationship

with the company F.F.F., NIF: ***NIF.2, (Webservi Soluciones Web) was carried out

according to section 1.1 “Activation” of section 1 “Acceptance of the

General Conditions” of the General Conditions where it is stated:

“The activation of the button to send the hiring request to the website of

Webempresa as the client's private area, attributes the condition of Client

and expresses the full and unreserved acceptance of the Conditions of

Contracting of the Services requested in the version that Webempresa puts

at your disposal electronically prior to activating the button

of sending the CONTRACTING.”

1. Provide a copy of the general contracting conditions with the company

F.F.F., NIF: ***NIF.2, (Webservi Web Solutions) where it counts:

a. In section 9.1 “General Regime”

“The Client is and will be solely responsible for: (a) the use made of

the Services provided; (b) full compliance with any standard

that may be applicable due to or in connection with the use of

the Services, including, without limitation, the

rules of use of the Services provided, the provisions regarding

data protection, international communications, export of

technological information, protection of consumers and users,

confidentiality, secrecy of communications and the right to

privacy. In this sense, the Client undertakes to adopt the measures

opportune to avoid any illegitimate interference in the privacy of

natural or legal persons that suppose a violation of the right to

honor of third parties.

b. In section 9.2 “Exoneration”

"webservi.es does not intervene in the creation, transmission or implementation of

provision of and does not exercise any kind of prior control or guarantee

the legality, infallibility and usefulness of the content transmitted,

disseminated, stored, received, obtained, made available or

accessible through or through the Services, declining any

liability that may arise from it.

…

The Client is solely responsible for any claim or

legal action, judicial or extrajudicial, initiated by third parties both

against the Client and against webservi.es, regarding the infringement of

rights of third parties and/or applicable regulations arising from the

content, assuming the Client how many expenses, costs and

indemnities are paid to webservi.es due to such

claims or legal actions."

c. In section 13 "Personal Data"

"Furthermore, in the event that webservi.es had access to data from

personal responsibility of the Client, will be considered

in charge of processing said information, committing to

comply with the obligations that correspond to it by law, especially those

established in article 12 of the current Organic Protection Law

of Personal Data. webservi.es will treat the data to which

has access according to the instructions of the Client,…

…

webservi.es undertakes to adopt security measures on the

files containing personal data. The Client acknowledges

that these measures are adjusted to the level of security applicable to the type of

information that is processed as a result of the

provision of the Service.”

2. That the aforementioned company was given precise instructions to anonymize

the personal data of the sentences. who believe in good faith that the

company anonymized most of them, although this was probably neglected in

the case of the claimants.

3. States that:

“We understand that the purging of responsibilities in relation to the

processing of personal data, the aforementioned company should be required to

in accordance with clause 13 of the general contracting conditions

imposed by the aforementioned company that are transcribed below, in

especially the third paragraph that establishes that if you have had access to data of

personal responsibility of the client, will be considered responsible for the

treatment of said information, committing to comply with the

obligations that correspond to it by law, especially those established in the

article 12 of the current Organic Law on the Protection of Character Data

Staff."

4. That on the website of the Ministry of Justice, there is currently the option

to access the original sentences with all the personal data to the

view. That this possibility is accessible to everyone and without the need for

have any digital certificate through ***URL.5

5. State:

"On that page a form opens in which you must indicate the Jurisdiction,

(in this civil case), the type of resolution, (in this case Judgment), the type of

body (in this case the Court of First Instance) and may verify that

the sentences are published with all the personal data of the parties."

On April 14, 2020, it is verified that the content of the URL

***URL.1 has been withdrawn.

THIRD: On June 16, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the

GDPR.

FOURTH: Having been unsuccessful in the practice of notification by the S.E.

Correos y Telégrafos S.A., was notified by the Single Edictal Board of the

BOE, on July 16, 2020.

FIFTH: Formal notification of the initiation agreement, the one claimed at the time of the

This resolution has not submitted a brief of arguments, so it is

application of what is stated in article 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations, which in its

section f) establishes that in the event of not making allegations within the stipulated period

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.

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

of Data in this procedure the following are considered proven facts:

FACTS

FIRST: The claimant filed a written claim on May 22, 2019 in

the AEPD stating that a statement has been published on the defendant's website

judgment in which the names of the plaintiffs appear without anonymizing. Without

However, the names of the defendant clients do appear anonymized

of the buffet.

SECOND: On February 3, 2020, the content of the URL ***URL.1 is checked

where there is a judgment of the Court of First Instance no.: 8 of

***LOCATION.1 dated March 20, 2019, with the claimant being Ms.

C.C.C., as defendant heirs of Doña D.D.D..

THIRD: The respondent on February 28, 2020 states that his office

professional is small in size and did not have a website developed

until last year.

It adds that the services of creation, design and implementation of the website, the

domain registrations and publication at the URL ***URL.2, were contracted to the

company F.F.F., NIF: ***NIF.2, (webservi web solutions), on 02/21/2019.

That there is no paper contract and the formalization of the contractual relationship with the

company F.F.F., NIF: ***NIF.2, (Webservi Soluciones Web) was carried out according to the section

1.1 "Activation" of section 1 "Acceptance of the General Conditions" of the

General conditions

That due to the poor performance of the work of preparing the website,

has been in contact with specialized companies in the sector to give immediate

solution to the detected problems. The company Tesa 46 Services has been contracted

IT, S.L.

That from the date of contracting the services with the company Tesa 46 Servicios

Informático, S.L., February 26, 2020, instructions have been given to the new

administrator of the web page so that no new ones are uploaded to the platform

judgment without the supervision of the defendant, to prevent incidents from occurring

Similar.

That they have decided to completely remove from the website the summary of the Judgment of the

Court of First Instance No. 8 of ***LOCATION.1

That they understand that the published sentence has not caused any disturbance to Doña

C.C.C. since it does not contain any data that affects your right to honor, privacy

personal and own image, except your own name.

FOURTH: On April 14, 2020, it is verified that the content of the URL

***URL.1 has been withdrawn.

FIFTH: On June 16, 2020, this sanctioning procedure was initiated by the

violation of article 5.1 f) of the RGPD, being notified on July 16, 2020. No

having made allegations, the claimed one, to the initial agreement.

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

Article 5.1 of the RGPD determines in section f) regarding the

“Principles relating to treatment” that:

“Personal data will be:

(…)

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

personal data, including protection against unauthorized or unlawful processing and

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

appropriate technical or organizational (<<integrity and confidentiality>>)”

Article 32.1.b) and 2 of the RGPD, regarding “Security of treatment”,

establishes:

"1. Taking into account the state of the art, the application costs, and the

nature, scope, context and purposes of the treatment, as well as risks of

variable probability and severity for the rights and freedoms of individuals

physical, the person in charge and the person in charge of the treatment will apply technical measures and

appropriate organizational measures to guarantee a level of security appropriate to the risk,

which in your case includes, among others:

(…)

b) the ability to ensure the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

(…)

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

takes into account the risks presented by the processing of data, in particular as

consequence of the accidental or unlawful destruction, loss or alteration of data

data transmitted, stored or otherwise processed, or the communication or

unauthorized access to said data. “

For these purposes, it is recalled that article 4 of the RGPD, under the rubric

“Definitions”, provides that:

“For the purposes of this Regulation, the following shall be understood as:

1) "personal data": any information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;

2) "processing": any operation or set of operations carried out

about personal data or sets of personal data, either by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use,

communication by transmission, broadcast or any other form of enabling of

access, collation or interconnection, limitation, suppression or destruction;”

7) «responsible for the treatment>> or <<responsible>>: the natural person or

legal entity, public authority, service or other body which, alone or jointly with others,

determine the purposes and means of the treatment; if the law of the Union or of the

Member States determines the purposes and means of processing, the data controller

treatment or the specific criteria for their appointment may be established by the

Law of the Union or of the Member States; >>

10) <<third party>>: natural or legal person, public authority, service or

body other than the interested party, the data controller, the person in charge of

treatment and of the persons authorized to treat personal data under the

direct authority of the person in charge or the person in charge;

For its part, under the heading "Duty of confidentiality", article 5 of the

LOPDGDD determines:

“Article 5. Duty of confidentiality.

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

people who intervene in any phase of this will be subject to the duty of

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

2. The general obligation indicated in the previous section will be complementary

of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain

even when the relationship of the obligor with the person in charge or person in charge had ended

of the treatment.”

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;”

(...)

“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;

Sections 1 and 5.a) of article 83 of the RGPD establish:

"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.

"5. Violations of the following provisions will be sanctioned, in accordance

with paragraph 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”

Article 72.1.a) of the LOPDGDD typifies the infringement of the principle of

confidentiality as very serious for prescription purposes in the following terms:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679."

IV

In the case at hand, it can be verified that the defendant contracted

a company to take charge of its website and states that it gave them instructions

precise that they should anonymize the sentences before uploading them to the web but

presents evidence of the existence of those instructions. However, they do appear

the names of the defendant clients of the firm were anonymised. Hence, what

constitutes, on the part of the claimed party, in its capacity as responsible for the outlined

processing of personal data, a violation of the principle of confidentiality.

On the other hand, it is known that the specific sentence has been eliminated from the page

Web.

In accordance with the evidence available to said conduct

could constitute, by the claimed infringement of the provisions of the aforementioned

article 5.1.f) of the RGPD, typified in article 83.5.a) of the aforementioned Regulation and

classified as a very serious infringement for prescription purposes in article 72.1.a)

of the LOPDGDD.

Without prejudice to the provisions of article 83 of the RGPD, in the present case,

the violation by the respondent of the principle of confidentiality could be

sanctioned with a warning, in accordance with article 58.2.b) of the RGPD, by not

be linked the main activity of the claimed with the treatment of data of

personal character and consider that the administrative fine that could fall with

in accordance with the provisions of article 83.5.a) of the RGPD would constitute a burden

disproportionate for the defendant, who is not aware of the commission of any

previous breach of data protection.

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

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE D. B.B.B., with NIF ***NIF.1, for a violation of Article

5.1.f) of the RGPD, in relation to article 5 of the LOPGDD; typified in Article

83.5 a) of the RGPD, a sanction of warning.

SECOND: TO REQUIRE the respondent party so that within a month from the

notification of this resolution:

2.1 COMPLY with the provisions of article 5.1.f) of the RGPD, for which the

called for the adoption of appropriate technical and organizational measures to

guarantee the implementation of the necessary measures so that you always verify

before publishing a judgment that has anonymized personal data.

2.2 REPORT to the Spanish Agency for Data Protection of compliance with

as required, providing the documents or other means of proof in which

show compliance.

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

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 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 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.

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

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [https://sedeagpd.gob.es/sede-electronica-

web/], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

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

notification of this resolution would end the precautionary suspension.

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