 Procedure No.: PS/00210/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 12/14/2019 filed

claim before the Spanish Data Protection Agency. The claim is

directed against the ANDALUSIAN FEDERATION OF HORSE RIDING with NIF G41393661 (in

later, the claimed one). The grounds on which the claim is based are, in short, that

the defendant has published on his website and on Facebook several documents of the

Administrative Court of Sport of Andalusia (trades, basically) in which

transferred to the Federation the Agreements by which the complaints were filed

that the claimant filed against three members of the board of directors of the

Federation. In these documents, the claimant is cited, in his capacity as

complainant, by name and surname. The documents continue to be posted on the

aforementioned social network.

SECOND: Upon receipt of the claim, the Subdirectorate General for

Data Inspection proceeded to carry out the following actions:

On 02/04/2020, reiterated on 02/17/2020, the claim was transferred to the defendant

submitted for analysis and the decision adopted in this regard and was required to

that within one month it send certain information to the Agency:

- 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.

The complainant in writing dated 07/01/2020 indicated that it is the complainant who

repeatedly and publicly mentions the complaints filed by the same;

that the respondent has limited himself to publishing an informative note and letters from the

Administration communicating the file of the complaints; than what was published by

claimed in any way violates the regulations on data protection and that in

If it is harmful, please notify us as soon as possible to proceed with its withdrawal.

THIRD: On 07/03/2020, 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.

FOURTH: On 09/24/2020, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged

infringement of article 5.1.f) of the RGPD, contemplated in article 83.5.a) of the aforementioned

Regulation., considering that the sanction that could correspond would be

WARNING.

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: Of the actions carried out in this proceeding, they have been

accredited the following:

PROVEN FACTS

FIRST: On 06/05/2019 there is an entry in the AEPD written by the claimant indicating

that the respondent has published on his website and on Facebook documents of the

Administrative Court of Sport of Andalusia in which transfer of

resolutions filing the complaints the claimant had filed against

members of the board of directors; in these documents the claimant is cited, in his

status of complainant, by name and surname and continue to be published in the aforementioned

social network.

SECOND: There is evidence of a publication on the FACEBOOK page of the respondent

of the communication reporting the file of complaints filed by the claimant

against members of the entity, including their name and surnames, as well as a copy of

the file agreements agreed by the Administrative Court of Sport of

Andalusia.

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.

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

As stated in the initial agreement, the claimed facts are

materialize in the publication on the web and on the Facebook social network of documents

issued by the Administrative Court of Sport of Andalusia in which it was given

transfer to the defendant of agreements to file complaints that had been filed

by the claimant or against members of the Board of Directors of the claimed party; in the

These documents contain the data of the claimant, in his capacity as complainant.

The documents continue to be published on the aforementioned social network.

In the first place, said treatment could constitute an infringement

of article 5, Principles related to the treatment, of the RGPD that establishes that:

"1. The personal data will be:

(…)

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

personal data, including protection against unauthorized processing or

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

of appropriate technical or organizational measures ("integrity and

confidentiality").

(…)”

Also article 5, Duty of confidentiality, of the new Organic Law

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

digital rights (hereinafter LOPDGDD), states that:

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

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”.

IV

The documentation in the file shows that the claimed,

violated article 5 of the RGPD, principles related to the treatment, in relation to the

Article 5 of the LOPGDD, duty of confidentiality, when publishing the data of a nature

that may be known by third parties, both on the web and in the social network

Facebook.

This duty of confidentiality, previously the duty of secrecy, must

understood that its purpose is to prevent leaks of data not

consented to by their owners.

Therefore, this duty of confidentiality is an obligation that falls not

only to the person in charge and in charge of the treatment but to everyone who intervenes in

any phase of the treatment and complementary to the duty of professional secrecy.

v

Article 83.5 a) of the RGPD, considers that the infringement of "the principles

basic for the treatment, including the conditions for the consent in accordance with

of articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the

mentioned article 83 of the aforementioned GDPR, "with administrative fines of €20,000,000

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.

On the other hand, the LOPDGDD, for prescription purposes, in its article 72 indicates:

"Infringements considered very serious:

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:

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

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

(…)”

Secondly, the security of personal data is regulated in the

articles 32, 33 and 34 of the RGPD.

SAW

Article 32 of the RGPD "Security of treatment", establishes that:

"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:

a) pseudonymization and encryption of personal data;

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

permanent resilience of treatment systems and services;

c) the ability to restore availability and access to data

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and evaluation of the effectiveness

of the technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular consideration shall be given to

taking 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.

3. Adherence to an approved code of conduct under article 40 or to a

certification mechanism approved under article 42 may serve as an element

to demonstrate compliance with the requirements established in section 1 of the

present article.

4. The person in charge and the person in charge of the treatment will take measures to

guarantee that any person acting under the authority of the controller or the

manager and has access to personal data can only process said data

following the instructions of the person in charge, unless it is obliged to do so by virtue of the

Law of the Union or of the Member States".

The violation of article 32 of the RGPD is typified in the article

83.4.a) of the aforementioned RGPD in the following terms:

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

with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or,

in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8,

11, 25 to 39, 42 and 43.

(…)"

For its part, the LOPDGDD in its article 71, Violations, states that:

“The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law.

And in its article 73, for the purposes of prescription, it qualifies as "Infringements

considered serious”:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679

are considered serious and will prescribe after two years the infractions that suppose a

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

following:

(…)

g) The violation, as a consequence of the lack of due diligence,

of the technical and organizational measures that have been implemented in accordance with

required by article 32.1 of Regulation (EU) 2016/679”.

(…)”

The GDPR defines personal data security breaches as

“all those violations of security that cause the destruction, loss or

accidental or unlawful alteration of personal data transmitted, stored or processed

otherwise, or unauthorized communication or access to such data”.

viii

From the documentation in the file, there are clear indications of

that the claimed party has violated article 32 of the RGPD, when an incident of

security in your system allowing access to personal data, when displayed in

the website of the entity and on the social network Facebook those corresponding to the

claimant as a result of the publication of filing agreements issued by

the sports court where they were recorded, with violation of the measures of

technical and organizational nature.

It should be noted that the RGPD in the aforementioned provision does not establish a list of

the security measures that are applicable according to the data that is

object of treatment, but it establishes that the person in charge and the person in charge of the

treatment will apply technical and organizational measures that are appropriate to the risk

that the treatment entails, taking into account the state of the art, the costs of

application, the nature, scope, context and purposes of the treatment, the risks of

probability and seriousness for the rights and freedoms of the persons concerned.

Likewise, the security measures must be adequate and

proportionate to the detected risk, pointing out that the determination of the measures

technical and organizational information must be carried out taking into account: pseudonymization and

encryption, the ability to ensure the confidentiality, integrity, availability and

resiliency, the ability to restore availability and access to data after a

incident, verification process (not audit), evaluation and assessment of the

effectiveness of the measures.

In any case, when evaluating the adequacy of the level of security,

particularly taking into account the risks presented by the processing of data, such 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 and that could cause damages

physical, material or immaterial.

In this same sense, recital 83 of the RGPD states that:

"(83) In order to maintain security and prevent the treatment from violating the
provided in this Regulation, the person in charge or the person in charge must evaluate
the risks inherent to the treatment and apply measures to mitigate them, such as
encryption. These measures must guarantee an adequate level of security, including
confidentiality, taking into account the state of the art and the cost of its application
regarding the risks and the nature of the personal data that must be
protect yourself. When assessing the risk in relation to data security,
take into account the risks arising from the processing of personal data,
such as the accidental or unlawful destruction, loss or alteration of personal data
transmitted, stored or otherwise processed, or the communication or access is not
authorized to said data, susceptible in particular to cause damages
physical, material or immaterial.
The responsibility of the claimed party is determined by the bankruptcy of
security revealed by the claimant, since it is responsible for taking
decisions aimed at effectively implementing technical measures and
appropriate organizational measures to guarantee a level of security appropriate to the risk
to ensure the confidentiality of the data, restoring its availability and preventing
access to them in the event of a physical or technical incident. However, from the
The documentation provided shows that the entity has not only breached this
obligation, but also the adoption of measures in this regard is unknown.
In accordance with the foregoing, it is estimated that the respondent would be
allegedly responsible for the infringement of the RGPD: the violation of article 32,
infraction typified in its article 83.4.a).

IX

Notwithstanding the aforementioned, article 58.2 of the RGPD provides the

following: “Each supervisory authority shall have all the following powers

corrections listed below:

(…)

b) sanction any person responsible or in charge of the treatment with

warning when the treatment operations have infringed the

provided in this Regulation;

(…)

The RGPD, without prejudice to the provisions of its article 83, contemplates in its

article 58.2 b) the possibility of going to the warning to correct the treatments

personal data that do not meet your expectations.

In the present case, it has also been specially taken into account that

appreciates recidivism, for not recording the commission, within a year, of more than

an offense of the same nature.

For all these reasons, it is considered that the sanctions that should be imposed are the

of warning, in accordance with the provisions of article 58.2 b) of the RGPD

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 the ANDALUSIAN FEDERATION OF HORSE RIDING, with NIF

G41393661, for an infringement of article 5.1.f) of the RGPD, typified in article

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

SECOND: IMPOSE the ANDALUSIAN FEDERATION OF HORSE RIDING, with NIF

G41393661, for an infringement of article 32.1 of the RGPD, typified in Article

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

THIRD: TO REQUEST the ANDALUSIAN FEDERATION OF HORSE RIDING, so that in the

Within a month from the notification of this resolution, prove to the AEPD the

adoption of the necessary and pertinent measures to correct the treatment of

personal data that does not comply with the regulations on data protection

of a personal nature and prevent the recurrence of violations such as those

have given rise to this claim correcting the effects of the infringement

committed, with the purpose of adapting to the requirements contemplated in article

5.1.f) and 32.1 of the GDPR.

FOURTH: NOTIFY this resolution to the ANDALUSIAN FEDERATION OF

HORSE RIDING.

FIFTH

with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman, in accordance

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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