

□ Procedure No.: PS/00258/2019

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 01/14/2019 filed

claim before the Spanish Data Protection Agency. The claim is

directed against LOGGING AND TREATMENT FOR

EXTERIORS, S.A.U. with NIF A42147090 (hereinafter, AMATEX). The reasons in

that bases the claim are in summary the following: that AMATEX provided a

report (attached) to the company Ares Gabinete Tributario y de Gestión, S.L. (in

hereinafter ARES), with your personal data to use it in your favor and against your

husband and hers as evidence in the Court of First Instance No. 2 of Soria for

a lawsuit filed against the company Ares; indicates that the Court has not requested

no report on it.

Provide a copy of the controversial certificate issued by AMATEX on 11/21/2018

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

Data Inspection proceeded to carry out the following actions:

On 02/14/2019, the claim submitted was transferred to the defendant for analysis

and communication to the affected party 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 the same date, the claimant was informed of the receipt of the claim and its transfer to the claimed entity.

The respondent in writing dated 03/20/2019 states that he has not provided or transferred personal data of the claimant to any third party, for which he understood that

The claim was admissible. It also noted that it had been sent communication to the claimant in this same sense, accrediting its reception.

On 03/26/2019, the claimant submitted a new document indicating her disagreement with the communication received from AMATEX, providing, among other documentation: a letter from the of the claimed to ARES, in which it reports the relationship maintained by the claimant with AMATEX; letter sent by the claimant to AMATEX related to the www.aepd.es

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regularization of their employment status and the response of the company, as well as the e-mail sent to company personnel related to the outsourcing of part of the personnel department.

THIRD: On 07/11/2019, 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 10/30/2019, 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, typified in article 85.5.a) of the RGPD.

FIFTH: Once the aforementioned initiation agreement has been notified, the person claimed by means of a 11/18/2019 requested a copy of the documents that made up the file and extension deadline for allegations; on 11/21/2019 the documents were sent requested and extended the term to answer.

In a letter dated 12/03/2019, the respondent alleged, in summary, the following: that AMATEX had not provided or transferred personal data of the claimant to any third party and that the report referred to by the claimant was issued at the request of ARES as a consequence of a judicial procedure without reflecting in it any data personnel other than those previously known to ARES due to the relationship maintained by the claimant for the development of the functions of his position in the company.

SIXTH: On 12/19/2019, the opening of a practice period for tests, remembering the following:

Consider reproduced for evidentiary purposes the claim filed by the claimant and his documentation, the documents obtained and generated by the Inspection Services that are part of file E/02128/2019.

Consider reproduced for evidentiary purposes, the allegations to the initial agreement presented by the claimed party and the documentation that accompanies them.

Ask the claimant for a copy of all the documentation in their possession related to the sanctioning procedure that for any reason had not been provided at the time of the complaint or any other manifestation in relation to the reported facts. Also, a copy of the lawsuit filed in the Court of First Instance No. 2 of Soria.

The claimant responded to the proposed test, the content of which is in the

proceedings.

SEVENTH: On 06/02/2020, a Resolution Proposal was issued in the sense that by the Director of the AEPD, the person claiming for the infraction of article 5.1.f) of the RGD typed in article 85.5.a), with a warning of conformity with article 58.2 of the aforementioned Regulation.

On 06/26/2020, the respondent submitted a brief of allegations reiterating what was already manifested throughout the procedure considering that he had not facilitated or transferred personal data of the claimant to any third party.

EIGHTH: Of the actions carried out, the following have been accredited,

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PROVEN FACTS

FIRST. On 01/12/2019 it has a written entry in the AEPD claiming AMATEX, at provide a report to the company ARES with your personal data in order to to use it against her husband, when it was presented as evidence in the Court of First Instance No. 2 of Soria for a lawsuit filed against him and without the Court have requested.

SECOND. The claimant provides a copy of her DNI nº ***NIF.1.

THIRD. ARES in writing dated 11/14/2018 addressed AMATEX indicating that:

“As a consequence of the judicial procedure (Verbal Judgment 489/2018 of the Court of First Instance No. 2 of Soria) in which ARES is involved, we request inform us if within the functions performed by the claimant in her company, were the functions related to the procedures related to

files of subsidies, creation and maintenance of employment convened by Public Administrations. And this for the sole and exclusive purpose of making it manifest in the indicated procedure”.

FOURTH. There is a letter from AMATEX dated 11/21/2018 stating: “We address the present in relation to the claimant, NIF..., which, given our status as responsible for the labor management of her company, we know she was employed by AMATEX third-party account.

That the claimant with DNI... provided her services for AMATEX from date 1 of December 2009 until March 5, 2017 holding the position of PERSONNEL RESPONSIBLE from May 10, 2010 to the date of his termination. Its functions included the assessment, application, management, processing and monitoring of public subsidies for the creation/maintenance of employment convened by the various public administrations.

FIFTH. AMATEX in response to the information request of the AEPD stated that he had not provided or transferred personal data of the claimant to no third party reason for which there is no incident whose cause to analyze no action to be taken.

SIXTH. It is known that the husband of the claimant filed a verbal trial 489/2018 before the Court of First Instance No. 2 of Soria, exercising the action of claim in the amount of 3,000 euros, against ARES.

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

The facts denounced are specified in the sending by the claimed of a report containing personal data and information about the activity carried out in AMATEX by the claimant to the company ARES to be contributed and www.aepd.es

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used before the Court of First Instance No. 2 of Soria for a claim filed by her husband, violating the duty of confidentiality.

Article 58 of the RGPD, Powers, states:

"two. Each supervisory authority will 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;

(...)

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:

(...)

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").

(...)"

And article 6, Legality of the treatment, of the RGPD determines that:

"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;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;

d) the processing is necessary to protect the vital interests of the data subject or of another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers vested in the person responsible for the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the controller or by a third party, provided that on such interests do not override the interests or rights and freedoms fundamental data of the interested party that require the protection of personal data, in particularly when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to treatment carried out by public authorities in the exercise of their functions.

(...)”

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”.

III

The documentation in the file shows that AMATEX has violated article 5 of the RGPD, principles related to treatment, in relation to the Article 5 of the LOPGDD, duty of confidentiality, when disclosing to a third party, ARES, the data of the claimant included in a report that was requested by him and where They include, in addition to the aforementioned data, a summary of the working life in the company of the claimant.

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

understood that its purpose is to prevent leaks of data not

consented by the holders of the same to third parties.

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

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

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

It is proven that AMATEX sent ARES a letter dated 11/21/2018 in the

which reported: "That the claimant with a DNI... provided her services for AMATEX

from December 1, 2009 to March 5, 2017 performing the

position of PERSONNEL RESPONSIBLE from May 10, 2010 until the

date of termination. Its functions included the assessment, application, management,

processing and monitoring of public subsidies for the creation/maintenance of

employment convened by the various public administrations.

The aforementioned report, which contained their personal data (name, surnames,

etc.) and, in addition, information on the working life carried out in the company were

provided by ARES as evidence in a judicial process unrelated to the claimant and

where her husband was an active party, who had sued ARES in

verbal trial before the Court of First Instance No. 2 of Soria, exercising the action

Of claim.

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First of all, before going into the main question, it is necessary to

point out that there is nothing to oppose the contribution by ARES in court of the

report issued by AMATEX in the legitimate exercise of its right of defence, for how much the enforceability of the consent of the owner of the data that could be object of a treatment in a judicial procedure for said treatment of its data would mean leaving the necessary information available to him so that a person can fully exercise their right to effective judicial protection and would imply, logically, a decrease in the possibility of contribution by the interested party of "the pertinent means of evidence for their defense", violating another of the guarantees derived from the aforementioned right to effective protection and limiting the possibility of obtain the full development of this right.

Based on the foregoing, from the documentation in the file, it follows that the respondent provided a third party, ARES, by means of a letter of 11/21/2018 a report referred to above that was provided by the Court of First Instance No. 2 of Soria.

In accordance with what was stated above, the processing of personal data requires the existence of a legal basis that legitimizes it, as a guarantee of security adequate for the integrity and confidentiality of the data.

In a brief of allegations dated 12/03/2019, AMATEX has stated and reiterated that he had not provided the claimant's personal data to third parties.

However, such an allegation is not sustained when he subsequently states and acknowledges that the report of 11/21/2018 was issued by AMATEX at the request of ARES, as a result of a legal proceeding and that the information reflected in the aforementioned report was already known by the consultancy, so the privacy or violated the protection of any data.

It must be considered that in the present case there is no legal basis that legitimizes the processing of personal data of the claimant by AMATEX for the purpose persecuted, in accordance with the provisions of article 6.1 of the RGPD.

Previously it was pointed out that data can only be processed when have the consent of the persons concerned, when they have an obligation contractual, to comply with a legal obligation, when the treatment is necessary for the fulfillment of a mission carried out in the public interest, to protect the vital interests of the interested party, to satisfy the legitimate interests of your organization, but only after having verified that the rights and freedoms of the person whose data they are treating are not seen significantly affected; If the rights of the person prevail over their interests, they cannot process data based on legitimate interest; assessment of whether your interests legitimate for the treatment prevail over those of the affected people depends of the individual circumstances of the case.

Firstly, it is clear that the report containing the data of the claimant to provide it as evidence before the Court of First Instance No. 2 of Soria for a lawsuit filed against ARES, not had the consent of the claimant, neither she nor AMATEX being parties

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active or passive in said process and, in addition, the aforementioned element of evidence disputed brought in verbal trial, it does not appear that it was required by the court and that therefore, he would have been the one to determine said circumstance.

Secondly, for purely dialectical purposes we could consider that

AMATEX has a legitimate interest in providing said report in court; however, such

This circumstance cannot be considered either, since neither the claimant nor the respondent

are part of the process as indicated in the preceding paragraph and, in the exercise of weighting should be considered that the rights and freedoms of the claimant prevail over the interests of the controller; In addition, it corresponds to the person in charge of the treatment demonstrate that the treatment is necessary and proportionate to the legitimate interest pursued and that does not invalidate the rights of the interested party.

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.

The LOPDGDD in its article 72 indicates for prescription purposes: "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.

(...)"

However, article 58.2 of the RGPD provides the following: "Each authority of control will have all the following corrective powers indicated below:
continuation:

(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

(...)"

Therefore, 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 processing of personal data that do not meet your expectations.

In the present case, the defendant violated article 5 of the RGPD, principles related to treatment, in relation to article 5 of the LOPGDD, duty of confidentiality, when disclosing to a third party, the data of the claimant included in a

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report provided by AMATEX to ARES, in order to use them as evidence in the Court of First Instance No. 2 of Soria motivated by a lawsuit filed by the claimant's husband, with no legal basis to legitimize it.

According to the available evidence, such conduct is constituting the infringement of the provisions of article 5.1.f) of the RGPD.

This infraction could be sanctioned with a warning in accordance with the article 58.2.b) of the RGPD and consider that the administrative fine that could fall in accordance with the provisions of article 83.5.b) of the RGPD would constitute a burden disproportionate for the respondent, whose main activity is not directly linked to the processing of personal data, in addition to the fact that the commission of no previous breach of data protection and that you informed the

complainant about the events that occurred.

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 LOGGING AND TREATMENT

FOR OUTDOORS, S.A.U. (AMATEX), with NIF A42147090, for an infringement of the article 5.1.f) of the RGPD, typified in Article 83.5.a) of the RGPD, a sanction of warning in accordance with article 58.2 of the aforementioned Regulation.

SECOND: NOTIFY this resolution to APROVECHAMIENTOS

WOODWORKERS AND TREATMENT FOR OUTDOORS, S.A.U. (AMATEX).

THIRD

: REQUIRE LOGGING AND TREATMENT

FOR OUTDOORS, S.A.U. (AMATEX), so that within a month from the notification of this resolution, accredits the adoption of technical measures and relevant organizational organizations in order to ensure that the processing of the data is carried out in accordance with the regulations on the protection of personal data personnel to ensure the confidentiality of the information included in their systems and in order to prevent incidents such as those that have occurred in the future from happening again. place to the claim that has motivated the opening of the procedure, so that the treatment of the data is adapted to the requirements contemplated in article 5.1, letter f) of the GDPR.

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

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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

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Director of the Spanish Data Protection Agency

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